



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

February 22, 2013

Hon. Michael McSweeney
City Clerk and Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 814-A, which amends the New York City Human Rights Law to make it illegal for employers to consider an individual's unemployment status in hiring and other employment decisions without a substantially job related reason for doing so or to post job advertisements indicating that the unemployed need not apply for a position.

Our Administration shares the Council's concern for the needs of those who have been unemployed due to circumstances beyond their control and in partnership with the City Council, we have taken aggressive steps to stimulate the economy and mitigate unemployment throughout the City. With the Department of Small Business Services we have aggressively expanded workforce development and job placement efforts through the expansion of the City's Workforce One centers. These efforts, along with investments in infrastructure and economic development activities in all five boroughs, have allowed New York City's economy to significantly outperform the rest of the country. Since the onset of the national recession, the United States has gained back only 54% of the private sector jobs it lost; by comparison, New York City has now recovered more than 215% of the private sector jobs we lost. And New York City now has more private sector jobs – 3.3 million – than at any point in its history. And for individuals without a high school diploma, the City's unemployment rate remains less than it is in the country, as it has been since 2007.

Introductory Number 814-A prohibits employers from advertising a job opening that includes language that currently being employed is a requirement for the job or that unemployed

applicants will not be considered. Several jurisdictions throughout the country have enacted similar legislation and this is something our Administration supports.

In a misguided attempt to further protect the unemployed from discrimination, Introductory Number 814-A makes it unlawful for employers to base hiring decisions on the unemployment status of a prospective employee without having a substantially job-related reason for doing so. Aggrieved prospective employees will have the opportunity to file a claim with the City's Commission on Human Rights or file a civil suit seeking damages. Allowing employers to inquire about a prospective employee's unemployment only if they have a "substantially job related" reason for doing so introduces a subjective standard and provides insufficient guidance for employers to engage in a hiring process without running afoul of the law. Hiring decisions frequently involve the exercise of independent, subjective judgment about a prospective employee's likely future performance, and the creation of this ambiguous legal standard will make it harder for employers to make decisions that will benefit their businesses. Moreover, to bring a claim, an aggrieved employee need only show that an employer's hiring practice has a "disparate impact" on the unemployed. Because it is reasonable to assume that employers throughout the City more often hire the employed than the unemployed, employers may be justifiably concerned about facing a litany of lawsuits claiming discrimination – lawsuits that after incurring significant expense may ultimately be dismissed. For these reasons this bill merely serves to add litigation, and not jobs. It is worth noting that while several jurisdictions have enacted legislation to protect the unemployed from discrimination, not one has provided for a private right of action or applied a disparate impact standard.

Furthermore, faced with the prospect of being fined as much as \$250,000 per violation by the Human Rights Commission, or perhaps much more at the whims of the courts, the practical effect of this law is that employers would simply choose to hire from within their businesses for fear of being sued. The chilling effect in hiring for those seeking employment from outside a business created by this bill only serves to further hinder the prospects of the unemployed.

I also have reservations about treating the unemployed as a protected class in New York City's Human Rights Law. The City's Human Rights Law is well recognized as one of the broadest civil rights laws in the nation and adding the unemployed blurs the line between irrational discrimination, which the Human Rights Law is supposed to address, and more complicated employment decision-making processes that can legitimately rely on multiple factors. Unlike other bases for discrimination prohibited by the Human Rights Law, such as race, religion, or sex – which should never be relevant to hiring and employment decisions – the circumstances surrounding a person's unemployment status may, in certain situations, be relevant to employers when selecting qualified employees.

While the Council's effort to protect the unemployed from discrimination is laudable, Introductory Number 814-A will only serve to increase employers' costs and introduce uncertainty in their hiring processes, further harming the prospects of the unemployed.

For the foregoing reasons, I hereby disapprove Introductory Number 814-A.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael R. Bloomberg
Mayor

Cc: The Honorable Christine C. Quinn