

# Madison, Wisconsin Enacts Expansive Unemployment Discrimination Law

**December 9, 2013**

On December 3, 2013, the Common Council of Madison, Wisconsin passed ORD-13-00211 [\[1\]](#) to prohibit employers from discriminating against job applicants based on their unemployment status.

The new Ordinance joins a growing number of laws to prohibit or limit discrimination against the unemployed. New Jersey, Oregon and the City of Chicago have outlawed advertisements that, in essence, state the unemployed need not apply. In addition to banning discriminatory ads, the District of Columbia and New York City have curtailed the consideration of an applicant's unemployment status in adverse hiring decisions. (New York City's law affords a private right of action with the promise of lucrative remedies.) The U.S. Congress and several state legislatures also have introduced bills that target "unemployment discrimination."

The rights and remedies provided in Madison's new Ordinance are significant and rival those of New York City's landmark law. To explain Madison's new Ordinance, this alert discusses its coverage, prohibitions, enforcement, and remedies.

## **Coverage**

The new Ordinance amends Section 39.03 of Madison's Equal Opportunities Ordinance, which protects a number of other classes from employment discrimination. By amending the City's existing discrimination statute, the coverage of the new Ordinance is expansive. Although Madison's existing Equal Opportunities Ordinance does not expressly define the term "employer," it broadly defines the term "employee" to exclude only those individuals who are employed by their parents, spouse, or child.

## **Unlawful Practices**

The new Ordinance prohibits (with exceptions)[\[2\]](#) employers from discriminating against individuals based on their unemployment status with respect to their compensation, or the terms, conditions, or privileges of employment. Along these lines, employers may not limit, segregate, or classify employees or job applicants based on unemployment status so as to deprive them of employment opportunities or otherwise adversely affect their employment status.[\[3\]](#) Moreover, it is unlawful to print or publish any notice or advertisement that discriminates against the unemployed.

### **Enforcement & Remedy**

By amending Section 39.03 of Madison's Equal Opportunities Ordinance, the new Ordinance allows an aggrieved individual to file a complaint of discrimination with the Madison Equal Opportunities Commission ("Commission") and, if successful, reap various monetary damages and other relief. The Director of the Madison Department of Civil Rights also may request the City Attorney to file an action before any city or state administrative agency and/or in the circuit court for Dane County, seeking temporary relief before the Commission takes final action. Moreover, an employer who violates the new Ordinance may incur a modest fine.

### **Takeaway**

While we have seen nothing to indicate that our clients or other employers are using current employment status as a basis to screen out candidates, employers in Madison should take the necessary measures to comply with the new Ordinance. Employers may consider putting a statement on their applications where there are questions about prior work history that states "unemployment is not a bar to employment."

Given recent trends, employers across the country also should brace for continued legislative efforts to curtail "unemployment discrimination." In addition to the growing patchwork of laws, the Equal Employment Opportunity Commission ("EEOC") purportedly is investigating a number of charges involving allegations of unemployment discrimination.

Overall, the hiring process has received a tremendous increase in legislative and judicial attention in recent years at the federal, state, and local levels. Indeed, a number of laws have limited inquiries into or consideration of an applicant's credit and criminal background histories and use of social media, among other things. If you have any questions or concerns regarding the new Ordinance or related developments regarding background checks, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling & Training Group.

[\[1\]](#) The new Ordinance will take effect upon being published in the Wisconsin State Journal.

[\[2\]](#) The new Ordinance expressly allows employers to inquire into or consider the facts or circumstances that led to the applicant's unemployment.

[\[3\]](#) The new Ordinance codifies similar proscriptions with regard to employment agencies and labor organizations.

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