

June 10, 2013

MEMORANDUM

To: College Presidents

From: Frederick P. Schaffer *FPS*
General Counsel & Senior Vice Chancellor for Legal Affairs

Re: New York City Prohibits Discrimination Against Unemployed

This memorandum is being sent to inform the University community of a recently-approved amendment to the New York City Administrative Code to prohibit discrimination against job applicants based on their unemployment status. The amendment, which takes effect on June 11, 2013, will make it unlawful for an employer, defined to include CUNY, to (1) base an employment decision concerning hiring, compensation, or terms, conditions or privileges of employment on an applicant's unemployment or (2) advertise for a job vacancy with provisions stating that being currently employed is a requirement or qualification for the position or that the employer will not consider unemployed individuals.¹ As a result, the unemployed in New York City will now be a protected class, with the rights and protections associated with that classification. Under the new law, unemployed or unemployment is defined as "not having a job, being available to work, and seeking employment."²

The amendment also clarifies what actions an employer can take with respect to an applicant's unemployment when making employment decisions. Specifically, employers may do the following:

- Consider an applicant's unemployment status when there is a "substantially job-related reason" or inquire into the circumstances surrounding an applicant's separation from employment.
- Consider or publish in a job advertisement any "substantially job-related qualifications," including but not limited to a current valid professional or occupational license, certificate, registration, permit or other credential and the

¹ N.Y.C. Admin. Code §§ 8-107(21)(a)(1)-(2) (effective June 11, 2013).

² N.Y.C. Admin. Code §8-102(27).

applicant's minimum level of education or training or professional, occupational or field experience.

- Determine that only employees currently employed by the employer who apply for the position will be considered for employment or given priority for employment or compensation terms, conditions or privileges of employment.
- Set compensation terms or conditions of employment for a person based on that person's experience.³

This amendment does not apply to appointments to competitive positions from eligible lists pursuant to state civil service law or the exercise of any right of an employer or employee pursuant to a collective bargaining agreement.⁴

In light of this amendment, all employees involved in the hiring process should be educated on what they can and cannot do with respect to unemployed applicants. To the extent it is applicable, all hiring guidelines should be revised to ensure that common inquiries or hiring factors are tailored to avoid any implication that an individual's employment status is a consideration in the hiring process and advertisements or job postings should be modified to remove any reference to an applicant's unemployment status. For example, search committees can no longer decide not to interview or hire candidates, who otherwise have met the requirements for a position, because they are unemployed, even if they have been unemployed for a significant period of time.

CUNY adheres to all federal, state and city laws and regulations regarding non-discrimination and affirmative action. Therefore, this change in New York City law changes CUNY's Policy on Equal Opportunity and Non-Discrimination to include a prohibition on discrimination based on an applicant's unemployment status.

For further guidance with respect to the application of this amendment, please contact Stacey Creem at the office of the General Counsel.

c: Chancellor
Cabinet
Chief Diversity Officers
Directors of Human Resources
Legal Affairs Designees

³ N.Y.C. Admin. Code §8-107(21)(b).

⁴ N.Y.C. Admin. Code §8-107(21)(c)(1)(c),(d).