

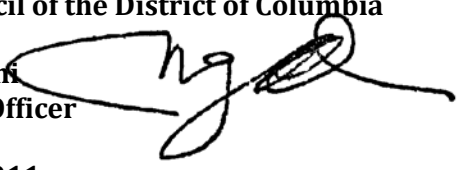
Government of the District of Columbia  
Office of the Chief Financial Officer



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Kwame R. Brown  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** December 19, 2011

**SUBJECT:** Fiscal Impact Statement – “Unemployed Anti-Discrimination  
Amendment Act of 2011”

**REFERENCE:** Bill 19-486 as introduced on September 20, 2011

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**Conclusion**

Funds are not sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the proposed legislation. The proposed legislation would require additional resources at the Office of Human Rights of \$50,900<sup>1</sup> in FY 2012 and \$696,300 over the FY 2012 through FY 2015 period.

The implementation of the proposed legislation is subject to its inclusion in an approved budget and financial plan.

**Background**

Unemployment in the Washington, D.C. Metropolitan Area stood at 6.1 percent as of September 2011.<sup>2</sup> Over 188,000 people were looking for work in the area, many of which looked for opportunities in the District.

The proposed legislation would amend the Human Rights Act of 1977<sup>3</sup> to add “status as unemployed” as a protected class, making it illegal for employers to consider applicant’s status as unemployed in the hiring process. Specifically, the proposed legislation would make it unlawful for an employing agency or employment agency to:

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<sup>1</sup> Assumes an implementation date of July 1, 2012.

<sup>2</sup> According to the Office of Revenue Analysis’ D.C. Economic Indicators.

<sup>3</sup> Effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

- Fail or refuse to consider for employment or hire an individual because of the individual’s status as unemployed;
- Advertise a job vacancy in any medium stating that status as unemployed is a disqualifying factor or that an unemployed individual would not be considered;
- Interfere with, restrain, or deny an attempt to exercise rights provided for in the proposed legislation; or
- Discriminate against an individual who opposes, files charges related to, supports an inquiry into, or testifies in an inquiry into discriminatory practices.

The legislation would allow an individual’s status as unemployed to be considered if experience in a similar or related job for a period of time is a *bona fide* qualification reasonably necessary to successfully perform the advertised job.

Currently four states and the U.S. Congress have bills or enacted legislation addressing the issue of discrimination against the unemployed.<sup>4</sup> The main focus of these bills is to limit discrimination in the advertising of job opportunities. The New Jersey legislation is the first to be signed into law and focuses on prohibiting three items: employment advertisements listing current employment as a required qualification, advertisements stating unemployed candidates will not be considered, and advertisements stating only employed candidates will be considered.

#### Office of Human Rights Procedures

The primary fiscal impact of the proposed legislation relates to the operations of the Office of Human Rights (OHR), which receives, mediates, investigates, and adjudicates all discrimination complaints under the jurisdiction of District law. Under the Human Rights Act of 1977 and subsequent amendments, nineteen classes are protected from unlawful discrimination in employment, housing, public accommodations, and educational institutions.<sup>5</sup> The addition of “status of unemployed” would raise the number of protected classes to twenty.<sup>6</sup>

When a discrimination complaint case is presented, OHR must docket the case and determine if the complaint meets jurisdictional requirements. Then OHR attempts to mediate the case before a full investigation occurs. If the case is not mediated successfully, OHR conducts an investigation to determine if there is probable cause. Next, OHR attempts to resolve the case by conciliation. If conciliation does not work, the case goes to adjudication before the D.C. Commission on Human Rights (“Commission”). It is reasonable to expect that adding a category to the protected classes in the District would increase the workload of OHR and the Commission by increasing the number of intakes, mediations, investigations, conciliations, and adjudications.

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<sup>4</sup> The citations are New Jersey: AB 3359; Illinois: SB 2153; Michigan: HB 4675; New York: AB 7830, SB 5151, SB 5316; U.S. Senate: S. 1471; U.S. House of Representatives: H.R. 2501.

<sup>5</sup> The 19 classes are: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of intra-family offense, and place of residence or business.

<sup>6</sup> Currently, Bill 19-17 is being considered by Council that would also add a person with an “arrest or conviction record” as a protected class.

## Financial Plan Impact

Funds are not sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the proposed legislation. The proposed legislation would require additional resources at the Office of Human Rights and the D.C. Commission on Human Rights of \$50,900 in FY 2012 and \$696,300 over the FY 2012 through FY 2015 period. The implementation of the proposed legislation is subject to its inclusion in an approved budget and financial plan.

The main driver of the additional costs is the need to accommodate additional cases and adjudications as a result of including "status as unemployed" as a protected class in the Human Rights Act of 1977. It is expected the legislation would result in one hundred fifty-three new cases<sup>7</sup> to be investigated and twenty-three new adjudications each year.<sup>8</sup>

To analyze the population of potential cases, it was important to look at the number of unemployed individuals not just located in the District, but also the entire metropolitan region. The District is an employment center for many residents of surrounding communities and thirty-eight percent of cases OHR reviews are from those communities.<sup>9</sup> Thus, the estimated population of potential cases is 76,600<sup>10</sup> individuals.<sup>11</sup>

Currently, seven OHR investigators review sixty-six cases each based on the FY 2008 through FY 2011 average total caseload of four hundred fifty-nine cases. The addition of one hundred fifty-three cases would require two new investigators in order to keep the current caseload close to the four-year average per investigator. The additional adjudications would not require an additional judge, but would require the hiring of a paralegal to support the research efforts associated with twenty-three new adjudications.

Estimated Fiscal Impact of Bill 19-486 Unemployed Anti-Discrimination Amendment Act of 2011 FY 2012 through FY 2015					
Cost Elements	FY 2012	FY 2013	FY 2014	FY 2015	Total
Personnel <sup>a</sup>	\$50,900 <sup>b</sup>	\$205,900	\$215,000	\$224,500	\$696,300

### Table Notes

<sup>a</sup> Includes two OHR investigators and one Commission paralegal.

<sup>b</sup> Assumes a July 1, 2012 implementation date.

<sup>7</sup> This estimate is consistent with the estimated complaint rate of 0.04 to 0.2 percent that resulted from the inclusion of the transgendered population as a protected group under the Human Rights Clarification Amendment Act of 2005. The high-end of 0.2 percent is used in this analysis due to the historically high unemployment rate.

<sup>8</sup> From OHR communication on November 9, 2011, fifteen percent of cases are historically referred to the Commission for adjudication.

<sup>9</sup> Based on OHR data provided on December 1, 2011.

<sup>10</sup> The District unemployed population was estimated at 33,700 and the Metropolitan region (excluding D.C.) was estimated at 146,600. A proportion of each was taken at sixty-two percent for the District and thirty-eight percent for the Metropolitan region based on OHR information. Unemployment data source: Rolling three month averages of September 2010 through August 2011 unemployment data provided in the Office of Revenue Analysis' Economic Indicators reports.

<sup>11</sup> This population excludes currently employed individuals who may file a case under the proposed legislation's provisions making it unlawful to target an employee who opposes discriminatory practices or participates in an inquiry into those practices.