“Overqualified” or too old for the job?

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It’s common knowledge that some employers try to recruit in their own image (whether lawful or not). Job advertisements and person specifications can be used to pinpoint particular demographics, and in particular, certain age groups. Advertising for a candidate who is active, energetic and computer-savvy? Chances are, you’re looking to hire someone young.

An employer's decision to say in clear terms that they want someone with "youthful enthusiasm" (McCoy v James McGregor & Sons Limited 00237/07IT) or a "younger, entrepreneurial profile" (Beck v Canadian Imperial Bank of Commerce ET/2328832/08) will at the least raise a presumption that the employer has directly discriminated on the basis of age.

A less obvious way in which age discrimination can creep into recruitment is via the imposition of experience requirements. Asking for someone with at least 10 years' experience will probably exclude candidates in their 20s. Equally, saying that candidates should have 5 years' experience or less will make it more difficult for older candidates to comply. Such requirements are likely to be indirectly discriminatory on age grounds unless they are objectively justified.

An example of a non-discriminatory experience requirement can be found in Jones Care UK Clinical Services Ltd ET/3302973/2015. Mr Jones (who was 51) had applied for the role of marketing services executive, which reported into the marketing services manager. The person specification asked for at least 2 years' experience and a relevant degree. The company decided that Mr Jones would not be the best candidate and offered the job to someone else (who was aged 29). Mr Jones claimed he had been discriminated against on grounds of his age. The company denied this, stating that his age played no part in the selection process and that his responses in interview suggested that his skills were beyond what was needed. His expectations were also higher than the constraints of the role could permit.

The employment tribunal dismissed the claim, finding that Mr Jones' "previous senior roles, high-level qualifications and extensive experience might unbalance the marketing team and undermine other team members whose qualifications and experience were of a much lesser order". It also found that there was a risk of Mr Jones becoming frustrated in the role, particularly given the lack of scope for career progression.

On the other hand, in Rainbow v Milton Keynes Council 1200104/2007, a role which specified that it "would suit candidates in the first five years of their career" was discriminatory. The tribunal had no problem finding that the requirement put older applicants at a particular disadvantage, given that applicants in their 60s (Ms Rainbow included) were more likely to have lots of experience. The employer's reason for wanting someone younger – which was that they were cheaper to employ – was not sufficient justification.

Essentially, the safer course for employers is to only ask for what you need from a candidate. Where a quality (or particular level of experience) is necessary and relevant to whether a candidate can do the job properly, you are entitled to ask for it. However, if you find yourself writing the words like "younger", "older" or "youthful" in your job advertisement, the best advice will always be… don't.

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