



## XpertHR Podcast

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- Jeya Thiruchelvam: Hello and welcome to this week's XpertHR podcast with me, Jeya Thiruchelvam. Recruiting the best people is crucial to an organisation's success, but just how do you do that? An uninspiring and lacklustre job advert could mean that the employer falls at the first hurdle and fails to speak effectively to potential candidates. I'm joined by Senior Employment Law Editor, Clio Springer, who is here to talk us through what employers need to think about when they are writing a job advert. [0:00:34.3]
- Clio Springer: Okay. Well starting at the beginning, before you advertise a role you're of course going to want to review that role and an employee leaving the organisation is really an ideal time to be doing this.
- Jeya Thiruchelvam: So before embarking on the recruitment process, the employer should review its needs. I suppose especially for a person who has been in post for a number of years, their job may well have expanded and evolved in a way that isn't reflected in their original job description. So employers might want a debrief at that point. [0:1:00.1]
- Clio Springer: Yes. So you need to look at that. Should the job be changed? But then of course how can we attract the right people?
- Jeya Thiruchelvam: And this needs to be captured in your job advertising, so it's really important to get this right from the start. [0:01:10.5]
- Clio Springer: Well without suitable candidate attraction, you're really not going to get very far.
- Jeya Thiruchelvam: So having established what you're looking for, you then need to try and attract the right people, so you need to think about how you're going to advertise and where. What things should employees be thinking about when they're deciding where to place their advert? [0:01:25.1]
- Clio Springer: Well employers are going to be familiar with the many options for getting your job out there. So from the traditional advertising in the press (and that's national and/or local), adding to your own website or on external job board websites and of course using social media, so LinkedIn, Facebook and Twitter for example.
- Jeya Thiruchelvam: Okay. So that covers where to advertise. What should employers think about when they are deciding how to advertise in this day and age? Given the reach of the internet and the power of social media,

how you advise is almost as important as where you advertise, isn't it? [0:01:53.1]

Clio Springer: Well it is, that's right. And when deciding what media to use, you need to think not only about how to attract the most potential candidates, but really, what's more important, is attracting the best candidates. So fairly obvious things like trade or professional press, but also the internet and social media is a key way in which many people search for jobs. But it's important that you identify the most relevant websites, with the most relevant readership etc and the most relevant social media platform as well.

Jeya Thiruchelvam: Okay. So you touched on it just then, but just to be clear – there are equality issues around where you advertise roles? [0:02:24.7]

Clio Springer: Well, yes, particularly if certain groups are underrepresented in your current workforce. An employer in that situation should be thinking about this and how different methods of attracting candidates would remedy the situation. So will advertising in only a certain place exclude certain groups? And the benefits of spreading the net wide, by using a number of different media, are that you are making the job more accessible to different groups, which is of course better practice in terms of equal opportunities, and you're tapping into a much wider pool of potential applicants, which is beneficial to your organisation anyway.

Jeya Thiruchelvam: Okay. So when a new appointment that wasn't advertised is announced, that often results in much discussion by the water cooler, but are employers actually legally required to advertise all jobs? [0:03:03.5]

Clio Springer: Well there's no law that specifically requires employers to advertise jobs, but a failure to do so can result in discrimination. If certain groups are underrepresented in your workforce, you risk perpetuating this by not advertising externally, and the Equality Act makes it unlawful for employers to discriminate in the arrangements they make for deciding who to offer employment to and potential applicants who didn't apply for a vacancy because it hadn't been advertised, could allege indirect discrimination on the basis that recruiting internally, say through word of mouth, is a discriminatory arrangement.

Jeya Thiruchelvam: Now presumably that means employers should advertise internally too? [0:03:36.9]

Clio Springer: Well, yes. So a failure to do this could result in an existing employee alleging discrimination. They've been prevented from applying for a job and the employer doesn't want to be in a situation where it has to justify why.

Jeya Thiruchelvam: Okay, so let's move on now then to the content of the advert itself. There is an awful lot for employers to think about at this point too, isn't there? [0:03:53.3]

Clio Springer: Well, yes. So first of all you of course want to attract plenty of applicants, but as I said what's more important is to attract the right applicants. So think very carefully about the wording and the

information that you include in the job and the organisation and your requirements.

Jeya Thiruchelvam: And it's important that your recruitment process involves getting jobs adverts checked, so will the potential applicants actually understand the advert correctly and will it speak it the right way to the right people presumably? [0:04:16.1]

Clio Springer: Well of course. As part of this you will have reviewed the job description and your person specification, so you're thinking about what you want and the key points and requirements should be clear from the advert. And it might be worth asking someone who is already doing the role whether they would apply for that job? Whether it's clear what the job involves. Sometimes if someone who is not involved in the relevant specialism drafts the advert, there can be a disconnect with the intended audience.

Jeya Thiruchelvam: Okay. So, so far we've talked about accessibility and broadening where you advertise in order to avoid discriminatory recruitment practices. Staying with the content of the job advert, a key issue, can you expand a bit on the equality issues? [0:04:50.5]

Clio Springer: While there is no specific provision in the equality legislation concerning job advertising, anything in an advert that indicates an intention to discriminate because of a protected characteristic, either in favour of someone with a particular protected characteristic or against applicants with a particular protected characteristic, this will make the employer vulnerable to a discrimination claim.

Jeya Thiruchelvam: And can you give us some actual examples of that? [0:05:11.1]

Clio Springer: Well some will be pretty obvious to most employers. So saying in an advert that only people from, for example, a particular racial group or gender or age-range, say specifying a young person or over 25s should apply, this is going to amount to direct discrimination. You also need to be careful of discriminatory language. So, for example, using terms that obviously have a gender bias like 'waitress' will someone think that they would be excluded from being considered?

Jeya Thiruchelvam: And is it ever okay to specify a particular protected characteristic in a job advert? [0:05:39.9]

Clio Springer: Well only in the limited circumstances where an occupational requirement applies. And this is going to be a legitimate occupational requirement covered by the Equality Act, not just the employer's preference thinking, 'I'd like a woman to do this job.'

Jeya Thiruchelvam: And so can you give us an example of that as well? [0:05:54.7]

Clio Springer: Well it's necessary to have regard to the nature or context of the work. So, for example, where being of a particular gender is necessary for privacy or decency.

Jeya Thiruchelvam: But I suppose employers putting in an advert that only women need apply or specifying particular racial groups, so directly discriminatory job adverts, are going to be pretty rare. It's usually going to be more subtle than that, isn't it? [0:06:15.0]

Clio Springer: Well, yes, you're right. Indirect discrimination is much more likely to creep in. So specifying, for example, a number of years' experience, or that applicants must be a certain height or using language such as 'authoritative', 'energetic', 'youthful' or 'ideal first job' again these indicate an intention to discriminate.

Jeya Thiruchelvam: And, again, is it ever okay to put terms in like that, that could be indirectly discriminatory? [0:06:37.0]

Clio Springer: Only where the criterion you are specifying can be justified. So if you really can demonstrate that so many years' experience is necessary, then you could put that in the advert. But employers really need to think carefully about what they're asking for and why.

Jeya Thiruchelvam: And are employers legally bound to put an equal opportunities statement in their job adverts? [0:06:55.6]

Clio Springer: Well there is no legal requirement to include an equal opportunities statement in job adverts, but if you do this, you are sending a message to potential and existing employees about your stance, and encouraging a more diverse range of applicants.

Jeya Thiruchelvam: And I suppose employers should also make clear that they will make reasonable adjustments in the recruitment process for applicants with a disability? [0:07:14.2]

Clio Springer: Well that's right.

Jeya Thiruchelvam: Okay. So moving on to another couple of very specific issues that can arise around job adverts, is the job advert legally binding? So something you put in your job advert, can a candidate say that that actually binds you in the future? [0:07:28.8]

Clio Springer: Well it's very unlikely to do that. You're not making a job offer and no job applicant is accepting at the point you are advertising. So there is no contract formed to bind you. I suppose it's possible that if you then offer a job without specifying the salary, the job applicant might take what is in the advert as part of the offer in the absence of any other information. But the advert on its own isn't legally binding. Having said that, employee relations are not exactly going to be enhanced by an employer that puts one salary in an advert and then makes a job offer with a different salary.

Jeya Thiruchelvam: So you've just mentioned salary there. Does an advert have to include some kind of indication of salary? [0:08:05.2]

Clio Springer: Well no and many employers don't include salary in their job adverts, preferring this to be discussed later. I suppose there are pros and cons either way really. The salary may depend on the applicant and the employer doesn't want to appear to commit itself. On the other hand, you may end up with applicants with unrealistic expectations about salary.

Jeya Thiruchelvam: And you also need to think about longer-term implications about salary commitments, don't you? [0:08:26.3]

Clio Springer: Well, of course. You don't want to be offering new recruits a salary that can make you vulnerable to equal pay claims at a later date.

Jeya Thiruchelvam: Finally, I just wanted to ask you about application deadlines. Lots of jobs adverts specify a deadline. Does the employer actually have to stick to it, even if it gets applications after that date? [0:08:42.7]

Clio Springer: Well normally there is nothing to stop an employer sticking with its application deadline and refusing to accept applications after the deadline. However, if there haven't been many applications, then the employer is probably going to want to be a bit flexible and if there is to be an extension, then this should be publicised. And there may be cases where being flexible beyond the closing date will amount to a reasonable adjustment, because an applicant with a disability would otherwise be unable to meet the deadline and apply for the job.

Jeya Thiruchelvam: Thanks, Clio. There's a wealth of resources on recruitment on the site, including a good practice guide on candidate attraction and a chapter in the employment law manual on recruitment and selection. That brings us to the end of this week's XpertHR podcast, which you've been listening to with me Jeya Thiruchelvam.