

The inside track from academia and industry

# All things being equal

Germany now has a law to eliminate discrimination — but interpreting it is proving to be a challenge.



Jens-Peter Mayer

Last year, Germany finally made a legal commitment to abolishing discrimination in the workplace. After years of debate, the General Act on Equal Treatment came into effect in August. Under the terms of this act, it is now illegal to discriminate against job applicants or employees on the grounds of age, race, religion, disability, gender or sexual orientation.

This is a welcome and long overdue step towards genuine equality for the country's workforce. But my experience as a scientific recruitment consultant suggests that there is some confusion, if not downright discomfort, on how to interpret these laws — both from the employer's and the jobseeker's perspective. The fight against inequality requires more than a legal framework. It needs a complete change in the mindsets of both employers and, more broadly, society. The passing of the law in Germany has already sparked greater public debate of the issues, which can only be a good thing.

At a corporate level, employers and recruitment consultants need to review their approach to job candidates to ensure that potentially discriminatory criteria are not being applied. Certain attributes of a candidate

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have no bearing on whether or not the applicant can do the job and so should not be taken into account. For example, the question of whether a female candidate is likely to want to start a family in the near future is wholly irrelevant to her ability to do the job. But some hiring managers may subconsciously consider this, even if they provide other reasons.

The crux of the problem is that the interpretation of

discriminatory actions can be difficult from both ends. For instance, a company could justify not hiring a female employee on the grounds of qualifications. But that rejected applicant could challenge the decision as discriminatory, if she can prove that she is as qualified as her competitors, or if she can prove that the company has an established record of not hiring women of child-bearing age.

Although the new law is designed to halt such discrimination, it may also have some negative effects. Already some job applicants in Germany are trying to twist the new rules to their advantage by applying for jobs they don't want so that they can file legal action once they are rejected. Only a handful of such suits has so far been filed, and none has yet been through the court system.

But the passage of the law did spark some lawsuits, including from three Lufthansa plane pilots, who challenged mandatory retirement ages, and six female executives at a US division of Dresdner Bank who are suing because they were unable to break through a 'glass ceiling' and receive promotions to higher management positions.

These sorts of lawsuits have had a chilling effect on recruiters, who feel they need to exercise a lot more caution. They need to anticipate whether anything they say or any decision they make will result in a lawsuit, as the courts have yet to interpret the new legislation.

As a result, I have heard that some prospective employers are becoming less willing to provide feedback to unsuccessful job applicants. Worried that they might say something that could be interpreted as discriminatory, they are opting to say nothing, which robs jobseekers of potentially constructive criticism.

Recruitment consultants face similar issues. Although

we can give personal feedback more easily because people are not always interviewed for a specific vacancy, at Kelly Scientific Resources, we feel we need to reduce the amount of information communicated and must exercise more caution in the way in which we document our candidate evaluations. The way in which we coach individuals with detailed feedback of their performance in an interview must be modified.

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We need to change our practice to protect both ourselves from lawsuits and potential employees from discrimination.

To reduce discrimination in Germany's workplaces, we need to adapt the law into clear employment practices — something that we and many other employers in Germany are now grappling with. Discrimination is clearly unacceptable. But is there truly no discrimination in countries with anti-discrimination laws? Job statistics related to race or culture suggest that there is still a gap between the desired outcome and reality. Legislating over discrimination is a first step in closing that gap. Interpreting those laws in the workplace is the next. But the biggest leap — making sure these laws are clear to understand and implement for both sides — will be necessary to eliminate it. ■

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