



Legal Issues in Recruitment

Recruiting staff can be as much of a legal minefield as employing staff. An employer must be alert to issues of discrimination, data protection and immigration or face potential exposure to claims from job applicants, civil penalties or even prosecution for a criminal offence.

An employer must be careful not to discriminate against a job applicant on the grounds of sex or marital status, gender reassignment, race, religion or belief, sexual orientation, disability or age.

Job advertisements should avoid reference or implication to any discriminatory grounds. For example, terminology such as "mature," "energetic," "senior" or "junior" could all be viewed as discriminatory on the grounds of age. Furthermore, requiring a birth date or age on job application forms, although not age-discriminatory in itself, could lead to problems. At interviews, an employer should avoid questions which suggest their decision may be influenced by age.

Any information such as title (marital status), ethnic origin or date of birth requested for monitoring purposes should be clearly shown to be for this purpose only, and should be on a separate document. Similarly, medical information should also be obtained separately and kept separate from the application form.

If an employer collects or uses information about people as part of a recruitment or selection exercise, the Data Protection Act will apply. Applicants should be aware of what information about them is being collected, what it will be used for and the duration for which the information will be retained. An employer should only keep information obtained through a recruitment exercise for as long as there is a clear business need for it. Employers should also have a policy on the retention or disposal of unsolicited applications for employment.

An employer has a responsibility to prevent illegal working in the UK. The Immigration, Asylum and Nationality Act 2006 establishes two offences: "negligently" employing an illegal immigrant and "deliberately" employing an illegal immigrant. An employer found guilty of the first offence may be liable to a civil penalty of up to £10,000 in respect of every employee employed illegally. An employer that knowingly employs an illegal immigrant may, on conviction, face up to 2 years' imprisonment and/or an unlimited fine. Employers should therefore ensure, that at the point of recruitment, all job applicants are asked to prove their entitlement to live and work in the UK.

Good practice in recruitment can result in a more effective and better motivated workforce. It is important that some extra time and care is put into recruitment and training is given to those involved in the recruitment process to limit, so far as reasonably practicable, the employer's liability for getting it wrong.

We mean business

 **Paris Smith**
The Region's Premier Solicitors

Number 1 London Road Southampton
Hampshire SO15 2AE

t: 023 8048 2482 f: 023 8063 1835

DX 38534 SOUTHAMPTON 3

e: info@parissmith.co.uk

www.parissmith.co.uk