

Hiring the Unemployed

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The EEOC is looking into reports that some employers and staffing agencies are automatically excluding from consideration job applicants who are currently unemployed. At recent EEOC hearings, employee advocate groups represented that this is happening; SHRM says it is unaware of any widespread practice to exclude unemployed persons from hiring consideration. The EEOC responded by instructing its staff to gather information about whether this practice is widespread and, if so, why employers and staffing agencies might do it and how the EEOC should respond. The EEOC believes that racial minorities, women, persons with disabilities, and older workers are disproportionately represented among the unemployed. If so, according to the EEOC, excluding the unemployed from hiring consideration would amount to disparate impact against protected groups of workers. Bottom line: If you are excluding the unemployed from hiring consideration, beware. Better to consider all applicants alike and hire the best qualified, regardless of their current employment status. That should help to avoid a disparate impact claim.

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