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Discrimination issues in recruitment

Many employers live in fear of inadvertently sparking a discrimination case when they hire staff. Yet a few simple rules make it easy to find the right recruits without causing offence.



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THE headline seems to say it all: “Advert for 'reliable workers' banned as discrimination by Jobcentre Plus”. An employer in need of a cleaner wrote in her ad that applicants “must be very reliable and hard-working”.

But a Jobcentre Plus worker claimed that the word “reliable” meant they could be sued for discriminating against unreliable workers, according to an article in the Daily Telegraph. This is proof that you simply can’t specify the qualities you want from staff any more in case it offends someone. It’s political correctness gone mad. Right?

Wrong. Quite reasonably, we all want our staff to be reliable, and despite what the over-zealous Jobcentre employee thought, being unreliable isn’t a valid reason to go to an employment tribunal. As so often, the headline doesn’t tell the whole story about complex equality laws which have evolved over time. However, it does highlight some of the pitfalls— as well as showing us how to avoid them.

What is discrimination?

Put simply, there are a specific number of reasons in law to claim for discriminatory treatment as defined in the Equality Act 2010. You can only claim to have been treated unfairly on the grounds of age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This applies both to employment practices and the recruitment process.

So asking for a “reliable” cleaner is reasonable. But is it the best way to avoid legal misunderstandings – and is it going to find you the right candidate?

Making recruitment fairer

I believe that having a clear recruitment policy that leaves no room for doubt is the effective way to select the right staff, and avoid any legal woes. This means stating clearly the key requirements of the job, and then assessing each candidate objectively on how well they can meet these requirements.

Here’s a tip: in interview, ask each candidate the same questions. If reliability is crucial to the role, ask each about a time when they have missed a deadline. That becomes a legitimate way of selecting the person who convinces you they’re the most reliable.



Note that the law doesn't make you do things this way. You could, in theory, be much more arbitrary and advertise for candidates with blonde hair.

Non-blondes have no specific right to claim discrimination, after all. But you lay your company open to claims that if you select staff in such an arbitrary way, then your policies may allow illegal forms of discrimination as well.

In this case, your advert may be taken as seeking women, who after all are more likely to be blonde. Do you really want to see headlines about a tribunal case from a brown-haired man who says he's been overlooked unfairly?

All the more reason then for having a robust recruitment process based on objective measurement and evidence of the skills and competencies required to do the role. As a bonus, a well evidenced, objective recruitment process could provide a sound defence should any case be raised.

Conclusion

Employers should also make sure that they have an equal opportunities policy and that all managers (particularly those recruiting) are aware of the policy and discrimination laws. This will give firms protection from any claims – or any embarrassment when one of their employees declines to put forward an advert on the basis that it discriminates against unreliable people.

If you would like to find out more about how to set up an effective recruitment policy, or to discuss any recruitment issue, please contact Debbie Taylor on 0845 241 3387.