

Employers Beware – Placing a Cap on the Number of Years of Experience in a Job Posting Could Be Deemed Age Discrimination

When an employer is looking to hire new talent, it often places a job advertisement or posting listing some of the requirements for the position. It's common practice to include the number of years of experience necessary to fulfill the role, such as an employer looking to hire an account executive with 3-5 years experience. The employer probably does not have any discriminatory intent when it seeks an applicant with 3-5 years of experience. It is probably looking to hire someone who is close to entry level and not overly qualified for the position. But a recent ruling from the Seventh Circuit Court of Appeals should have employers thinking twice before placing a cap on the number of years of experience required for a particular position.

In *Kleber v. Carefusion Corp.*, No. 17-1206, 2018 WL 1959662 (7th Cir. April 26, 2018), the plaintiff applied for a position as "Senior Counsel, Procedural Solutions" with the defendant, a healthcare products company. The job posting called for "a business person's lawyer" with the ability to "assume complex projects." The job posting also stated that applicants must have "3 to 7 years (no more than 7 years) of relevant legal experience."

The defendant received the plaintiff's application but did not select him for an interview. It subsequently hired a 29-year old applicant. The plaintiff filed a charge of age discrimination with the Equal Employment Opportunity Commission and later filed a lawsuit alleging claims for disparate treatment and disparate impact under

the Age Discrimination in Employment Act. The district court dismissed the lawsuit for failure to state a claim. On appeal, the Seventh Circuit Court of Appeals reversed, finding that the subject job posting could amount to age discrimination. The case was remanded to the district court for further proceedings.

This case should be a warning to prospective employers who are seeking applicants with a certain level or amount of experience. Instead of limiting the number of years of experience, it is best practice for employers to consider highlighting other aspects of the position, such as necessary skills or duties required for the role.

If you have any questions about this Alert, or if you would like assistance in drafting a job posting, please contact the author listed below or the Aronberg Goldgehn attorney with whom you work.

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