

Bulletin 197

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## JOB APPLICANT WHO HAS NO INTEREST IN A JOB CANNOT SUE FOR DISCRIMINATORY ADVERT

In the recent case of *Berry v Recruitment Revolution and others* the EAT has held that a job applicant cannot bring a discrimination claim in respect of an advert for a job that he has no interest in taking.

Mr Berry, who was in his 50s, had sent an email to Recruitment Revolution, a recruitment agency who had advertised the role, saying that he appeared to be prevented from applying by reason of his age and that unless he heard back he would assume that there was no point in applying. Recruitment Revolution advised Mr Berry that the advertisement had been mistyped and that he should send in his CV, which would be considered with all other CVs received.

Mr Berry ultimately chose not to apply for the advertised job and brought a claim alleging that the advert was unlawfully discriminatory under regulation 7(1)(a) of the Age Regulations (which provides that it is unlawful for an employer to discriminate against a person through its recruitment arrangements) by referring to "school leavers" or "recent graduates".

Mr Berry was, in fact, a serial litigant who had brought in the region of 50 tribunal claims against recruitment agencies and employers complaining that job advertisements were unlawfully discriminatory under the Age Regulations. A number of the claims were settled. This case was struck out and Mr Berry appealed to the EAT.

The EAT dismissed his appeal holding that while a job advert could form part of "arrangements" for recruitment under regulation 7(1)(a) and could therefore in theory be the basis of a discrimination claim, a claimant had to be impacted by the "arrangements" in question. In this case the job advert had not impacted upon Mr Berry and he had not been deterred from applying for the job by the allegedly discriminatory wording. He therefore could not bring a discrimination claim.

In addition, the EAT indicated that the purpose of the Age Regulations is not to "*provide a source of income for persons who complain of arguably discriminatory advertisements for job vacancies they have in fact no intention to fill.*" They warned that "*those who try to exploit the Regulations for financial gain in such circumstances are liable... to find themselves facing a liability for costs.*" This is clearly a warning to serial litigants.

### Practical Tips

- Ensure that your job adverts are non- discriminatory
- This case could prove useful to Respondents seeking to obtain costs orders against serial litigants.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [kimberley.malcolm@brabnerscs.com](mailto:kimberley.malcolm@brabnerscs.com)

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