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## Internet recruiting: Determining who is an 'applicant'

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For many employers, large and small, the Internet acts as an important recruiting tool. Human resource departments and recruiters using these online resources consistently report that they have been "overwhelmed" with resumes.

Since federal and state employment nondiscrimination laws apply to employers when they use the Internet and for recruitment and selection, the use of such technology raises questions about how employers can monitor their recruiting practices to ensure compliance.

Employers have been waiting for years for guidance from the federal government as to how to determine who is an "applicant" for record-keeping purposes in the context of the Internet recruiting. Last month, the Equal Employment Opportunity Commission, in conjunction with the U.S. Department of Labor and other federal agencies, finally published proposed guidelines.

According to the proposed guidelines, for an individual to be an "applicant" in the context of Internet recruiting, all three of the following conditions must be met:

- The employer must be seeking to fill a particular position.

For example, individuals who register online for Customer Service Representative positions with an employer are asked to complete online personal profiles for the employer's resume database.

The company acts to fill two vacancies at its Tampa Bay Service Center and identifies 100 recruits from the database. The employer contacts these 100 recruits and inquires about their interest in the particular Tampa vacancies.

Fifty of these people respond affirmatively to the employer's inquiry about interest in Tampa vacancies. Even if the employer chooses to interview only 25 of those individuals for the Tampa positions, all 50 are "applicants" for purposes of the antidiscrimination employment laws.

- The individual must have followed the employer's standard procedures for submitting applications.

If in order to be considered for a position, individuals wishing to apply online must complete an online personal profile, only those individuals who do so can be "applicants."

- The individual must have expressed interest in the particular position.

The core of being an "applicant" is seeking to be hired to do a particular job for a specific employer. An individual can only accurately assess her interest in an employment opportunity of which she is aware.

With respect to Internet recruiting, this means that people who post resumes in third-party resume banks are not "applicants" for all employers.

By posting a resume, the individual is advertising her credentials to the world and indicating a willingness to consider applying for new positions that may be brought to her attention. The individual is not indicating an interest in a particular position with a specific employer.

If an employer contacts this individual about a particular position after finding her resume or personal profile online, and the individual indicates an interest in that position, then the individual becomes an "applicant," provided the individual then follows the employer's procedures.

Similarly, if an employer contacts an individual about a particular position in response to an unsolicited resume submitted online and the individual indicates an interest in that position, then the individual becomes an "applicant," again provided the individual then follows the employer's procedures.

What about the individual who expresses an interest in a whole category of positions in response to an employer's solicitation.

That individual is not an applicant but is simply identifying the kinds of positions in which she may be interested. She is not indicating an interest in a particular position with a specific employer.

What about an individual who submits a resume repeatedly to the same employer? Once again, that individual is simply identifying the kinds of positions in which she is interested and is not automatically an applicant.

These guidelines will help employers by freeing them from the record-keeping burden of trying to track inquiries and unsolicited resumes, including resumes sent using automated online tools and those sent cold, expressing an interest in a whole range or category of possible positions. The guidelines are expected to be finalized and published in late May of this year.

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