



Testimony of Mitchell Hirsch

National Employment Law Project

In Support of An Act providing fair chances for employment S.954

Hearing before the Joint Committee on Labor and Workforce Development

189th General Court of The Commonwealth of Massachusetts

July 21, 2015

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Chairman Wolf, Chairman Scibak, and Honorable Members of the Committee, thank you for the opportunity to submit this testimony in support of An Act providing fair chances for employment, S.954, a measure that will help remove an unfair barrier to employment opportunities for unemployed job-seekers in Massachusetts.

A disturbing trend emerged among employers and staffing firms in the last few years: that of refusing to even consider the unemployed for available job openings, regardless of their qualifications. Excluding unemployed workers from employment opportunities is unfair to workers, and it's bad for the economy. The National Employment Law Project (NELP) commends this Committee and the bills' sponsor, Senator Barrett, for taking up this important legislation.

Elevated levels of unemployment have combined with a difficult job market to make finding new work for unemployed job-seekers an extraordinarily difficult challenge for too many workers in recent years. An improving labor market has helped bring unemployment rates down – in May 2015 the unemployment rate in Massachusetts was 4.6 percent, down from nearly 9 percent in 2009-2010. Still, in May of this year, more than 165,000 Bay State workers actively seeking work were unemployed. And long-term unemployment, where workers are still jobless after looking for work for six months or more, remains a particularly troublesome issue. During all of 2014, there were about 60,000 unemployed job-seekers in Massachusetts looking for work for 6 months or more each month on average, representing 34.7 percent of all the unemployed. And the vast majority of those long-term unemployed were jobless for a year or longer. During the twelve month period ending September 2014, roughly 80 percent of the long-term unemployed in Massachusetts were looking for work without finding any for 52 weeks or more.

The unfortunate prevalence of hiring bias and discrimination against unemployed job applicants has certainly contributed to longer durations of unemployment for far too many Bay Staters. Too often, long-term unemployed job-seekers become so frustrated with their seeming inability to get a foot in the door for an interview, or even a call back from a prospective employer – regardless of their employment record and qualifications – that they give up looking entirely

and leave the labor market. That is one of the bad reasons behind falling unemployment rate statistics. And it does long run harm to workers, families and the economy.

At a time when we should be doing all we can to ensure fair and open access to job opportunities for all who want and need to work, it is profoundly disturbing to see the deliberate exclusion of otherwise-qualified unemployed job-seekers from even being considered for such opportunities.

Reports of these exclusionary practices in the job market began to surface in 2010. Press accounts reported job announcements explicitly stating “No Unemployed Candidates Will Be Considered”; others requiring that applicants “must be currently employed.” Around the same time, we at NELP began to hear from people seeing similar job postings online, and from others who were shocked when they were told by recruiters and staffing agency representatives that despite their qualifications, they would not be referred for interviews for positions because they were not currently employed or because they’d been unemployed for a certain number of weeks or months.

In the Spring of 2011, NELP conducted a 4-week survey of online job posting sites and found more than 150 examples of ads containing explicitly exclusionary language, and in July 2011 we detailed these findings in a report titled [“Hiring Discrimination Against the Unemployed”](#) which received prominent news coverage and helped bring the issue to national attention.

Since then we have heard from hundreds of unemployed job-seekers from across the country, including workers from Massachusetts -- most with many years, even decades of relevant job experience -- telling of their personal encounters with these discriminatory practices, often describing their deep frustration, their increasing financial strains and, for some, their fear of possibly never working again.

Stephanie Theriault from Gloucester wrote saying she had "talked to recruiters and they told me two things: either I had to be currently employed, or employed in the past 6 months, or they would not send me on job interviews. For companies doing direct hiring, they said the same thing."

Herve T. of Brighton wrote saying that staffing firms had replied to his job inquiries by telling him "employers do not want them to hire or refer anyone who has been unemployed for more than 6 months." "I would hope that employers could find that I and many others who are unemployed are as capable of being great workers as the next person," he said.

Barbara Monte from Melrose wrote saying she was “told by a recruiter at an employment agency that I was at a disadvantage because I was unemployed. I also have encountered being

unable to fill out job applications online because I am unable to provide a current employer or salary." "Because of these unfair practices," she wrote, "I remain unemployed and see no light at the end of the tunnel."

The devastating effects of being denied access to employment opportunities by such discriminatory practices -- that serve no rational purpose -- are exacerbating the personal suffering of those who need jobs the most.

Those who would argue that these are isolated occurrences and that these practices are by no means widespread have been well disputed by substantive academic research findings, as well as by leading figures in the recruiting and human resources fields.

Recent independent research studies -- based on responses to thousands of sample resumes and surveys of hundreds of human resource and recruiting professionals -- have documented the barrier to employment these biases and discriminatory practices produce. In a survey [reported on in the Boston Globe](#) (June 23, 2013) Rand Ghayad, a researcher at Northeastern University and the Boston Federal Reserve, found a drastic drop-off in call-back rates for resumes indicating an employment gap of six months, and significantly fewer call-backs for those resumes indicating current unemployment, despite substantially greater relevant experience, than for those with current employment and far less job-relevant experience. Similarly, Geoffrey Ho, a researcher at the UCLA Anderson School of Management, has documented the "pervasive" practice of employers, hiring managers, recruiters and employment agencies discriminating against unemployed job applicants based solely on their unemployment status in a study entitled ['The Stigma of Unemployment: When Joblessness Leads to Being Jobless'](#).

Rich Thompson, vice president of learning and performance for Adecco Group North America, the world's largest staffing firm, told *CNNMoney.com* in June 2010 that companies' interest only in applicants who are currently working "is more prevalent than it used to be...I don't have hard numbers," he said, "but three out of the last four conversations I've had about openings, this requirement was brought up." Similarly, Lisa Chenofsky Singer, a New Jersey human resources consultant specializing in media and publishing jobs, commented that, "Most executive recruiters won't look at a candidate unless they have a job, even if they don't like to admit it." According to Ms. Singer, the first question she is generally asked when recommending a candidate is whether the candidate is currently working—and if the candidate is unemployed, the recruiter is not interested.

A survey reported in October 2011 by SmartRecruiters, which markets free recruiting software, found that "82% of recruiters, hiring managers, and human resources professionals, report the

existence of discrimination against the unemployed.” Among those surveyed by the company, “55% of recruiters and HR managers have ‘personally experienced resistance when presenting qualified yet unemployed candidates to clients/colleagues.’”

It is clear that discriminatory exclusion of applicants for jobs simply because they are unemployed, or a refusal to hire based solely on an individual’s being unemployed, are harmful and unfair barriers to employment -- barriers which this legislation would help remove.

Two years ago, New York City enacted the nation’s strongest protections for unemployed job-seekers against discriminatory job market practices, legislation similar to that which you are now considering. At the time, opponents warned that it would significantly depress hiring and lead to a wave of unwarranted litigation. Neither assertion has proven even remotely true. Since adopting anti-discrimination protections for unemployed job-seekers, job growth and hiring in New York City have substantially outpaced both state and national trends – with virtually no litigation. Employers, recruiters and staffing firms have simply adjusted their practices in order to comply with the law – as they should, and as the legislation intended.

Where New York City has been the municipal pioneer on this issue, so now should Massachusetts set the standard for the states.

NELP also supports **S.123/H.1736**, regulating the use of credit reports by employers, and urges this Committee to act to advance that bill toward passage, as well as this measure to provide fair chances for employment to unemployed job-seekers (**S.954**).

Thank you.

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