



Equality compliance

Standfirst: Yvonne McNulty from EMA Partners Ireland outlines the pitfalls of the recruitment and selection process.

The purpose of a recruitment and selection process is to identify and select the most suitable person for the position. In practice this can be more difficult than it seems, as both executive search consultants and hiring

companies need to have objective and justifiable reasons for their selection and should be in a position to defend such a selection against an allegation of discrimination.

Under recent employment equality legislation, the Employment Equality Act 1998 – 2004, an employer is prohibited from discriminating either directly or indirectly against an employee or a potential employee, or any of the above grounds covered by the legislation. The discrimination outlined by the legislation falls under the following grounds: gender, marital status, family status, sexual orientation, religion, age, disability, race/nationality/ethnic and national origins, membership of the traveller community.

Discrimination is stated to occur where, on any of the nine grounds, a person is treated less favourably than another is, has been or would be treated. It is essential to be compliant with this legislation as it presents dangers for employers and discrimination claims. Maximum awards for non employees are EUR 12,697. For an employee it is two years salary, if they win a discrimination case that is brought to the Equality Tribunal.

There are a number of ways to avoid the perils of discrimination. Firstly, it is imperative to train hiring managers in the recruitment and selection process and to train interviewers in the types of questions that may be discriminatory. Hiring managers must be able to elicit required information in a non-discriminatory way and they should be trained to use demonstrably objective criteria to evaluate applicants.

Secondly, the drawing up of job descriptions must be such that jobs are organised so as not to weight them in favour or against any category. Invite job advertisements with the widest appeal across the nine categories. Use neutral language that is standardised and objective. Proofreading application forms is the next step in the process. Ensure there are no discriminatory questions in any application forms used. Danger questions to avoid include those pertaining to nationality, ethnic origin, date of birth, place of birth, gender, marital status, number of children and medical history.

When reviewing job advertisements, write the advertisements with the widest possible appeal across the nine categories. Specifically prohibited are advertisements that indicate an intention to discriminate or could be reasonably understood as indicating an intention to

discriminate. The personnel specification or job description should be used to develop the short list criteria. Decide on the shortlisting criteria before reviewing CVs or application forms. The criteria should be strictly justifiable in relation to the duties and the post.

When interviewing candidates, choose an interview time and venue that is accessible to all categories. The following questions are danger areas: asking job applicants how they would have their children looked after if they were appointed; culturally specific questions to migrant workers; asking how committed the candidate is to their career (especially to a married woman). A written record should be made for each interview and retained. Referees should only comment on a job applicant's ability to carry out the particular tasks of the post. The role played by references in the recruitment process should be set out clearly before the process begins.

The equality principles underlying the practices and procedures recommended for recruitment and selection above are equally applicable for internal promotions. When deciding on the appropriateness of a pre-employment medical examination, it is important to remember that if, during the medical examination, it is discovered that a person has a disability, a job offer cannot be withdrawn unless there is evidence that he or she could not do the job.

These are the practical steps that employers can take which will ensure that their recruitment and selection procedures are compliant with equality law. While it is always possible that a job applicant may take a claim against an employer, it is a defence by an employer to show that he or she took all reasonable steps to prevent such discrimination occurring.

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