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NEW YORK CITY COMMISSION ON HUMAN RIGHTS AGGRESSIVELY TARGETING EMPLOYERS FOR PLACING GENDER AND AGE SPECIFIC ADVERTISEMENTS

By Gregg M. Kligman

Recently, the New York City Commission on Human Rights (the "City Commission") increased its efforts to enforce the New York City Human Rights law, with a particular focus on job postings. Specifically, the City Commission has been examining Craigslist job advertisements that indicate a preference for a particular gender (i.e., a job posting for a "waitress" rather than a more gender neutral "server"), or age (where the ad indicates that the employer is looking for an "energetic" employee, often considered a code word for "young").

Upon discovering these advertisements, the City Commission has been known to create further evidence of a violation of the anti-discrimination laws by sending multiple emails or other inquiries to the employer. Each inquiry contains nearly identical resumes, but some emails are sent from male applicants and others female applicants. The City Commission uses tracking software to see whether the employer opens the email from only one gender or from both. After the emails are sent and opened, the City Commission then sends an agency-initiated complaint of discrimination to the employer, alleging

discrimination in employment based upon the advertisement and the protected class at issue (e.g. age or gender).

After the complaint is filed, the City Commission is typically willing to resolve the matter quickly. However, the City Commission usually mandates supervisor training and a financial penalty, often ranging from \$2,500 to \$5,000.

The City Commission is not the only governmental agency roaming Craigslist. The federal Equal Employment Opportunity Commission (EEOC) and other state agencies have been doing this for years. In addition to sending out resumes, these agencies often send out "spotters," who will often apply for jobs in person in order to ferret out discrimination based on gender, age, race, national origin and the like. Retailers and hospitality employers are particularly prone to these investigations.

Employers are warned to be extremely vigilant in drafting job listings, ensuring that they do not indicate a gender or age preference or another preference that may violate anti-discrimination laws. Employers are also reminded to maintain records of each applicant

and individual interviewed for each job positing, which includes maintaining all of the resumes and applications that were submitted for consideration. In addition, training staff in this area is imperative. Businesses must ensure that employees at the “front door” who may be screening initial applicants are not screening based on unlawful factors. Finally, there needs to be checks and balances in place before placing ads online. Too often managers without training place ads with good intentions, but no understanding of the laws. This can result in fines and penalties over an ad for “female bartenders needed.” These are easy fixes – train staff.

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