



NEWS REPORT

Date: 15 August 2014
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Title: NIHR: website not responsible for discriminatory job ad
Country: The Netherlands
Context
Issue at stake: NIHR decides that Age Discrimination Act does not apply to website that merely functions as an intermediary
Ground of discrimination: Age
Source: National equality body
Field: Employment, access to goods and services

Content

Decision of the equality body: The Dutch equality body Netherlands Institute for Human Rights (NIHR) has rendered a decision on the question whether a job posting website may be liable under national equal treatment legislation. In the case at hand, it concerned a website that functions as an intermediary (“a bulletin board”), enabling self-employed persons to find clients (and vice versa).

One advertisement on the website contained a possibly discriminatory age requirement (maximum 45 years old), without mentioning a possible objective justification. One older freelancer felt restrained from applying and decided to file a complaint with the NIHR, solely directed against the job posting website. During the proceedings before the NIHR, the respondent claimed that he did not bear responsibility for the advertisement and that the statutory provisions on age discrimination did not apply to his company.

Unlawful age distinctions in the context of employment are prohibited by Article 3 of the Age Discrimination Act (“WGBL” - ADA). This prohibition applies to the entire employment process (including advertising), from the moment of notice of a vacancy, to the commencement of the employment relationship or public appointment, till its termination. The norms contained in the ADA are addressed not only to private and public employers, but also to organizations of employers, employment offices, job agencies, universities, et cetera. The ADA does however not cover the field of goods and services.

The NIHR decided that in this case, the age-discrimination legislation did not apply to the website. This decision was based on the limited activities of the job posting site, as no further activities to connect self-employed and clients were undertaken. Article 3 ADA therefore did not apply. Providing the website is a service, but this service is not covered by the ADA.



Internet link source: The decision (2014-82) may be found at:
<http://www.mensenrechten.nl/publicaties/oordelen/2014-82/detail>