



Department of Trade & Industry
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Fair Advertising and the Employment (Sex Discrimination) Act 2000 *Good Practice Guide*

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Introduction

The Employment (Sex Discrimination) Act 2000 makes it unlawful to discriminate on the grounds of sex or marriage in employment. It also makes it unlawful to publish an advertisement which indicates, or could reasonably be understood as indicating, an intention by anyone to commit an act of sex discrimination which is unlawful under the Act.

1. WHAT THE LAW SAYS ABOUT ADVERTISING

Section 29 of the Employment (Sex Discrimination) Act 2000 makes it “*unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful...*” (under the Act). Publishers share with employers and their agents the responsibility for ensuring that advertisements do not indicate any intention to discriminate unlawfully.

Discrimination can take the following forms:

- **Direct sex discrimination** is less favourable treatment of a woman than a man (or vice versa) because of her sex. Direct sex discrimination occurs where, for example,

a restaurant owner puts a card in the window saying that "waiters are required". This implies that the job is open to men only. The advertisement needs to make it clear that the vacancy is open to both men and women eg 'waiter/ waitress required'

- **Indirect sex discrimination** occurs when a condition or requirement is applied equally to both women and men but, in fact, it affects more women than men

(or vice versa) and is not genuinely necessary. For example, it would be indirect sex discrimination if,

an employer advertises for 'a person who is 6 feet tall and plays rugby' when these requirements are not necessary to do the job.

- **Marriage discrimination occurs if** a married person (of either sex) is treated less favourably than a single person of the same sex. The Act forbids marriage discrimination in the field of employment.

What is an advertisement?

An advertisement is defined in the Act as: “*every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio; by display of notices; signs; labels; showcards or goods; by distribution of samples; circulars; catalogues; price lists or other material; by exhibition of pictures; models or films; or in any other way ...*”

An 'advertisement' would therefore include advertising in the media and on the Internet, as well as direct mail advertising, in-company advertising and careers films.

2. HOW TO ADVERTISE JOBS & VOCATIONAL TRAINING COURSES

The general rule to follow when deciding if an advertisement could be unlawful is to consider the impact of the advertisement as a whole. Employers and publishers should be aware of the following issues:

(i) Job Titles - The Act says that job titles which have a sexual connotation, such as *waiter and salesgirl*, are unlawful because they refer to one sex only. The advertisement must contain an '*indication to the contrary*', that means it must contain a form of words that clearly shows that applications from both sexes will be equally welcome. Other examples of job titles which employment tribunals have found to be potentially discriminatory are:

- ‘craftsman’
- ‘ex-policeman or similar’
- ‘manageress’

It is often possible to use a job title that is not discriminatory, eg:

- *fireman* becomes *fire-fighter*
- *salesgirl* becomes *sales assistant*
- *chairman/woman* becomes *chair* or *chairperson*
- *head master/mistress* becomes *head teacher*

Other job titles such as *manager* and *carpenter* have been seen as neutral by Employment Tribunals. If it is not possible to find a neutral job title, then make sure that there is an eye catching statement that will counteract the effect of the title and will make it clear that applications are welcome from both women and men. If a job is known to have been done in the past exclusively or mainly by men or by women, then the advertised job should state that it is open to both sexes.

(ii) Composite advertisements If an employer is using a composite advert, that is where a number of jobs with a company are advertised within one advertisement, each individual advertisement, must comply with the Act. It is acceptable to rely on a bold disclaimer at the top of the advertisement, stating that all the posts are open equally to all men and women, provided nothing in the wording or illustration of any individual advertisement indicates sex discrimination.

(iii) Banner headlines A general statement, banner or strap headline, which make it clear that all jobs advertised on a page or in a section are open to both sexes, is welcome. However, employers and publishers are still liable if any individual advertisement indicates sex discrimination.

(iv) Illustrated advertisements - Illustrated job advertisements should represent both sexes fairly, in both numbers and prominence. If this is not feasible, then the advertisement must include a statement which is sufficiently prominent and explicit to counterbalance the message conveyed by the illustration. The general rule is *to consider the impact of the advertisement as a whole*.

(v) Self-employment Advertisements for staff who will be self-employed are covered by the advertising provisions of the Act.

3. EXCEPTIONS TO THE ACT

There are very limited circumstances where a job vacancy or vocational training course can be restricted to individuals of one sex. These include:

(i) Genuine Occupational Qualifications It is lawful to discriminate in recruitment, training, promotion and transfer in a job for which the sex of a worker is a genuine occupational qualification (GOQ). GOQs are interpreted very narrowly by the law and can be claimed where the work:

- is restricted to one sex for reasons of physiology or authenticity
- is restricted to one sex to preserve privacy and decency
- requires the promotion of personal welfare or educational services
- requires living in single sex accommodation
- is in a private home
- is in a single sex establishment
- is outside the Isle of Man
- requires the employment of married couples.

GOQs cannot be used to restrict places on vocational training courses to one sex. More detailed information about GOQs can be found in a separate publication available from the Department of Trade & Industry, '*Genuine Occupational Qualifications a Good Practice Guide*'.

(ii) Working abroad The Act does not apply to advertisements for jobs which are wholly or mainly outside the Isle of Man.

(iii) Positive action The Act allows employers and training organisations to advertise women-only or men-only training, e.g. courses or taster days, for work where it can be shown that few or no people of that sex have done that kind of work in the previous year. Special encouragement can be used by training providers to attract the under-represented sex onto mixed courses as well.

However, the Act does not allow employers to discriminate by sex when it comes to *selecting* who will be recruited.

4. LIABILITY, ENFORCEMENT & PENALTIES

The Act provides that the **advertiser** (the employer) and their **agents** (such as employment agencies), and the **publisher** of the advertisement are *all* liable if such an advertisement is published. Newspapers, magazines, television and radio stations, employment agencies, Job Centres and advertising agencies are all covered under the Act.

However, publishers are not liable if they can show:

- that they relied on a statement from the advertiser that publication of a particular advertisement would not be unlawful, and
- that it was reasonable for them to rely on that statement.

It is recommended that whenever possible publishers should obtain *written statements* from advertisers who claim exceptions from the Act. (A person who knowingly or recklessly makes such a statement which is false or misleading is committing an offence.)

It is an offence to publish a discriminatory job advertisement which may be punishable by a fine of up to £5,000 or, in particularly serious cases, this could even lead to an injunction from the High Court.

5. WHAT YOU CAN DO ABOUT A DISCRIMINATORY ADVERT?

Anyone who believes that they are qualified for a job but who considers that they are prevented from applying for it because of a discriminatory advertisement, can still attempt to apply for the job. If they are rejected because of their sex then they may take a claim under the Employment (Sex Discrimination) Act 2000 to an Employment Tribunal.

The Equality Adviser is a useful first contact if you would like to complain about an advert or enquire about the legislation.

The leaflet is a guide and has no status in law. It does not cover all the rules for every situation, nor does it provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law. It should be read in conjunction with the Code of Practice that the Department of Trade & Industry publishes on the new legislation.

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