The Long-term Unemployed: A New Protected Class of Employee?

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ABSTRACT

Since the onset of the latest United States (U.S.) recession (beginning in December 2007), the U.S. economy has been posting high unemployment levels consistently exceeding 8 percent. Of specific interest, the U.S. Department of Labor, Bureau of Labor Statistics (BLS), reports on a specific subset of the U.S. unemployed: the long-term unemployed, defined as those who are unemployed for 27 weeks and over. Since December 2009, the share of the long-term unemployed of the total U.S. unemployed has exceeded 40 percent (through April 2012), the highest level since 1948 when data was first collected. A phenomenon of this recession is an alleged public bias by American private sector employers against hiring the long-term unemployed, or even simply those unemployed. While the authors support the removal of discrimination against the unemployed in job advertisements, they cannot support the larger notion of including those who are unemployed.
as a protected class of employees. Becoming or being unemployed is a state that one can change, and based on the lack of research on how widespread this discrimination is (beyond anecdotal stories or limited research surveys), they believe that extending protection under equal employment opportunity legislation would be over-reaching and inappropriate at this time.

Since the onset of the latest United States recession (beginning in December 2007), the U.S. economy has been posting high unemployment levels consistently exceeding 8 percent. While the latest recession officially ended in June 2009, its effects continue to be felt in the U.S. labor market. Of specific interest, the U.S. Department of Labor, Bureau of Labor Statistics (BLS) reports on a specific subset of the U.S. unemployed: the long-term unemployed. According to the BLS, the numbers of unemployed people seeking employment who are unemployed for 27 weeks and over are considered in the category of the “long-term unemployed.” The BLS data show that since December 2009, the share of the long-term unemployed of the total U.S. unemployed has exceeded 40 percent (through April 2012), the highest level since 1948 when these data were first collected (see Figure 1). The number of Americans who are among the long-term unemployed is not insignificant, hovering within a range of 5.1–6.7 million people over this time frame (see Figure 2). Furthermore, the official labor force participation rate in the U.S. economy, again calculated by the BLS, is only 64.1 percent for 2011, the lowest U.S. workforce participation percentage since 1983, when it was 64.0 percent.

Rob Valletta and Katherine Kuang, both of the Economic Research Department of the Federal Reserve Bank of San Francisco, recently examined U.S. unemployment duration in some detail, considering why it has been so high in the recent recession and persistent in the postrecession recovery. According to Valletta and Kuang, changes in workforce characteristics and cumulative employment losses largely explain the excess unemployment duration of recent years. Weak labor demand plays a key role in prolonged unemployment duration, but does not directly disprove
explanations related to the supply of labor, such as mismatches between worker skills and employer skills needs. Such mismatches may cause available jobs to go unfilled and thereby hold down employment growth. Another factor raised by Valletta and Kuang, although they cite research suggesting that its impact on extending U.S. unemployment duration has been modest, is the extension of unemployment insurance (UI) benefits from the normal 26 weeks to a maximum of 99 weeks for most eligible workers. Lastly, the researchers argue that anecdotal evidence suggests that recent employer reluctance to hire reflects an unusual degree of uncertainty about future growth in product demand and labor costs.

A phenomenon of this recession, however, is an alleged public bias by American private sector employers against hiring the long-term unemployed, or even simply those unemployed. Evidence of hiring bias against the unemployed was first uncovered in the spring of 2010, when local media in Atlanta, Georgia, reported that Sony Ericsson’s new headquarters posted a job announcement stating that “No Unemployed Candidates Considered at All.”

Similar media reports have followed. For example, in a recent *The Wall Street Journal* article, Kim Keough, a resident of Bethel, Connecticut, and a human resource specialist who has been unemployed since July 2008, reports that part of the reason she continues to be unemployed is due to what she characterizes as a widespread bias against long-term unemployed workers.⁵ “Recruiters have told me not to bother sending in a resume if I’m not currently employed,” said the 46-year-old Ms. Keogh. “It’s damned if you do, damned if you don’t. The longer you are out of work, the more discriminatory companies get.”

In July 2011, the National Employment Law Project (NELP), a liberal New York City-based nonprofit advocacy organization, released the results of its survey showing that some businesses are advertising in their employment advertising that potential job seekers not presently employed need not apply for a position with their firm.⁶ In a “snapshot” survey of job postings listed on four web sites—CareerBuilder.com, Indeed.com, Monster.com, and
Craiglist.com—conducted by NELP researchers, they identified more than 150 employment advertisements that included job exclusions based on current employment status, the overwhelming majority bluntly requiring that applicants “must be currently employed,” or in some instances “recently employed.” NELP researchers believe that its relatively limited research suggests that the hiring practice of excluding unemployed job seekers could be far more pervasive than found in their limited sample.

There have been legislative efforts to address discrimination against the unemployed at both the federal and state levels. At the federal level, in “The American Jobs Act,” proposed by President Obama in September 2011, there is a provision that would allow unsuccessful job applicants to sue an employer if they believe a company of 15 or more employees denied them a job because they were unemployed. Moreover, this provision would ban employment advertisements that explicitly state that the unemployed are ineligible for consideration, with language such as “Jobless need not apply.”7 Democrat lawmakers in both the U.S. Senate and House of Representatives also introduced similar bills (H.R. 2501/S. 1471) in their respective chambers in the summer of 2011.8 Lastly, in February 2012, the U.S. Equal Employment Opportunity Commission initiated an inquiry into employment discrimination advertising and hiring practices against the unemployed.9

According to information compiled by the National Conference of State Legislatures, four states introduced bills in 2011 addressing discrimination against the unemployed.10 New Jersey is the first and only state to pass legislation banning discrimination in advertising against the unemployed. The New Jersey legislation prohibits making current employment a job qualification when advertising for job vacancies, or indicating that applications from those presently employed will be considered, or not accepting applications from all unemployed job seekers. Fines for violators are $1,000 for a first offense, $5,000 for a second offense, and $10,000 for a third or subsequent offense. The states of Illinois, Michigan, and New York also introduced bills during the 2011 legislative session. In 2012, through March, 10 states and the District of Columbia, including California, Florida, Iowa, Maryland, Michigan, Minnesota, New York, Pennsylvania, South Dakota, and Tennessee are considering bills in their legislatures addressing discrimination against the unemployed.11
Given the sensitive nature of this issue during a prolonged U.S. recession, this article will explore the different facets of the controversy, and conclude with a discussion and recommendations for a workable solution. First, however, we will turn to the issue of human capital and the degradation of employment skills over time due to long-term unemployment.

**HUMAN CAPITAL AND EMPLOYEE SKILLS DEGRADATION**

Before determining the argument for or against the protection of those who are unemployed in the search process, it is important to understand why the acceptability of this form of discrimination is allegedly pervasive among employers. One of the main drivers behind employers' reluctance to hire someone who is currently unemployed is the idea that unemployment leads to human capital degradation. There is an assumption that once someone leaves the workforce, their skills become outdated and possibly obsolete. Furthermore, the longer a job applicant is out of the active workforce, the less qualified that person is perceived to be because of this cumulative depreciation in skills over time. This notion of “human capital depreciation” has not only been a subject of debate, but also one of controversy in the literature.12

Studies that have looked at data measuring actual skills retention or degradation have been scarce, but powerful. Researchers Edin and Gustavsson analyzed Swedish data regarding literacy at two different points in time (1994 and 1998) and found that time out of work had a significant negative correlation with skill maintenance in terms of reading comprehension.13 This is essentially the only study available that attempts to assess skills degradation using actual data, and within the purview of unemployment. More studies thus need to be done to accurately determine individual shifts in skills retention over time due to unemployment, to truly capture the nature and persistence of skills degradation. Currently, the availability (and in fact, expectation) of self-initiated training may mitigate the skills loss so that the skills gap between the employed and unemployed may be minimal. In addition, the skills that might be lost due to unemployment may in fact not be critical to the job that one is applying for; the stigma around
those who are unemployed may mean that regardless of which
skills may or may not be depreciated over the time not worked,
such applicants are perceived as lacking qualifications for the
job without even having a chance for their application to be
reviewed.

This idea of skills degradation due to absence in the labor
market is not new; this is a common issue in gender studies,
where women who take time out of the workforce for personal
reasons are not permitted to reenter the market at or above the
level at which they initially departed. This punctuated career has
been one of the premises behind the gender pay gap among other
inequities in the labor force. For example, Görlich and De Grip
conducted a recent economic analysis where they looked at the
depreciation of human capital due to exits from the workforce in
male- and female-dominated occupations.¹⁴ They found that
depreciation rates of human capital were significantly lower in
female-dominated occupations rather than in male-dominated
occupations in high-skilled occupations, while there was no dif-
ference in low-skilled occupations. They also found that this sup-
ported their hypothesis that women may choose to select work
in female-dominated occupations when considering high-skilled
work, because they feel they will be penalized less for their career
interruptions. In general, it is mainly perceptions and economic
theorizing of potential human capital degradation among those
who are unemployed and that appear to give rise to the desire
of employers to eliminate those from consideration in the recruit-
ment and selection process. Little is known about actual skill
degradation overall.

Other than New Jersey, there is currently no legislation pro-
tecting employees who are unemployed from being discriminated
against in the recruitment or selection process. This is because
they are not considered a protected class, and in most states, the
employment-at-will doctrine permits this type of discrimination
to occur. However it has been suggested that there could be
instances of adverse impact should the exclusion of the unem-
ployed become rampant in the hiring process. For example,
preventing unemployed individuals from applying for jobs may
result in disproportionate numbers of certain populations being
excluded from such jobs, such as women or minorities, which will
ultimately result in fewer numbers of the members of such groups
not being able to secure employment in a company, industry, or locale. Systemic bias in the recruitment and selection process against those who are not currently employed may also lead to diminishing the relevance and appropriateness of skills that have been developed and used by job applicants, as has been widely researched.

The exclusion of the unemployed in the hiring pool might be more appropriate for some industries than for others, for example, the rate of skill obsolescence may be higher in areas such as high tech or research field. However, one must consider whether the absence of employment is an acceptable proxy for determining whether someone is unskilled or lacking the appropriate skills for a particular job. In addition, not considering an applicant because of their employment status may mean that an organization is failing to consider what might be the best person for the job. While there is much confusion and debate about what human capital is, human capital is multifaceted and is largely composed of skills, knowledge, competencies, and abilities, and is typically divided into two types: specific capital (skills that are generic in the labor market and are transferable across jobs and industries) and general capital (skills that are developed for a specific organization or task).

An individual who may not have the most current skills may still possess the knowledge and ability to be an effective employee. In addition, skills degradation may not occur for both types of human capital. Thus omitting those who are unemployed from the candidate pool is not an optimal solution for an organization. In addition, skill depreciation is derived from a variety of sources, including ageing and technological and organizational change. Fossum et al. outlined a comprehensive model of skills obsolescence that includes multiple inputs, such as person changes (resulting from motivational, individual, organizational, and external factors) as well as job changes (including new procedures, technologies, structures, goals etc.). Therefore it is not a good or sound decision to use unemployment (or unemployment duration) as a singular weeding factor in the recruitment and selection process.

Longer-term effects, however, of discriminating against the unemployed, whether justifiable or not, can have more permanent results. Even if an individual is not lacking the appropriate skills
for the job, those skills may become eroded as the lack of employ-
ment can hinder further development of critical work skills to “keep up” in the industry.\textsuperscript{21} This can lead to suppressed income, snowballing over time, and ultimately resulting in psychological and emotional effects on the unemployed individual and his/her family.\textsuperscript{22} The wider implication of such effects may support the “unemployment hysteresis” hypothesis, leaning toward the idea that these levels of widespread unemployment is likely to be permanent rather than cyclical, and a country may never quite return to a long-term “mean” level of unemployment.\textsuperscript{23} Next, we examine the evolution of key federal legislation and court cases supporting the so-called “protected classes” of employees in the U.S. economy.

**PROTECTED CLASSES OF EMPLOYEES**

The concept of protected classes in American jurisprudence began as far back as the U.S. Constitution itself. The Fourteenth Amendment of the U.S. Constitution, enacted in 1868, provided in part that “no state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.” Although the Thirteenth Amendment had abolished slavery, many former confederate states adopted laws that restricted the rights of blacks in many arenas.\textsuperscript{24} Congress sought to invalidate the laws indirectly and the Supreme Court decision in *Dred Scott v. Sandford*\textsuperscript{25} by adoption of the Civil Rights Act of 1866, which required citizens of every race and color to have “full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens.” Concerned that the law might not withstand a constitutional challenge, Congress passed the Fourteenth Amendment.\textsuperscript{26}

The Fourteenth Amendment has been used to protect Chinese immigrants in *Yick Wo v. Hopkins*, corporations in various cases, women in *Reed v. Reed*, mentally retarded in *City of Cleburne v. Cleburne Living Center, Inc.*, white males in *Regents of the University of California v. Bakke*, but not Japanese American immigrants during World War II in *Korematsu v. United States*. Although the Fourteenth Amendment only refers to states, later court cases regularly applied its terms to the federal government
through the Fifth Amendment, beginning with *Bolling v. Sharpe* and *Brown v. Board of Education*. The Constitution does not address discrimination in the private sector, but there is a large body of state and federal law to address discrimination in the private sector.

The Civil Rights Act of 1964 was a landmark piece of federal legislation prohibiting discrimination in voting, public accommodations, federally funded programs, education, and employment. Title VII of the Act prohibits discrimination by covered employers on the basis of race, color, religion, sex, or national origin, as well as discrimination against anyone based on association with another person of a particular race, color, religion, sex, or national origin. Title VII also prohibits discrimination against an individual because of his or her association with another individual of a particular race, color, religion, sex, or national origin.

In the nearly 50 years since the Civil Rights Act of 1964, several other national and state laws have added protections for other classes of workers (see Table 1). Numerous state laws have adopted similar versions to the federal laws, as well as establishing additional protected classes. Protections for political affiliation, sexual orientation, gender identity, marital status, medical conditions, military discharge status, age under 40, familial status, welfare status, personal appearance, matriculation, height, weight, place of birth, and smoker status have been adopted in several states. Local municipalities have also enacted antidiscrimination ordinances. The latest category proposed by the Seattle Office of Civil Rights is discrimination in employment, housing, and contracting based upon a person’s criminal history. Madison, Wisconsin, protects on the basis of arrest and conviction record, less than honorable discharge, and domestic partnership, inter alia.

The “Fair Employment Opportunity of 2011” (H.R. 2501/S. 1471) has been proposed in the 112th Congress, creating a new protected class in employment discrimination (covering for employers with more than 15 employees)—applicants who are or have been unemployed. Employment advertisements could not preclude the unemployed from applying. Prospective employers could continue, however, to consider employment history and the reasons for unemployment. Further, consideration by an employer or employment agency of an individual’s status as unemployed shall not be unlawful where an individual’s employment in a
<table>
<thead>
<tr>
<th>Act</th>
<th>Year</th>
<th>Protected Class (ES)</th>
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<tbody>
<tr>
<td>Equal Pay Act</td>
<td>1963</td>
<td>Persons based on race, color, religion, sex, or national origin, where workers perform equal work in jobs requiring equal skill, effort, and responsibility and performed under similar working conditions</td>
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<tr>
<td>Age Discrimination in Employment Act</td>
<td>1968</td>
<td>Persons over 40 years old</td>
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<td>Rehabilitation Act</td>
<td>1973</td>
<td>Disabled persons (applies to the federal government, certain federal contractors, and programs receiving federal financial assistance)</td>
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<td>Black Lung Benefits Act</td>
<td>1973</td>
<td>Victims of black lung disease (applies to mine operators)</td>
</tr>
<tr>
<td>Pregnancy Discrimination Act</td>
<td>1978</td>
<td>Women who are pregnant, give birth, and related medical conditions</td>
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<tr>
<td>Bankruptcy Reform Act</td>
<td>1978</td>
<td>Persons who are bankrupt or have bad debts</td>
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<td>Civil Service Reform Act</td>
<td>1978</td>
<td>Federal employees on the basis of conduct not related to job performance (including sexual orientation and gender identity)</td>
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<td>Immigration Reform and Control Act</td>
<td>1986</td>
<td>Persons based on national origin or citizenship (except illegal immigrants)</td>
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<tr>
<td>Americans with Disabilities Act</td>
<td>1990</td>
<td>Persons with disabilities, a record of disability, or regarded as having a disability</td>
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<tr>
<td>Family and Medical Leave Act</td>
<td>1993</td>
<td>Persons who take leave for certain medical and family reasons, including pregnancy and military service</td>
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<tr>
<td>Genetic Information Nondiscrimination Act</td>
<td>2008</td>
<td>Bars use of genetic information when hiring, firing, job placement, promotions</td>
</tr>
<tr>
<td>Fair Employment Opportunity Act</td>
<td>Proposed 2011</td>
<td>Unemployed persons</td>
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similar or related job for a period of time reasonably proximate to the hiring of such individual is a bona fide occupational qualification reasonably necessary to successful performance of the job that is being filled.

The Act findings include the denial of employment to persons have been unemployed is discriminatory and burdens interstate commerce by:

1. reducing personal consumption and undermining economic stability and growth;
2. squandering human capital essential to the nation’s economic vibrancy and growth;
3. Increasing demands for state and federal UI benefits, reducing trust fund assets, and leading to higher payroll taxes for employers, cuts in benefits for jobless workers, or both;
4. imposing additional burdens on publicly funded health and welfare programs; and
5. depressing income, property, and other tax revenues that states, localities, and the federal government rely on to support operations and institutions essential to commerce.

The Act provides penalties of actual damages equal to any compensation denied to the applicant by reason of a violation, or where compensation has not been denied or lost, actual monetary losses or a civil penalty of $1,000 per day per violation, whichever is greater, plus interest, and other relief a court may grant, such as employment and punitive damages. The Labor Department may also seek an injunction and damages. We will next discuss the strengths and weaknesses of the arguments addressing a public policy solution to the issue of discrimination against the long-term unemployed.

THE CASE FOR A PROTECTED CLASS OF EMPLOYEE

The issue of chronic U.S. long-term unemployment is based in undeniable fact. According to the BLS, the share of the long-term unemployed has exceeded 40 percent of the total unemployed for nearly two and a half years, a sobering statistic. “You clearly have a long-term unemployment issue in the U.S., but it is driven, I would argue much more by structural factors that have to do
with—where’s the demand for people in the economy?" says Scot Melland, chief executive officer of Dice Holdings, a provider of career web sites. Anecdotal reporting in the media, as well as a limited research survey of job postings listed on four web sites by NELP, have found evidence of advertisements that included exclusions based on current employment status, requiring that applicants “must be currently employed,” or in some instances “recently employed.” There are media reports that some major employers have an unspoken policy against hiring applicants who have been out of work for two or more years because they want employees with a stable job history and recent references, while other employers may use unemployment status as a method of “weeding out” applicants to reduce the huge number of resumes for covered job openings in this high unemployment economy.

There is some—although limited—empirical evidence that skill degradation occurs over an extended period of time. Swedish researchers Edin and Gustavsson analyzed their home country data regarding literacy and found that the time out of work variable had a significant negative correlation with skill maintenance in terms of reading comprehension. Also, it is hypothesized that the rate of skill obsolescence may be higher among professionals who are usually employed in high-technology industries. It appears that perceptions of human capital degradation among those who are unemployed mainly give rise to employers eliminating those from consideration in the employment recruitment and selection process. An expectation of self-initiated training may, however, mitigate employee skills loss so that the skills gap between the employed and unemployed may be minimal.

According to Rosemary Haefner, vice president of human resources for CareerBuilder, “[I]f you fill the gaps with activities and experience that illustrate how you are still developing your skill sets—by volunteering, taking temporary work, or signing up for a class that develops your professional toolkit, the overwhelming majority of employers will look past your unemployment and focus on what you can bring to their team.” This sentiment is verified in a recent nationwide survey of 3,023 hiring managers and human resource professionals undertaken between November 9 and December 5, 2011 by Harris Interactive for CareerBuilder, when 85 percent of those surveyed reported that they are more understanding of employment gaps postrecession, while 94 percent
responded that they would not have a lower opinion of a candidate who took on a position during the recession that was at a lower level than the one he or she had held previously.30

Another factor raised by Valletta and Kuang in explaining long-term unemployment is the extension of UI benefits from the normal 26 weeks to a maximum of 99 weeks for most eligible workers. While Valletta and Kuang believe that this increase in the length of time to collect UI benefits has only a modest impact on the long-term unemployment number, others argue that generous jobless benefits probably keep unemployment higher.31 Some studies have shown that employment levels tend to rise around the same time benefits end, suggesting that people exhaust their unemployment benefits before looking for work in earnest.32 USNews.com chief business correspondent Rick Newman explains his concerns regarding some of the long-term unemployed:33

Government checks have been a lifeline for many people who would happily work if they could find a job. But the current system also creates perverse incentives and makes it hard to cut off the lazy while helping those in genuine need. Anybody who has collected unemployment insurance knows that some paying jobs provide less money than is available collecting a government check. There’s also the risk that a new job won’t work out, leaving you worse off than if you had never taken the job in the first place. So while it might be unethical to feign a job hunt, while living on the dole, it’s often rational to do just that.

At the federal level, “The American Jobs Act,” proposed by President Obama in September 2011, there is a provision that would allow unsuccessful job applicants to sue an employer if they believe a company of 15 or more employees denied them a job because they were unemployed, and another provision that would ban employment advertisements that explicitly state that the unemployed are ineligible for consideration, with language such as “Jobless need not apply.” This bill has little chance of being seriously considered by the U.S. Congress in the present session. The State of Connecticut, however, is considering legislation with provisions similar to “The American Jobs Act.”

The Connecticut Business & Industry Association, the largest business association in the state, views a ban on discriminatory employment advertising as reasonable, but is fervently against
permitting unemployed job seekers who claim discrimination to file a complaint with the state’s Human Rights Commission or file suit in court over claims of discrimination. Even Connecticut’s Human Rights Commission informed lawmakers that substantiating bias in hiring would be difficult and could require its staff to be nearly doubled if just a small fraction of Connecticut’s 150,000 unemployed were to file a discrimination claim with them. According to Representative Bruce Zalaski, chair of the Labor and Public Employees Committee, he may drop the provision allowing claims of discrimination. “It’s not our intent that everyone can be sued,” said Zalaski. We will next offer our conclusions and policy recommendations that will best protect the long-term unemployed, the business community, and society.

THE LONG-TERM UNEMPLOYED, BUSINESS, AND SOCIETY

The case for a legally protected class status for the long-term unemployed is fraught with problems related to both definition and implementation. According to NELP, state laws should explicitly prohibit employers and employment agencies from eliminating from consideration candidates who are unemployed. However, the previous example of proposed legislation in Connecticut shows how it can “chill” business hiring and create a regulatory implementation nightmare regarding government oversight responsibilities. Employment hiring decisions are complex processes that involve factors including education, work experience, appropriate skill sets, and “fit” with organizational culture, among others. The issue of skill set degradation is relevant, but can be mitigated by evidence of skill set maintenance during the unemployment period and has varying relevance depending on profession and industry.

As pertains to an appropriate public policy response, banning discriminatory employment advertising against the unemployed or long-term unemployed is a reasonable response to what appears to be a blanket, repugnant practice that some employers have adopted. This is not necessarily a wise human resource management policy, as it may preclude reviewing otherwise highly desirable candidates for a position with a business. It is thus reasonable to agree with proposed legislation to ban discrimination against
those who are unemployed in job recruitment advertisements. It simply is an inaccurate and a potentially adverse discriminatory practice to follow. In fact, refusing to hire those who are unemployed might cause more problems for the employer in the long run. In addition, as a general business policy, this is not a socially responsible practice, especially during a time of economic recession.

As an integral member of society, businesses should, without coercion from the government, recognize that citizens should have the opportunity to be considered for gainful employment based on the state of their job skills and other employment attributes. Such blanket statements as “Not accepting applications from all unemployed job seekers” are not the type of signals to the community that will ingratiate companies with their local customers. To be an effective corporate citizen, it is important that a business recognize the long-term exchange relationships that it has developed and nurtured with its stakeholders. In times of economic hardship, this translates to business extending basic opportunities to those who are most in need—the long-term unemployed.

However, before potentially draconian federal or state legislation creating a protected class for the long-term unemployed is enacted into law, data on how widespread this discrimination is (beyond anecdotal stories or limited research surveys) needs to be collected through formal research studies. In fact, while we support the removal of discrimination against the unemployed in job advertisements, we cannot support the larger notion of including those who are unemployed as a protected class of employees, and who fall under equal employment opportunity protection at the state or federal levels. Many of the categories of people who are protected result from Title VII of the U.S. Civil Rights Act, the Americans with Disabilities Act, etc., and those individuals are often discriminated against based on inherent characteristics or abilities that cannot be changed (e.g., race, color, disability, etc.) or one's belief systems (e.g., religion). Becoming or being unemployed is a state that one can change, and thus we believe that extending protection under equal employment opportunity law would be overreaching and inappropriate. More research and investigation in this area must be undertaken to further understand the implications of discrimination against the unemployed and whether this is a temporary
issue, or a long-term problem that needs a broader legislative solution.

NOTES


3. In the U.S. manufacturing sector, it is estimated that about 600,000 jobs are going unfilled, particularly in the areas of skilled production and production support, because manufacturers cannot find people with the right skills. Deloitte and The Manufacturing Institute, Boiling Point? The Skills Gap in U.S. Manufacturing, 2011 Skills Gap Report (October), Washington, DC.


18. See Mincer and Ofek, “Interrupted work careers,” for a complex discussion of this topic.


22. Ibid.


25. In *Dred Scott v. Sandford*, 60 U.S. 393 (1857), the Supreme Court ruled that people of African descent brought into the United States and held as slaves and any of their descendants were not U.S. citizens and not protected by the Constitution.

26. The Amendment was enacted after Congress excluded, by virtue of Article 1, Section 5, clause 1 of the Constitution, Southern members, whose states then had to ratify the Amendment to be readmitted into the union.


30. Ibid.


33. Ibid.


35. Ibid.

36. Ibid.

37. Ibid.