

New York City Council Passes Bill Prohibiting Hiring Discrimination Against Unemployed Job-Seekers

Questions & Answers

1. What action was taken by the New York City Council to prohibit discrimination in hiring against the unemployed?

On January 23, 2013, the New York City Council passed legislation ([Int. No. 814](#)) sponsored by Speaker Christine Quinn and Councilmembers Leroy Comrie and Vincent Gentile that prohibits discrimination in hiring against the unemployed. The legislation passed by a margin of 44-4. The mayor has vowed to veto the bill, but the overwhelming vote in the Council means there is more than enough support to override his opposition.

2. What is the harm that the legislation addresses?

In the wake of the most severe economic downturn since the Great Depression, there is a widespread bias on the part of employers and employment agencies against hiring the unemployed. Researchers at the UCLA Anderson School of Management documented the “pervasive” practice in a recent study entitled, [The Stigma of Unemployment: When Joblessness Leads to Being Jobless](#) (published by Institute for Research on Labor and Employment, Working Paper 2011-98, December 2011).¹ In July 2011, the National Employment Law Project also issued a report ([Hiring Discrimination Against the Unemployed](#)) that detailed the prevalence of job postings expressly limiting consideration to the “currently employed.”

These wrong-headed practices are not only harmful to job seekers, fueling their frustration and fear of not being able to get back on their feet, but they also undermine the city’s economic recovery and impede employers’ ability to find the best qualified and most motivated workers. As Federal Reserve Chairman Ben [Bernanke has repeatedly cautioned](#), persistently high levels of long-term unemployment, which are exacerbated by hiring discrimination against the unemployed, imposes a serious drag on the nation’s economy while causing even more economic hardship.

¹ According to the authors, “In sum, the results of these studies suggest that the unemployed may have a legitimate concern about bias against them because the psychological stigma of the unemployed exists, occurs instantaneously (i.e., the moment an individual is unemployed), is unjustifiable (i.e., without regard to qualifications), is pervasive (i.e., affects resume and live person evaluations), is difficult to alleviate (i.e., causal controllability of unemployment onset did not affect stigma) and has negative consequences (i.e., leads to hiring bias against the unemployed).” Id. at page 11.

3. Are there certain New York City workers most severely impacted by the problem?

With an unemployment rate of 9.4 percent in 2012, large numbers of New York City residents are still struggling to find work. Because of the limited job growth, however, record numbers of New York City workers find themselves unemployed for prolonged periods of time, which makes them even more vulnerable to discrimination in hiring. According to the Fiscal Policy Institute, more than half (51 percent) of unemployed New York City residents were actively seeking work for more than six months (compared to 39 percent nationally and 44.5 percent in New York State) in 2012. While long-term unemployment has taken a heavy toll on all New York City residents, women, middle-aged workers, African Americans, and the least educated were the most severely impacted (see Table).

4. What specific protections were included in the legislation to prohibit discrimination against the unemployed?

Int. No. 814 amends the city's anti-discrimination laws to include provisions that make it unlawful to exclude the unemployed who are "available for work, and seeking work" from consideration for employment and prohibit discriminatory job postings that contain exclusionary language. Workers have the right in appropriate situations to file a complaint alleging a violation of the law with the New York City Commission on Human Rights and to pursue their remedies in court. In addition, the bill instructs the Commission to educate employers, employment agencies and job seekers about their rights under the new law.

5. Does the bill limit an employer's ability to select the best qualified candidate for the job?

The bill expressly authorizes employers to consider an individual's unemployment in the hiring process, and to base hiring decisions or eligibility on an individual's unemployment in any case where there is a "substantially job-related reason" for doing so—thus maintaining employer flexibility to consider unemployment status in appropriate situations. In addition, the bill expressly protects the employer's ability to inquire into the circumstances surrounding an applicant's separation from employment and to impose other necessary job requirements, such as professional, educational, or occupational licensing standards.

6. What measures have been proposed or adopted around the country to limit discrimination in hiring against the unemployed?

In response to the problem, President Obama proposed the Fair Employment Opportunity Act, which was introduced in both the House of Representatives (H.R. 2501) and the Senate (S. 1471). The federal bill was strongly endorsed by *The New York Times* ([One Way to Help the Jobless](#), July 25, 2011). Like Int. No. 814, the federal legislation sought to address the underlying discrimination without in any way dictating the employer's ultimate hiring decision, and it provided workers with a complaint process to challenge the discrimination and protect their rights in court if necessary.

New Jersey and Oregon have both passed laws regulating only the exclusionary job postings. In addition, the District of Columbia enacted the Unemployed Anti-Discrimination Act of 2012, which amends the city's civil rights laws to prohibit employment discrimination against the unemployed at all stages of the hiring process, not only in job ads posted by employers or employment agencies. It provides the city's Office of Human Rights with the authority to investigate employers and impose up to \$20,000 in civil penalties for violations of the law.

New York City, average duration of unemployment (in weeks), 2012

All workers	42.5
Gender	

Males	42.0
Females	43.2
Race-ethnicity	

White non-Hispanics	37.6
Black non-Hispanics	47.2
Hispanics	42.2
Asian and other	41.2
Education attainment	

Less than high school	51.5
High school or equivalent	44.6
Some college	44.3
4-year college degree plus	40.1
Age	

18-24	37.4
25-34	42.9
35-44	43.6
45-54	50.2
55-64	42.3
65 and older	35.6

% of NYC's 2012 unemployed who were long-term unemployed (more than 26 weeks): 51% (females, 54%, males 50%)

% of NYC's 2012 unemployed who were very long-term unemployed (more than 52 weeks): 29% (females 29%, males 29%)

Source: Fiscal Policy Institute analysis of Current Population Survey, Jan. 20, 2013.