

**ASSEMBLY BILL**

**No. 1450**

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**Introduced by Assembly Member Allen  
(Coauthors: Assembly Members Mendoza and Swanson)**

January 5, 2012

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An act to add Chapter 2.5 (commencing with Section 1812.50953) to Title 2.91 of Part 4 of Division 3 of the Civil Code, and to add Chapter 3.95 (commencing with Section 1046) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as introduced, Allen. Employment: discrimination: status as unemployed.

Existing law contains provisions that define unlawful discrimination and employment practices by employers and employment agencies.

This bill would make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer to knowingly or intentionally refuse to consider for employment or refuse to offer employment to an individual because of the individual's status as unemployed, publish an advertisement or announcement for any job that includes provisions pertaining to an individual's status as unemployed, as specified, or direct or request that an employment agency take an individual's status as unemployed into account in screening or referring applicants for employment.

The bill would also make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employment agency to knowingly or intentionally refuse to consider or refer an individual for employment because of the individual's status as unemployed, limit, segregate, or classify individuals in any manner

that may limit their access to information about jobs or referral for consideration of jobs because of their status as unemployed, or publish an advertisement or announcement, as described above with respect to employers.

This bill would subject an employer or employment agency who violates the above provisions to civil penalties that increase as the number of violations increase. The bill would state that it shall not be construed to create a private cause of action, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 2.5 (commencing with Section  
2 1812.50953) is added to Title 2.91 of Part 4 of Division 3 of the  
3 Civil Code, to read:

4  
5 CHAPTER 2.5. EMPLOYMENT AGENCY DISCRIMINATION ON THE  
6 BASIS OF UNEMPLOYMENT STATUS

7  
8 1812.50953. (a) For purposes of this chapter, “status as  
9 unemployed” means an individual’s present or past unemployment  
10 regardless of the length of time that the individual was unemployed.

11 (b) Unless based on a bona fide occupational qualification, an  
12 employment agency shall not knowingly or intentionally do any  
13 of the following:

14 (1) Refuse to consider or refer an individual for employment  
15 because of the individual’s status as unemployed.

16 (2) Limit, segregate, or classify individuals in any manner that  
17 may limit their access to information about jobs or referral for  
18 consideration of jobs because of their status as unemployed.

19 (3) Publish in print, on the Internet, or in any other medium, an  
20 advertisement or announcement for any job that includes either of  
21 the following:

22 (A) A provision stating or indicating that an individual’s status  
23 as unemployed disqualifies the individual for a job.

24 (B) A provision stating or indicating that an employer will not  
25 consider an applicant for employment based on that individual’s  
26 status as unemployed.

1 (c) This chapter does not prohibit an employment agency from  
2 doing either of the following:

3 (1) Publishing, in print, on the Internet, or in any other medium,  
4 an advertisement or announcement for any job that sets forth other  
5 lawful qualifications for a job, including the holding of a current  
6 and valid professional or occupational license, certificate,  
7 registration, permit, or other credential, or a minimum level of  
8 education or training or professional, occupational, or field  
9 experience.

10 (2) Printing, circulating, or causing to be printed or circulated  
11 a publication, advertisement, or solicitation for a job vacancy that  
12 contains any provision stating that only applicants who are  
13 currently employed by a particular employer will be considered.

14 (d) An employment agency shall not do either of the following:

15 (1) Interfere with, restrain, or deny the exercise of or the attempt  
16 to exercise any right provided under this chapter.

17 (2) Discriminate against any individual because the individual:

18 (A) Opposed any practice made unlawful by this chapter.

19 (B) Has caused to be instituted any proceeding under or related  
20 to this chapter.

21 (C) Has given, or is about to give, any information in connection  
22 with any inquiry or proceeding relating to any right provided under  
23 this chapter.

24 (D) Has testified, or is about to testify, in any inquiry or  
25 proceeding relating to any right provided under this chapter.

26 (e) (1) An employment agency that violates this section shall  
27 be subject to a civil penalty in an amount not to exceed one  
28 thousand dollars (\$1,000) for the first violation, five thousand  
29 dollars (\$5,000) for the second violation, and ten thousand dollars  
30 (\$10,000) for each subsequent violation, enforceable by the  
31 Attorney General or any city attorney.

32 (2) Notwithstanding Section 1812.523, this chapter does not  
33 create, establish, or authorize a private cause of action by an  
34 aggrieved person against an employment agency that has violated,  
35 or is alleged to have violated, this chapter.

36 (3) A violation of this chapter does not constitute a misdemeanor  
37 pursuant to Section 1812.523.

38 SEC. 2. Chapter 3.95 (commencing with Section 1046) is added  
39 to Part 3 of Division 2 of the Labor Code, to read:

1 CHAPTER 3.95. EMPLOYER DISCRIMINATION ON THE BASIS OF  
2 UNEMPLOYMENT STATUS

3  
4 1046. (a) For purposes of this chapter, the following definitions  
5 apply:

6 (1) "Employer" means a person who has 15 or more employees  
7 for each working day in each of 20 or more calendar weeks in the  
8 current or preceding calendar year and includes both of the  
9 following:

10 (A) A person who acts, directly or indirectly, in the interest of  
11 an employer with respect to employing individuals to work for the  
12 employer.

13 (B) A successor in interest of an employer.

14 (2) "Status as unemployed" means an individual's present or  
15 past unemployment regardless of the length of time that the  
16 individual was unemployed.

17 (b) Unless based on a bona fide occupational qualification, an  
18 employer shall not knowingly or intentionally do any of the  
19 following:

20 (1) Refuse to consider for employment or refuse to offer  
21 employment to an individual because of the individual's status as  
22 unemployed.

23 (2) Publish in print, on the Internet, or in any other medium, an  
24 advertisement or announcement for any job that includes either of  
25 the following:

26 (A) A provision stating or indicating that an individual's status  
27 as unemployed disqualifies the individual for a job.

28 (B) A provision stating or indicating that an employer will not  
29 consider an applicant for employment based on that individual's  
30 status as unemployed.

31 (3) Direct or request that an employment agency, as defined in  
32 subdivision (a) of Section 1812.501 of the Civil Code, take an  
33 individual's status as unemployed into account in screening or  
34 referring applicants for employment.

35 (c) This chapter does not prohibit an employer from doing either  
36 of the following:

37 (1) Publishing, in print, on the Internet, or in any other medium,  
38 an advertisement or announcement for any job that sets forth other  
39 lawful qualifications for a job, including the holding of a current  
40 and valid professional or occupational license, certificate,

1 registration, permit, or other credential, or a minimum level of  
2 education or training or professional, occupational, or field  
3 experience.

4 (2) Printing or circulating or causing to be printed or circulated  
5 a publication, advertisement, or solicitation for a job vacancy that  
6 contains any provision stating that only applicants who are  
7 currently employed by that employer will be considered.

8 (d) An employer shall not do either of the following:

9 (1) Interfere with, restrain, or deny the exercise of or the attempt  
10 to exercise any right provided under this chapter.

11 (2) Discriminate against any individual because the individual:

12 (A) Opposed any practice made unlawful by this chapter.

13 (B) Has caused to be instituted any proceeding under or related  
14 to this chapter.

15 (C) Has given, or is about to give, any information in connection  
16 with any inquiry or proceeding relating to any right provided under  
17 this chapter.

18 (D) Has testified, or is about to testify, in any inquiry or  
19 proceeding relating to any right provided under this chapter.

20 (e) (1) An employer who violates this section shall be subject  
21 to a civil penalty in an amount not to exceed one thousand dollars  
22 (\$1,000) for the first violation, five thousand dollars (\$5,000) for  
23 the second violation, and ten thousand dollars (\$10,000) for each  
24 subsequent violation, enforceable by the Chief of the Division of  
25 Labor Standards Enforcement pursuant to the procedures specified  
26 in Chapter 4 (commencing with Section 79) of Division 1.

27 (2) This chapter does not create, establish, or authorize a private  
28 cause of action by an aggrieved person against an employer who  
29 has violated, or is alleged to have violated, this chapter.