

THURSDAY, JUNE 2, 2011

# A reluctance to hire jobless

*I was under consideration for a major IT manager job. I hold an MBA and several current technical certifications but was subsequently informed that, because I've been out of work for more than a year due to a major downsizing at my former company, they won't interview me. I can't be hired because I don't have a job? Is this legal?*

## Joseph T. Clees

Ogletree, Deakins, Nash, Smoak & Stewart

An employer's decision to not consider applicants because they have been unemployed for a certain amount of time is likely legal in most circumstances. Generally, employers are free to develop hiring and employment criteria suitable for their business needs or preferences, as long as the criteria do not violate various state and federal laws prohibiting discrimination against certain protected classes of individuals.

Unemployment itself does not fall into a protected category, and therefore, hiring decisions based solely on this factor are probably not prohibited under current law.

However, the apparent increasing use of this particular practice has recently caught the attention of the Equal Employment Opportunity Commission,



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which is the government entity responsible for the enforcement of federal employment-discrimination laws.

The EEOC held a public meeting Feb. 16 to discuss the practice of excluding applicants based on current unemployment. With testimony from a variety of sources, the EEOC panel examined the potential for disproportionate effects this practice may have on certain racial and ethnic minorities and people with disabilities. The EEOC has not issued any formal enforcement guidance; however, employers and employees alike should watch for any further developments.

## Amy Lieberman

Insight Employment Mediation

The true focus should be on one's qualifications. It's unfortunate that an employer would refuse to consider you solely because you had been out of the market for over a year — but it's

not illegal.

Title VII of the Civil Rights Act, as amended, prohibits employers from refusing to hire someone based on certain factors such as race, gender, age (over 40), ethnicity, disability, religion and color, or because they filed a past claim alleging discrimination.

However, as long as the employer is not basing its decision on an illegal reason such as one of those listed, the employer can prefer a qualified applicant with more recent experience over one whose experience is more remote.

There is no law that prohibits an employer from considering the length of time an applicant has been out of work. Whether you have the requisite educational background or technical training is only one aspect of the employer's requirements and preferences in considering potential hires. An exception might be if there was proof of a disparate impact on a particular protected group, such as those over 40 years of age.

— Compiled by  
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# How mutual funds are meant to work

By The Motley Fool  
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**Question:** How do mutual funds work?

**Answer:** They feature the pooled money of many investors that is managed by a company of professionals. Mutual funds make sense for most people because few of us have the time or skills to choose investments carefully. Instead, we can tap the services of pros, who will increase our wealth for a

it's supposed to work.

There are many kinds of mutual funds. Some invest just in stocks, others in bonds, and some in both. Some focus on large companies, others on small companies, and others on a mix. Some seek income through dividend- or interest-paying securities, and others aggressively seek fast-growing firms. Some specialize in one industry (such as energy or biotechnology) and others in a region (such as Africa or Latin

Unfortunately, many professionally managed mutual funds don't do so well for their investors because of hefty fees or management problems. To combat this, it makes a lot of sense to opt for broad-market index funds, which tend to have low fees and invest only in the stocks of major indexes, such as the S&P 500. Over the long run, these have outperformed most managed, non-index funds.

Learn more about funds at  
fool.com/mutualfunds/mutual