

**The number of Americans who file for unemployment benefits** for the first time has fallen to the lowest point in nine months, the U.S. Department of Labor recently announced. However, there are still millions of Americans who have been unemployed for six months, a year, or longer.

These long-term unemployed face many barriers, Congress was told in a hearing on December 8. Lawmakers heard testimony including:

1. Employers are increasingly screening applicants by conducting credit background checks. The catch-22 for applicants who have been out of work for a long time is they may have a bad credit rating yet they can't improve it until they get a job.

2. There has been discrimination against unemployed individuals by some employers that only want to hire people who already have a job.

For example, you might have seen a job posting that reads like this: "Looking to hire an individual with experience. Must be currently employed."

In some cases, the advertisement may go so far as to state that the employer will not interview or consider anyone who is unemployed, regardless of the reason.

*Question:* Is imposing this type of requirement legal? *Answer:* On a federal level, it's not clear yet and state laws continue to evolve.

The Equal Employment Opportunity Commission (EEOC) is surveying the landscape. It held public meetings to assess how employers are handling the situation. Detractors of the practice testified that unemployment discrimination has a "disparate impact" on minorities, older workers and the disabled because they already face higher unemployment rates than other people. Although the EEOC has not formally declared its position, this issue is definitely on its radar screen.

Some legal commentators have declared such hiring tactics to be illegal. They argue that the practice is discriminatory under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967. In addition, state law may have an impact. For example, New Jersey recently passed new legislation making it illegal to require that only candidates with current jobs may apply for employment, and other states are considering similar measures.

Earlier this year, the Obama administration proposed federal legislation that would make unemployment status a protected class, just like race, sex, disability age, national origin or other factors. However, the legislation has not been passed by Congress.

Businesses should be aware that potential lawsuits from aggrieved job candidates are a distinct risk. Courts might be sympathetic to an unemployed individual who wasn't even granted an interview. And the publicity resulting from a trial or discrimination allegations could be harmful to a company.

## The Rationale Behind the Employed-Only Requirement

Some businesses have stated that they believe in the current economic environment, people who remain employed have special talents, strong work ethic and are likely to be well-versed in the latest technology and industry applications. Conversely, some employers feel that people who are unemployed may require additional training if they are hired. That takes both time and money.



Some employers may also believe that being employed indicates stability, loyalty and dedication. Finally, if these employers limit the applications to people who are currently employed, they can reduce the usual avalanche of applicants to a more manageable level.

Of course, not everyone is convinced that imposing this requirement produces the best group of job candidates. Plenty of job-seekers with skills and purpose are unemployed through no fault of their own. They can provide a valuable reservoir of business talent.

So if your business is using an "employed only" approach or contemplating it, seek expert legal guidance concerning the parameters. Alternatively, you may take other steps that can benefit your hiring policies, including the following:

**Update job descriptions to be more specific.** Make sure that you define the main responsibilities, functions and requirements of the position being offered. This will likely limit the number of unqualified candidates who submit applications to your firm.

**Choose one employee to review all job postings from your business.** Using the same person for this task will provide greater consistency and minimize the possibility that "employment-only" ads will sneak through.

**Be more selective with recruiting tools.** Traditionally, employers have tried to broaden their searches by advertising on sites that reach a wide audience. But you may find better candidates by relying on industry-specific sites, recruiting firms or networks of professional associations. Current employees may also be encouraged to make referrals or recommendations.

**Use software to screen applicants.** For instance, you might allow candidates to submit applications online, while the software can help you narrow the search. Typically, you'll be able to save resumes for the future if you don't have an immediate opening for someone who wows you. Also, this technique makes it relatively easy to respond to each applicant in quick fashion.

**Telephone some applicants.** Instead of interviewing every candidate face-to-face -- which is a time-consuming process -- spend a few minutes on the phone with the cream of the crop. That will give you a better feeling if a particular person is right for the job. Take detailed notes and keep them on file for legal protection.

*Bottom line:* You don't want to spend an inordinate amount of time wading through resumes. But imposing an employment-only requirement could land you in hot legal water (not to mention possibly missing out on viable candidates). If you're committed to this hiring approach, proceed with caution.