

How should we go about recruitment and selection?

There are a variety of ways that employers go about recruiting and selecting employees. Some place adverts in newspapers. Increasingly, adverts are placed online and shared on social media. Some employers ask candidates to complete application forms and others ask candidates to submit CVs. Sometimes people are recruited by 'word of mouth' and other times a job is offered to someone who is in the right place at the right time, who seems like a good fit, and so they are offered the job without any process.

The law does not specify the method by which employers must recruit staff. What the law does require is that employers do not discriminate in their recruitment practices. So, what does that mean for employers and, in particular, employers with a religious ethos?

Generally speaking, employers are not allowed to discriminate on the basis of characteristics that are protected under the Equality Act. Examples of such characteristics include race, religious belief, sex, age and sexual orientation. So any advertising or recruitment practice that disadvantages someone on the grounds of one of these protected characteristics is usually unlawful.

It is also worth noting that employers are not permitted to ask health-related questions as part of a recruitment process until the candidate has been offered a job. There are some exceptions to this, including checking to see if any reasonable adjustments may be required to assist the candidate at interview.

Organisations with a religious ethos will often wish to specify that certain positions need to be held by people who are adherents to that religion. This is permitted where being of that religion is an occupational requirement. Employers must always understand when seeking to attach these requirements that they are relying upon exemptions to the normal rule.

The onus is on the employer to show that the role carries with it an occupational requirement that it must be held by someone of a particular religion. If no formal recruitment process is followed, this will be more difficult to prove. So, while there is nothing illegal in and of itself about a recruitment practice where an employer appoints someone that they know without a formal process, recruiting in this way will make it harder to justify an occupational requirement in the event that the organisation faces a challenge from someone claiming that they were discriminated against.

A suggested recruitment procedure for an organisation with a Christian ethos would be as follows:

1. Draft the job description. Even if it is not a new role, re-consider the job description and see if it needs to be updated
2. Assess the job description to see what aspects of it (if any) would need to be undertaken by a Christian
3. Consider whether those aspects that need to be undertaken by a Christian can be redistributed to other roles. If not, then make a decision that you are going to assert that the role carries with it an occupational requirement that it must be undertaken by a Christian.
4. Draft the person specification, setting out what you are looking for in terms of experience. If asserting an occupational requirement, a commitment to the Christian faith should be an essential criterion
5. Advertise the position, making the job description and person specification available to anyone who expresses an interest. If the job does not carry with it an occupational requirement that it must be undertaken by a Christian, ensure the advert is placed in places that the general public will see it. If the occupational requirement is asserted, it is ok to place the advert on, for example Christian Vocations, church notice boards and social media accounts

6. If an occupational requirement is asserted, make sure the application process tests the individual's commitment to the Christian faith by, for example, requiring them to confirm their agreement with the organisation's statement of faith and requiring a church leaders' reference as part of the process

There is no 'one size fits all' approach and, as the law is not prescriptive regarding recruitment methods, there is freedom to tailor a recruitment process to suit your organisation and the particular job. However, following the steps outlined above will act as a useful exercise for you and put in place the foundations of any defence to a challenge of discrimination if it is alleged that you improperly asserted an occupational requirement that the role had to be undertaken by a Christian.

For specific advice on a particular recruitment exercise or for anything else to do with employment law or HR in your organisation, please do not hesitate to get in touch.

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These articles are intended to provide general information and guidance and are not to be relied upon as legal advice. For specific advice on a particular situation, you can contact Mark on 028 9084 8899 or email him at mark@markmasonlaw.co.uk. Please note that Global Connections members can benefit from an initial 30 minute no-cost telephone consultation.

To receive Mark's monthly employment law articles, please email mark@markmasonlaw.co.uk and ask him to add you to his mailing list.