Barring unemployed workers from applying for job openings allows employers to discriminate against blacks, older workers and the disabled.

Room for Debate: A Running Commentary on the News

The Bias Against the Unemployed

Should employers be allowed to discard a résumé because the applicant is not currently working?

Protecting 'Employment Status'

The New Jersey law outlawing job ads that bar unemployed workers from applying raises an interesting economic puzzle. Why would a profit-maximizing firm deliberately tie its hands by narrowing the range of applicants who can be considered for a job? The New Jersey law does not prevent employers from preferentially hiring candidates who are already working.

One possibility is that after several years of high unemployment, firms are being deluged with job applications. But surely in this era of computerized job applications there are other ways to lower the costs of screening applicants without requiring that applicants are employed. Furthermore, firms typically need to pay employed workers a premium to woo them away from their current employer, making it more puzzling that firms would opt to limit applications to those currently employed.

Still, employers have been running such job ads, so they must see some benefit.

But there's a problem. Limiting the applicant pool on the basis of current employment disproportionately screens out groups of workers with high unemployment rates. And the
groups with the highest unemployment rates -- blacks, older workers and the disabled -- fall disproportionately into the classes protected by current nondiscrimination law. Thus, by barring unemployed workers from applying for job openings, employers are able to discriminate in hiring without violating current laws that prohibit employment discrimination.

Inclusion of “employment status” as an additional protected class may have only a minor impact on the employment prospects of the currently unemployed, but it should be added to the list of protected classes to reduce employers’ ability to subvert current nondiscrimination laws.

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Topics: Business, Economy, Jobs, Law, discrimination, unemployment