



EU court rules homophobic statements could be unlawful

By Fiona Webster and Stephanie Rosseau
6 May 2020

Making homophobic remarks about not hiring individuals of a certain sexual orientation could be unlawful under the European Union (EU) equal treatment directive because they could discourage protected individuals from applying for jobs, ruled the Court of Justice of the EU (CJEU). The directive establishes a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards an individual's employment and occupation.

The ruling concerns an Italian lawyer who announced on a radio broadcast that he would never recruit homosexual persons. The lawyer's firm wasn't currently hiring, but an association of lawyers that defends the rights of lesbian, gay, bisexual, transgender or intersex (LGBTI) persons sued him for damages. The Italian court ruled that the statement was discriminatory, and the case was referred to the CJEU to determine if a hypothetical statement — in the absence of a direct victim — falls within scope of the EU's equal treatment directive prohibiting discrimination on the grounds of sexual orientation.

The CJEU ruled that the directive's provisions on the "conditions for access to employment ... or to occupation" cover statements that suggest the existence of a homophobic recruitment policy, even if the employer isn't actively recruiting. The link between such statements and the conditions for access to employment or an occupation cannot be hypothetical — and national courts must decide on the facts of each case — for example, if the person making the statement has a decisive influence on recruitment decisions.

Related resources

- [Press release](#) (Court of Justice of the European Union, 23 Apr 2020)
- [Judgment C-507/18](#) (Court of Justice of the European Union, 23 Apr 2020)
- [Council Directive 2000/78/EC of 27 November 2000](#) establishing a general framework for equal treatment in employment and occupation (EurLex, 2 Dec 2000)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.