

Notice to Employers Regarding Job Bank Nondiscrimination and Hiring Restrictions Based on an Individual's Unemployment Status

We advise employers not to automatically exclude job seekers based on their unemployment status unless the employer can show that an unemployment status restriction is related to the job posted and consistent with the employer's business needs. This type of screening requirement may unjustifiably limit the employment opportunities of applicants in protected groups and may therefore violate federal civil rights laws. Any employer that submits a job announcement containing restrictions or exclusions based on an applicant's unemployment status will have an opportunity to edit or remove the announcement.

Practical Considerations:

- It could be difficult for employers to show that screening out applicants based on their current status as unemployed is job related and consistent with business necessity. For example:
 - Candidates for entry-level jobs and certain other positions receive relevant training upon hire.
 - An applicant who currently is employed is not likely to be employed in a position identical to the position being filled.
 - For jobs that do not require state-of-the-art knowledge, skills and/or abilities related to rapidly changing technologies or practices, the qualifications and experience that applicants acquired through past jobs do not automatically disappear during the period of unemployment. Many of those who are unemployed for long periods of time before returning to work see their earnings eventually bounce back to their pre-unemployment levels, suggesting little loss of their skills during unemployment.
 - Even for those jobs that require state-of-the-art knowledge, skills and/or abilities of rapidly changing technologies or practices, it cannot be assumed that the applicant has not taken steps to maintain proficiency in those skills and knowledge. Moreover, current employment may not be useful in evaluating relevant experience and knowledge.
- More accurate and potentially less discriminatory alternatives to exclusion of those currently unemployed include individualized assessments, such as posing problems or questions on applications or in interviews about an individual's recent experience and employment history, the reasons underlying an individual's status as unemployed, and his or her education and training. For example, by taking into account an individual's particular circumstances, an employer may learn that the candidate is currently unemployed because he or she has been in school receiving relevant training or serving in an internship. The candidate may have been employed until very recently, or the candidate may have used a period of unemployment to add to his or her training and knowledge base.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the bases of race, color, religion, sex, national origin, or disability, among others. More information about the laws CRC enforces and its external complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, (202) 693-6500 (voice), or (202) 693-6516 (TTY).

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the bases of race, color, religion, national origin or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at: <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).