

German Court Orders Company to Pay €2,500 for Using the Phrase ‘Nimble Female Hands’ in Rejection of Male Job Applicant

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The vast majority of employers in Germany are aware by now that caution is required when formulating job advertisements in order to avoid being confronted with accusations of discrimination and the associated claims for damages. The “(m/f/d)” —for “männlich, weiblich oder divers,” which translates as “male, female, or diverse” —after the position title of the advertised job is now standard when posting job ads.

Less well known—but by no means less relevant—is the fact that maintaining compliance with the German General Equal Treatment Act is critical during the rest of the application process. A recent regional labor court decision demonstrates what can happen when a court finds that a company has not complied with the job posting and General Equal Treatment Act requirements.

In December 2022, the Nuremberg Regional Labor Court ordered a Bavarian company to pay compensation of €2,500 to a rejected applicant after finding issues with the company’s job advertisement and failure to comply with the General Equal Treatment Act (Case No.: 7 Sa 168/22). In the court’s view, the company had directly discriminated against the plaintiff on the basis of his gender.

Background

The advertisement of the vacant position by the company—a producer of model cars—was almost textbook, at least with regard to the General Equal Treatment Act.

The company was looking for an “employee (m/f/d) for [their] digital printing press.” The job profile required potential applicants to have “dexterity/skill,” among other things.

The plaintiff applied for this position in April 2021, but received a rejection from the company’s authorized signatory on the same day.

The rejection letter to the applicant stated that the tasks to be performed were “rather something for nimble female hands,” which is why he could not be considered in the selection process.

Around six weeks later, the plaintiff asserted compensation claims against the company amounting to at least three months' gross salary. As a result, he was invited to a trial work session, but he refused to accept this offer.

In June 2021, the plaintiff brought an action before the Nuremberg Labor Court and demanded payment of appropriate compensation in the gross amount of at least €8,000.

The company claimed that the wording used in the rejection letter merely described the dexterity and nimble fingers required for the job. The intention was to emphasize the importance of small hands and delicate fingers for the position to be filled. The reason for the rejection of the applicant was not his gender, the company contended, but the fact that his hands were simply too large for such precision work. The company had come to this conclusion after viewing photographs of the applicant that were freely available on the internet.

The Nuremberg Labor Court did not accept this line of argument; the court affirmed unjustified direct discrimination on the basis of gender and ordered the company to pay the plaintiff €3,300.

Indeed, the company was successful only to a very limited extent in the second instance. The Nuremberg Higher Labor Court also affirmed direct gender discrimination to the detriment of the plaintiff. The Higher Labor Court reduced the Labor Court's compensation order to €2,500 and thus 1.5 gross monthly salaries.

The decisive factor in the applicant's rejection was the alleged life experience of the authorized signatory of the company, according to which women regularly coped better with the required small-scale work than men did. However, this represented prohibited discrimination against the applicant because of his gender, especially since he had no opportunity to refute this life experience by means of a trial work session.

The court reasoned that the company's subsequent offer to provide such a trial work session had served primarily as an attempt to avoid an action for compensation and had not been an expression of an honest interest in the applicant's ability to work. Therefore, the company's argument that the applicant was not qualified due to the size of his hand and fingers was irrelevant. Only a reduction of the compensation amount was justified, since the effects of the discrimination on him were relatively mild. In particular, he had already been able to establish another employment relationship shortly after the rejection. Therefore, the court determined that compensation in the amount of one-and-a-half times the gross monthly salary—half of the maximum possible compensation amount—was appropriate.

Key Takeaways

The decision shows that even some seventeen years after the General Equal Treatment Act took effect in 2006, not all of the containing pitfalls are common knowledge. For example, not only must a job advertisement be nondiscriminatory, but the entire application process, and thus also and especially rejections of unsuccessful applicants, must not constitute prohibited discrimination. The latter, in particular, is unproblematically implementable. The law does not provide for an obligation on the part of the employer to give unsuccessful applicants a substantiated or unfounded rejection letter.

While the imperative of politeness might conflict with the total renunciation of a rejection letter, unfounded or, at best, loosely justified rejection letters are anything but rare. This may be frustrating

for the applicants concerned in individual cases. However, as the present decision shows, in case of doubt, less can be more.

In addition, the General Equal Treatment Act's prohibitions against discrimination not only apply in the application procedure, but must be observed at all times in the entire employment relationship.

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