

Assembly Bill No. 2271

Passed the Assembly August 21, 2014

Chief Clerk of the Assembly

Passed the Senate August 19, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, Ian Calderon. Employment: discrimination: status as unemployed.

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

This bill would, beginning July 1, 2015, make it unlawful, unless based on a bona fide occupational qualification for an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to publish an advertisement or announcement for any job that includes an indication that current employment is a requirement, as specified.

This bill would subject an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state who violates the above provisions to civil penalties that increase as the number of violations increase. This bill would also provide that no private right of action is authorized for a violation of these provisions.

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

SECTION 1. Chapter 3.95 (commencing with Section 1045) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS
OF EMPLOYMENT STATUS

1045. For purposes of this chapter, the following definitions apply:

(a) "Employer" means the state or any political or civil subdivision of the state and any person, as defined in Section 18, who directly or indirectly, or through an agent or any other person,

employs or exercises control over the wages, hours, or working conditions of any person.

(b) “Employment agency” has the same meaning as defined in Section 1812.501 of the Civil Code.

(c) “Employment status” means an individual’s present unemployment, regardless of the length of time that the individual has been unemployed.

1046. (a) Unless based on a bona fide occupational qualification, an employer shall not do either of the following:

(1) Publish in print, on the Internet or in any other medium, an advertisement or announcement for any job that includes a provision stating or indicating that an individual’s current employment is a requirement for the job.

(2) Affirmatively ask an applicant for employment to disclose, orally or in writing, information concerning the applicant’s current employment status until the employer has determined that the applicant meets the minimum employment qualifications for the position, as stated in the published notice for the job.

(b) Unless based on a bona fide occupational qualification, an employment agency shall not do any of the following:

(1) Publish in print, on the Internet or in any other medium, an advertisement or announcement for any job that includes a provision stating or indicating that an individual’s current employment is a requirement for a job.

(2) Limit, segregate, or classify an individual in any manner that may limit that individual’s access to information about jobs or referrals for consideration of jobs because of the individual’s employment status.

(3) Affirmatively ask an applicant for employment to disclose, orally or in writing, information concerning the applicant’s current employment status until the employer has determined that the applicant meets the minimum employment qualifications for the position, as stated in the published notice for the job.

(c) Unless based on a bona fide occupational qualification, a person who operates an Internet Web site for posting jobs in this state shall not publish on that Internet Web site an advertisement or announcement for any job that includes a provision stating or indicating that an individual’s current employment is a requirement for a job.

1047. Nothing in this chapter shall be construed to prohibit an employer, employment agency, or a person who operates an Internet Web site for posting jobs in this state, or an agent, representative, or designee of that employer, employment agency, or Internet Web site, from:

(a) Publishing in print, on the Internet or in any other medium, an advertisement or announcement for any job that contains any provision setting forth qualifications for a job, including:

(1) Holding a current and valid professional or occupational license, certificate, registration, permit, or other credential.

(2) Requiring a minimum level of education or training or professional, occupational, or field experience.

(3) Stating that only individuals who are current employees of the employer will be considered for that job.

(b) Setting forth qualifications for any job, including:

(1) Holding a current and valid professional or occupational license, certificate, registration, permit, or other credential.

(2) Requiring a minimum level of education or training or professional, occupational, or field experience.

(3) Stating that only individuals who are current employees of the employer will be considered for that job.

(c) Obtaining information regarding an individual's employment, including recent relevant experience.

(d) Having knowledge of a person's employment status.

(e) Inquiring as to the reasons for an individual's employment status.

(f) Refusing to offer employment to a person because of the reasons underlying an individual's employment status.

(g) Otherwise making employment decisions pertaining to that individual.

1048. An employer, an employment agency, or a person operating an Internet Web site for posting jobs shall not do either of the following:

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

(b) Discriminate against any individual because the individual:

(1) Opposed any practice made unlawful by this chapter.

(2) Has instituted, or caused to be instituted, any proceeding under or related to this chapter.

(3) Has provided, or is about to provide, any information in connection with any inquiry or proceeding relating to any right provided under this chapter.

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

1049. An individual aggrieved by a violation of this chapter may file a complaint with the Labor Commissioner. The Labor Commissioner may impose a civil penalty against any employer, employment agency, or person operating an Internet Web site for posting jobs that the commissioner finds to be in violation of this chapter. An employer, employment agency, or person operating an Internet Web site for posting jobs that violates any provision of this chapter shall be subject to a civil penalty of one thousand dollars (\$1,000) for the first violation of this chapter, five thousand dollars (\$5,000) for the second violation, and ten thousand dollars (\$10,000) for each subsequent violation.

1049.5. Notwithstanding any provision of law, nothing in this chapter shall be construed to create or authorize a private right of action for a violation of this chapter.

1049.7. This chapter shall take effect on July 1, 2015.

Approved _____, 2014

Governor