



RECRUITMENT ADVERTISING

A GOOD PRACTICE GUIDE FOR EMPLOYERS FOR PROMOTING EQUALITY OF OPPORTUNITY

Equality Commission

FOR NORTHERN IRELAND

THE EQUALITY COMMISSION FOR NORTHERN IRELAND

The Equality Commission has responsibility for enforcing the anti-discrimination laws in Northern Ireland. Our general duties include working for the elimination of unlawful discrimination; promoting equality of opportunity and affirmative action and keeping under review the operation of the anti-discrimination laws.

Further information may be obtained from the Equality Commission.

The Commission's contact details are given at the back of this booklet.

INTRODUCTION

This is a publication for employers that aims to provide good practice guidance on how to advertise job vacancies and how to avoid publishing discriminatory advertisements. The publication is also suitable as a source of guidance for newspaper publishers and other publishers of recruitment advertisements.

The anti-discrimination laws prohibit discrimination on the *equality grounds* in the fields of employment and occupation, including vocational training and third-level education. A list of the anti-discrimination laws and a description of the *equality grounds* are given in Appendix 1.

The laws apply to all employers. They also apply to persons who engage contract workers; employment agencies; persons who appoint office-holders; vocational organisations; the providers of vocational training services; partnerships (in relation to the employment of partners); bodies who confer vocational qualifications; and, bodies in charge of further and higher educational establishments (in relation to providing education to students). All references to *employers* in this guide include references to the other categories of persons listed above.

The anti-discrimination laws use terms such as *direct discrimination*, *indirect discrimination* and *victimisation* to describe the different types of discriminatory conduct which are prohibited. Further information on the definitions and meanings of these terms may be found in other publications issued by the Equality Commission; a list of which is contained in Appendix 2. The guide does not attempt to describe every set of circumstances that may arise and it should not be taken as an authoritative statement of the law.

The anti-discrimination laws also prohibit discrimination and the publication of discriminatory advertising in relation to various non-employment activities, such as the provision of goods, facilities and services to the public; the provision of education; and, in the letting and selling of land and property. The guide does not aim to address the publication of advertising in relation to these other activities; although many of the principles outlined here apply equally there too.

DISCRIMINATORY ADVERTISEMENTS

It is generally unlawful for an employer to publish a discriminatory advertisement, or to cause one to be published. There are some exceptions but most of these rarely apply in practice. The most important exception is the one that permits positive or affirmative action advertising in certain circumstances. Further information about using the exceptions is given in the Good Practice Checklist (see pages 9 to 14 below).

A discriminatory job advertisement is a job advertisement which indicates, or which might reasonably be understood as indicating, that an employer intends to commit an act of unlawful discrimination when determining who should be offered employment or promotion.

How to identify a discriminatory advertisement:

- An advertisement must be read as a whole and account must be taken not only of the words but also of the pictures that it uses.
- The law presumes that the use of job titles or descriptions which have sexual connotations (such as “waiter”, “salesgirl”, “postman” or “stewardess”) indicate an intention to discriminate on the ground of sex, unless the advertisement contains an indication to the contrary.
- If an advertisement could reasonably be understood by an ordinary person to mean that an employer intends to commit an act of discrimination then the advertisement is discriminatory, regardless of whether the employer *actually* intends to discriminate against anyone. Consequently, an advertisement may be discriminatory simply through the careless use of words and pictures, even though the employer who placed the advertisement does not actually intend to commit an act of discrimination.
- Advertisements can take many forms, such as advertisements placed in newspapers, magazines and job centres; or, on television, radio or the internet. It also includes notices or circulars placed on staff notice boards or

intranets, and it even includes notices placed in shop windows.

While it is unlikely that any employer will attempt to publish an advertisement which is intentionally and blatantly discriminatory, discriminatory advertising still occurs, often inadvertently, and the examples set out below are typical of the kinds which may still occasionally be seen.

For guidance on how to avoid the pitfalls highlighted in these examples, refer to the Good Practice Checklist on pages 9 to 14.

Example 1

A notice in a restaurant window simply states: “*waiters required*”. The word “*waiters*” has a male, but not a female, connotation. The advertisement does not contain an equal opportunities statement and does not specify that the jobs are open to men and women. The law presumes that this is a discriminatory advertisement because it does not contain any indication to the contrary.

Example 2

A medical clinic places an advertisement for a nurse that is illustrated by a photograph of a female nurse. Nursing is an occupation that is traditionally associated with women. The advertisement does not contain an equal opportunities statement and does not specify that the jobs are open to men and women.

Example 3

A car dealership places an advertisement for a mechanic that is illustrated by a photograph of a male mechanic. This is an occupation that is traditionally associated with men. The advertisement does not contain an equal opportunities statement and does not specify that the jobs are open to men and women.

Example 4

An advertisement placed in the “small ads” section of a newspaper which merely states “*Mature, responsible female required to run a Bed and Breakfast*” could reasonably be understood as indicating an intention to discriminate against men and young workers, i.e. discrimination on the grounds of sex and age.

Example 5

An advertisement for a sales assistant in a clothing store which states that the employer is seeking “*a young, energetic, dynamic person*” is potentially discriminatory against older workers and disabled workers; all the more so if the language bears little or no relation to the genuine occupational requirements of the job.

Example 6

A local recruitment agency places an advertisement for manual labourers and production operatives which has the heading “*Immigrant Workers*”. The advertisement contains no equal opportunities statement. When read as a whole, the advertisement could reasonably be understood as indicating that the vacancies are not open to persons from Northern Ireland and is thus discriminatory on the grounds of national origins. A similar advertisement which has the heading “*European Workers*” could reasonably be understood as indicating an intention to discriminate on the grounds of race and national or ethnic origins against non-European persons.

Example 7

The owner of a pub advertises for a “*married couple*” to manage the business. This phrase indicates that the owner is seeking to employ a man and woman who are married to each other. If the advertisement does not also specify that a genuine occupational requirement of the job is that it must be held by a heterosexual married couple, then, read as a whole, this might reasonably be understood as indicating that the owner intends, without lawful justification, to refuse to employ a same-sex couple who are civil partners of each other. This might indicate an intention to unlawfully discriminate against civil partnership couples on the grounds of sexual orientation. An inference of this nature could only be rebutted if the owner does in fact have lawful justification for claiming that such a genuine occupational requirement exists for the job in question.

TAKING ACTION AGAINST DISCRIMINATORY, OR POTENTIALLY DISCRIMINATORY, ADVERTISEMENTS

Action by individuals

A job applicant or employee who considers that he or she has been discriminated against by an employer in respect of their treatment in a recruitment or selection exercise may lodge a complaint in an Industrial Tribunal or the Fair Employment Tribunal.

Such a complaint might entail an allegation that the arrangements made by the employer to fill a vacancy discriminated against a job applicant on the grounds of sex, or age, or sexual orientation, or on any of the other equality grounds. The existence of a discriminatory job advertisement in this case will provide cogent documentary evidence that the “arrangements” were discriminatory and is likely to assist the complainant in proving the allegation of discrimination.

Action by the Equality Commission

Officers of the Commission regularly scan job advertisements in the local newspapers to check whether discriminatory advertisements are being published. In addition, members of the public occasionally refer incidents to the Commission as well.

Where advertisements which are discriminatory, or potentially so, are identified, the Commission’s policy is to contact the relevant employers and/or the publishers to seek further information, to offer advice and to obtain assurances that the employers and publishers will desist from publishing further discriminatory advertisements. At this stage the Commission may also request the employers to re-advertise the job vacancies in question with the discriminatory wording or pictures removed.

On all but two of the equality grounds, the Commission also has the power to lodge complaints in the Industrial Tribunal or Fair Employment Tribunal against employers and publishers who have published, or who have caused the publication of, discriminatory advertisements.¹

¹ The two exceptions are the equality grounds of sexual orientation and age.

In certain circumstances an employer may commit a criminal offence too – see the next section for further details.

Action by newspapers and other publishers

Where the Equality Commission may take legal action against an employer who places a discriminatory advertisement, it may also take legal action against a newspaper or other publisher who publishes that advertisement. A newspaper or other publisher may be held jointly liable with an employer for publishing the employer's discriminatory advertisement.

A newspaper or other publisher has a defence in any action brought against it by the Commission where it can show that it acted in reliance on a statement made by the employer to the effect that the advertisement was not unlawfully discriminatory. The publisher must also show that it was reasonable to rely on the employer's statement.

An employer who knowingly or recklessly makes a false or misleading statement to a publisher to the effect that an advertisement is not unlawfully discriminatory shall be guilty of an offence.

Consequently, it is in the interests of newspaper and other publishers to make appropriate enquiries into the nature and meaning of the advertisements that they are being engaged to publish and to seek appropriate assurances from employers. It is entirely reasonable that publishers should make such enquiries, particularly to enquire whether it is proper for an employer to rely on an exception to the anti-discrimination legislation, or to enquire whether a job criterion which is potentially indirectly discriminatory is objectively justifiable.

It is also entirely reasonable for publishers, where appropriate, to refuse to publish advertisements which they consider to be discriminatory, or to ask for remedial amendments to be made to an advertisement before permitting its publication to go ahead.

The Commission provides guidance on recruitment advertising to newspaper and other publishers and often gives advice to publishers who are considering whether to place particular advertisements.

GOOD PRACTICE CHECKLIST

1. Advertise as widely as is practicable so that as many eligible and suitably qualified candidates as possible have an opportunity to apply;
2. Do not publish job advertisements in locations or publications where they are likely to be read only by persons who share a particular community background, or sex, or race, or disability, or sexual orientation, or age. For example, do not advertise vacancies exclusively at University “Milk Rounds”, or in newspapers that are read wholly or mainly by persons from one community background or racial group;
3. Use language which is clear and simple and do not use vague or abstract words. For example, when describing the working environment or the characteristics of the desirable candidate do not use words like-

Young *Mature* *Dynamic* *Energetic*

4. Where possible, do not use job titles which have a distinctly male or female connotation. For example, do not use the following words-

Waiter / Waitress *Salesman / Salesgirl* *Postman*
Stewardess *Handyman* *Craftsman*
Manageress *Foreman* *Storeman*
Matron *Chairman / Chairwoman*
Head Master / Mistress

Instead, where possible, use job titles that have a gender-neutral connotation. For example, the following words are appropriate-

Waiting Staff *Sales Assistant* *Postal Worker*
Manager *Stores Person* *Supervisor*
Chairperson *Nurse Manager* *Head Teacher*

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5. Where it is not possible to avoid using a job title or description which has a sexual connotation, then a prominent equal opportunities statement should be added to the advertisement to indicate that the employer welcomes applications from all suitably qualified men and women.
 6. Where the advertisement is to be illustrated with a photograph or picture, it should, as far as is practicable, depict a balance of men and women and persons of different racial groups and persons of different ages performing a variety of jobs.

Where it is not possible to obtain a “balanced” photograph or picture, then a prominent equal opportunities statement should be added to the advertisement to indicate that the employer welcomes applications from all suitably qualified persons.

7. Do not perpetuate stereotypes. Exercise particular caution with job titles and photographs in respect of jobs that are traditionally associated with one or other of the sexes (e.g. nursing and women; airline stewarding and women; mechanics and men).

Where this danger arises, then a prominent equal opportunities statement should be added to the advertisement to indicate that the employer welcomes applications from all suitably qualified men and women.

8. Where possible, do not use job titles which have an age-related connotation. For example, be very careful when using words like *Junior* or *Senior* in job titles.

It is likely to be acceptable to use a word like *Senior* or *Junior* where it merely specifies a job-holder’s position in an organisation’s hierarchy. For example, if the job title *Senior Accounts Officer* is merely used to imply that the job-holder is the *Accounts Officer’s* line manager and has more duties and responsibilities but is not necessarily an older person, then that is likely to be a non-discriminatory use of the word *Senior*.

On the other hand, if an employer uses a job title like *Office Junior* to imply that the post-holder is expected to be a young

worker, perhaps a person in their first job, then that is likely to be considered to be an age discriminatory use of the word *Junior*. An alternative job title should be used instead; for example, *Office Assistant*, *Clerical Assistant*, etc.

9. When citing selection criteria, only cite those which are described in the written personnel specification for the job in question. Selection criteria must be based on objectively justifiable requirements or otherwise should be abandoned. Exercise particular caution with criteria which might disproportionately exclude persons who have certain characteristics. For example-
- Physical characteristics such as minimum height or physical fitness requirements may disproportionately exclude women and disabled persons. If such criteria cannot be objectively justified then they ought to be abandoned;
 - Age requirements may be age discriminatory. For example, an advertisement that states “*young person wanted*” or “*mature person wanted*” may be directly discriminatory, or one that seeks “*recent graduates*” may be indirectly discriminatory against persons over the age of 25 years. If age discriminatory criteria cannot be objectively justified then they ought to be abandoned;
 - Driving licence requirements may disproportionately exclude disabled persons and should not be cited in advertisements unless they are genuinely essential for the performance of the job and where no reasonable alternative method of performing the travelling duties is available.
10. In some circumstances (see above) it is necessary for the advertisement to contain an equal opportunities statement. In all other circumstances, however, it is nonetheless good practice to place one in the advertisement. A range of statements may be used and the following are only examples of kinds that employers typically use. Ultimately, the content of a statement is a matter for each employer to decide in the light of their own circumstances-

“*We are an equal opportunities employer*”; or

“We are an equal opportunities employer and we welcome applications from all suitably qualified men and women”; or

“We are an equal opportunities employer and we welcome applications from all suitably qualified persons regardless of their religious beliefs or political opinions, sex, marital or family statuses, races, sexual orientations, ages or whether they are disabled”.

11. Where an employer has an affirmative or positive action programme which is designed to address an under-representation of, or other disadvantages suffered by, a particular group of persons (e.g. men or women; Catholics or Protestants; disabled persons), then the employer’s job advertisements should complement and be consistent with that programme. For example, in certain circumstances the following may be an appropriate positive action statement to include in an advertisement-

“We are an equal opportunities employer. We welcome applications from all suitably qualified persons. However, as women are currently under-represented in our workforce, we would particularly welcome applications from women. All appointments will be made on merit.”

Another option may be to include a notice in job advertisements to promote particular working arrangements or benefits which might attract applications from an under-represented group. For example, a short sentence may be included to let potential applicants know that flexible working arrangements are available. This may help to attract applications from women who have caring responsibilities.

Employers may seek advice from the Equality Commission prior to developing and implementing an affirmative or positive action programme.

12. Where the employer intends to rely on a genuine occupational requirement exception (i.e. where it is genuinely necessary for the job to be carried out by a person, or persons, of a particular sex or race or religious belief or political opinion or sexual orientation

or age), then this fact should be noted in the advertisement. For example, where it is lawful to recruit only women for a particular post on the basis that there is a need to preserve decency or privacy in circumstances where the job requires the post-holder to be in physical contact with other women who might reasonably object to a man doing the particular tasks in question, the advertisement should include a notice such as the following-

“This post is open to women only. For this post, being a woman is a genuine occupational requirement in accordance with Article 10(2)(b)(i) of the Sex Discrimination (NI) Order 1976 (as amended).”

Information on the particular wording to use in different circumstances may be obtained from the Equality Commission. Employers should seek advice from the Commission prior to designating jobs as having genuine occupational requirements.

13. Where the employer intends to publish a composite advertisement which advertises two or more different vacant posts and also intends to rely on a genuine occupational requirement exception, or other exception (such as a positive action welcoming statement) in respect of one of those posts, the advertisement must clearly state which post the exception applies to. The advertisement must not give the impression that the exception applies to posts that cannot rely on it.
14. Where an ability to communicate in a particular language, other than English, is required for certain kinds of work, it is common practice for the relevant employers to place advertisements for the jobs in both English and in the language in question. This practice is lawful and has the advantage of providing information to the general reader about the nature of the selection criteria. Nevertheless, where an ability to speak and/or read a particular language, other than English, is an objectively justifiable requirement of a particular job, then an employer may lawfully place an advertisement for the job that is exclusively in that language. In these particular circumstances it is not actually necessary for the advertisement to be placed in English too, or to contain any English words by way of explanation or clarification.

However, where a newspaper publisher or other publisher does not understand the meaning of the proposed advertisement due to an inability to read the particular language in question, he or she should seek an assurance from the employer that an ability to speak and/or read the specific language is an objectively justifiable requirement of the job in question prior to accepting an advertisement of this nature.

APPENDIX 1

THE ANTI-DISCRIMINATION LAWS

The anti-discrimination laws (and the equality grounds) are-

Equal Pay Act (NI) 1970, and Sex Discrimination (NI) Order 1976

These laws prohibit discrimination on the grounds of sex; pregnancy and maternity leave; gender reassignment; marital status or civil partnership status.

Fair Employment & Treatment (NI) Order 1998

This law prohibits discrimination on the grounds of religious belief and political opinion.

Race Relations (NI) Order 1997

This law prohibits discrimination on the grounds of race; colour; ethnic or national origins; nationality; belonging to the Irish Traveller community.

Disability Discrimination Act 1995

This law prohibits discrimination against disabled persons.

Employment Equality (Sexual Orientation) Regulations (NI) 2003

This law prohibits discrimination on the grounds of sexual orientation.

Employment Equality (Age) Regulations (NI) 2006

This law prohibits discrimination on the grounds of age.

APPENDIX 2

USEFUL PUBLICATIONS

The Equality Commission has published a number of Codes of Practice, good practice guides and other advisory materials-

SHORT GUIDES

- *Religious Belief and Political Opinion Discrimination Law in Northern Ireland*
- *Sex Discrimination and Equal Pay in Northern Ireland*
- *Racial Discrimination Law in Northern Ireland*
- *Disability Discrimination Law in Northern Ireland*
- *Sexual Orientation Discrimination Law in Northern Ireland*

CODES OF PRACTICE

- *Fair Employment in Northern Ireland [1989]*
- *Removing Sex Bias from Recruitment and Selection [1995]*
- *Code of Practice on Equal Pay [1999]*
- *Protecting the Dignity of Women and Men at Work – A Code of Practice on Measures to Combat Sexual Harassment [European Commission, 1991]*
- *Code of Practice for Employers for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment [1999]*
- *Disability Code of Practice – Employment and Occupation [2005]*

GOOD PRACTICE GUIDES

- *Sexual Orientation Discrimination in Northern Ireland – The Law and Good Practice [2004]*
- *Age Discrimination in Northern Ireland - The Law and Good Practise for Employers [2006]*

OTHER MATERIALS

Employers should have regard to a publication from the Home Office; namely, *Code of Practice for all employers on the avoidance of race discrimination in recruitment while seeking to prevent illegal working*.

CONTACTING THE EQUALITY COMMISSION

If you need help or advice or would like to find out more about the Equality Commission and its work, contact us at-

The Equality Commission for Northern Ireland

Equality House

7 – 9 Shaftesbury Square

Belfast

BT7 2DP

Telephone: (028) 90 890 890

Fax: (028) 90 248 687

Textphone: (028) 90 500 589

Email: information@equalityni.org

Website: www.equalityni.org

This publication is available on request in a range of formats, such as large print, Braille, CD-ROM. It may also be downloaded from the Equality Commission's website.

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