



Testimony for the KS Senate Commerce Committee  
SB 295 – Discrimination based on employment status prohibited.



February 8, 2012  
Topeka, Kansas

Submitted on behalf of The Kansas State Council of the Society for  
Human Resource Management (KS SHRM)

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Dear Members of the Committee:

My name is Phillip M. Hayes and I am submitting written testimony on behalf of The Kansas State Council of the Society for Human Resource Management (KS SHRM) in opposition of Senate Bill 295. I am Vice President of HR Services and Operations for The Arnold Group, A Human Resource Company in Wichita, Kansas. As an HR professional with 14 years of experience, my focus is on people and employee development with extensive experience in recruiting, employee development and effective succession planning. I have been a local, state and national SHRM member for 14 years and currently serve as KS SHRM Director-Elect.

For those unfamiliar with KS SHRM, it is a professional organization comprised of 2,300+ HR professionals in Kansas. KS SHRM serves the needs of HR professionals and advances the interests of the HR profession in the state. It is KS SHRM's mission to proactively provide our members with educational resources on effective HR practices and strategic workforce issues. As HR professionals, our members are responsible for developing and implementing workplace policies and practices that comply with federal, state, and local laws and provide guidance to line managers on fair and effective people management. Our members serve public and private sectors as well as large and small businesses. The focus of the HR professional is to facilitate between the employer and employee so that a safe and productive work environment is achieved. On a daily basis our members are on the front lines when it comes to important employment issues:

- Workforce Planning and Employment
- Human Resource Development
- Compensation and Benefits
- Employee and Labor Relations
- Workers' Compensation
- Unemployment Insurance

Kansas historically adheres to the employment at-will doctrine, which holds that employees and employers may terminate an employment relationship at any time, for any reason, unless there is an express or implied contract governing the employment's duration. *Morriss v. Coleman Co.*, 241 Kan. 501, 510, 738 P.2d 841 (1987). But there are specific statutory exceptions to this rule, such as terminations based on race, gender, or disability. See K.S.A. 44-1009 (It is unlawful for an employer to terminate or otherwise discriminate against a person because of race, religion, color, sex, disability, national origin, or ancestry or to commit other discriminatory employment practices listed in the statute.).

As with every rule, there are exceptions to the at-will doctrine. In Kansas, the courts have adopted the "implied contract exception" to the at-will employment rule, which means a promise to fire only for good reason is implied into the contract of employment based on statements in the employer's policies or employee handbooks. Additionally, Kansas courts have endorsed public policy exceptions in four circumstances:

- filing a claim under the Kansas Workers Compensation Act, K.S.A. 44-501 et seq;
- whistleblowing;
- filing a claim under the Federal Employers Liability Act (FELA), 45 U.S.C. § 51 (2006) et seq.; and
- exercising a public employee's First Amendment right to free speech on an issue of public concern.

At its most basic, the employment at-will doctrine can be viewed as the natural consequence of the ideals inherent in the founding of our country which lie at the bedrock of the American way of life: the freedom: the freedom to work where one wishes without the supervision or involvement of the government. As a general rule, an at-will employee has no claim against an employer for termination of employment or, as it is more popularly phrased, "wrongful discharge."

In thinking about the at-will doctrine, emphasis is usually placed upon the affect (often unfairly portrayed as harsh or detrimental) which it has on the employee who can be fired at any time; however, the doctrine is a two-way street and can often benefit employees by providing them the freedom to move from one job to next as the market dictates without fearing legal action from their former bosses.

Certainly KS SHRM frowns upon employers, employment agencies, and labor organizations that include any reference in a job advertisement/posting that candidates' currently unemployed need not to apply. As an organization, we question the level of such activity and are opposed to any effort to restrict an employer's consideration of the reasons for a gap in service or unemployment status in rendering a decision on whether or not to hire a candidate(s).

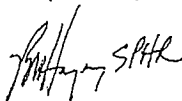
It's our understanding the U.S. Equal Employment Opportunity Commission (EEOC) is formulating a 'guidance document' for employers on this issue. As an alternative to SB 295, KS SHRM could support a similar action by the Kansas Human Right Commission to establish guidance for KS employers on how to handle the unemployed in the hiring/selection process.

KS SHRM is unaware of a widespread practice or trend to exclude unemployed individuals from consideration for available jobs. Employers, in KS SHRM's experience, whether operating in the currently challenging economy or in more robust times, are focused on finding the right people for the job, regardless of whether or not they are currently employed. Our members recognize that any type of blanket exclusion raises concerns under Title VII. What's more exclusionary policies are poor business practices because they prevent organizations from accessing some of the best available knowledge, skills and abilities in a given labor force.

As the economy improves, financial uncertainty remains within organizations. As the nation and our great state continue to navigate out of the most severe economic downturn since the great depression, KS SHRM strongly opposes SB 295, which would essentially erode and eliminate the employment at-will doctrine in the state. The Kansas economy is strengthening... however with the passage of SB 295, our recovery will be impacted with the imposition of new restrictions and penalties facing Kansas employers. Kansas employers should be allowed to select the most qualified candidates to help grow their businesses. SB 295 would essentially involve government in daily hiring decision across the state. In today's economy, no one is immune from unemployment, including human resource professionals. KS SHRM strongly advocates for a free market system and respectfully requests your NO vote on SB 295.

Thank you for the opportunity to submit written testimony today in opposition of SB 295. I can be contacted at 316.619.7864 or by email at [phayes@the-arnold-group.com](mailto:phayes@the-arnold-group.com) for questions/concerns.

Respectfully,



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KS Unemployment Insurance Committee Chair, KS SHRM