

9 September 2016

3HR Legal Weekly

Employment

The Recruitment Process

Recruiting is an essential part of any business as the success of your organisation can often depend on the quality of your employees. Organisations tend to look for potential employees who would not only be great at their job but who would fit into the office's culture. However, organisations need to be careful that no unlawful discrimination occurs at any stage in the recruitment process, as the law protects not only employees but individuals seeking employment. Nevertheless, candidates who have no intention to work for the organisation and make a claim for discrimination purely for compensation, will not be protected.

A recent German case law, that went to the European Court of Justice (ECJ) last month, regarding an Equal Treatment Directives claim reminds us of this. The Equal Treatment Directive prohibits discrimination in employment for the protected characteristics of age, disability, religion or belief and sexual orientation, sex, marriage and civil partnership, pregnancy and maternity, and gender reassignment. This Equal Treatment Directive is implemented in the UK by the Equality Act 2010.

The company Allgemeine Versicherung AG (AV), advertised a graduate trainee role. The advertisement specified that AV were looking for applicants with a good university degree in the legal field who had passed both state examinations and chosen an employment law option, or had medical knowledge.

Mr Kratzer applied for the position confirming that he met all the criteria mentioned in the advert, and stated that in addition he was a lawyer and a former manager with an insurance company. He was also attending a course to become specialised in employment law. Lastly, he added in his application that owing to the death of his father, he had dealt with a very large medical law file and, therefore, had extensive experience in that field.

On 19 April 2009, AV rejected Mr Kratzer's application, stating that it was currently unable to offer him a post. On 11 June 2009, Mr Kratzer sent a written complaint to AV demanding compensation of €14,000 for age discrimination.

AV then invited Mr Kratzer to an interview at the beginning of July 2009, confirming the rejection was a mistake as it was automatically generated. However, Mr Kratzer declined the invitation, suggesting that his future with AV could be discussed after his compensation claim has been satisfied. This showed that Mr Kratzer was interested in compensation and not in actually working there.

The matter proceeded to the Wiesbaden Labour Court (WLC), and Mr Kratzer found that all four trainee positions were given to females. Consequently, he claimed a further €3,500 for sex discrimination.

The WLC referred the matter to the ECJ, as they needed clarification as to whether the Equality Treatment Directives protect individuals who are making a claim to the Court purely for compensation and not actually seeking employment. The ECJ has held that where an individual applies for a job only in order to seek compensation for discrimination, and not to obtain employment, s/he will not be covered.

Even though this is good news for companies, it does highlight that during the process of shortlisting candidates it is critical to ensure you do not discriminate, and in particular you need to be careful if you use an automatically generated system.

Should you require advice on the recruitment process please do not hesitate to contact your HR consultant.

Mel Northfield
Director - HR Services
E: mel.northfield@3hracs.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Corporate Solicitors Ltd is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935. The registered office of 3HR Corporate Solicitors Limited is New Broad Street House, 35 New Broad Street, London EC2M 1NH, registered in England and Wales
no: 08198795

VAT Registration No: 163-5744-93 Tel: 0207 194 8140 Web: www.3hracs.com

