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Dentistry and the Law: Risk of Employment Discrimination in Job Advertisements

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Risk of Employment Discrimination in Job Advertisements



By Dan Schulte, JD
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Question: I have seen advertisements for associate dentist positions that contain religious references. They contain statements like “we believe

in using our God-given talents,” “faith-based practice,” and “we give our patients Christ-like compassion.” Some ads might include a cross or other religious symbols either as a part of the practice’s logo or separately. Aren’t these ads discriminatory? If so, why would a publication or job board allow them? Wouldn’t they be held liable for running an ad that is found to be discriminatory on some basis?

Answer: Discrimination in employment is prohibited by federal law and Michigan law. Although similar to federal law, Michigan’s Elliot Larson Civil Rights Act provides broader protections against discrimination for a greater number of protected classes. This Michigan law prohibits employers from making hiring decisions based upon a candidate’s religion, race, color, national origin, age (no limitations), sex, height, weight, familial status, or marital status. ELCRA is also broader in that it applies to all employers, no matter how many employees they have. The federal employment discrimination laws apply only to employers with 15 or more employees. Thus, ELCRA would apply to dental practices in Michigan, even a small one.

ELCRA is enforced by the Michigan Department of Civil Rights. If an employer is found to have violated ELCRA, the employer may be liable for injunctive relief and/or compensatory damages. Lawsuits may also be brought by rejected candidates and other private parties seeking monetary damages.

It would be a violation of ELCRA for an employer to base a hiring decision in whole or in part on the religion or religious beliefs/practices of a job candidate. Including statements and/or symbols of the type described in the question above would certainly be used as evidence in a case brought by a rejected candidate who was not a

member of the specific religion referred to in the ad. Even if the rejected candidate had lesser training, qualifications, and experience than a candidate who was hired, the ad could still be the basis of a claim, especially if the hired candidate is a member of the religion mentioned.

It is unwise to include these references/symbols or any other references in an ad or job posting that could lead candidates to believe an employer is making hiring decisions based on age, sex, or any of the other protected classes. Despite what an employer’s intentions may be to the contrary, by including these references/symbols in an ad or job posting the employer is making employment discrimination claims much more difficult and expensive to defend.

The publishers of the ads you describe (or any ad containing references to age, sex, or any of the other protected classes) are also at risk. When employment discrimination claims are made it is often the case that there are multiple defendants. These defendants can include recruiting firms, referral agencies, and those alleged to have participated in a joint effort to discriminate, including the publishers of ads used in the effort. Any claim can be time-consuming and expensive to defend, even those claims that are ultimately successfully defended. Having a case dismissed might not seem like much of a success if it costs you several thousand dollars and the process is a major distraction lasting for months.

To avoid this exposure to expense, wasted time, and liability, the best practice for publishers is to reject any employment ads that reference age, race, sex, gender, sexual orientation, pregnancy, religion or other protected classifications or in any other way give the appearance of participating in illegal discrimination. ●

Send questions of general interest to Dentistry and the Law, MDA Journal, 3657 Okemos Road, Suite 200, Okemos, MI 48864 or email Journal managing editor Dave Foe at dfoe@michigandental.org.