

NEW CHALLENGES IN EMPLOYMENT AND DISCRIMINATION LAW:
LOOKING FOR THE 'PERFECT' EMPLOYEE?
30-31 MARCH 2006: BARCELONA

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This was the second stand alone conference presented by the Employment and Industrial Relations Law Committee and Discrimination and Gender Equality Committee of the IBA Human Resources Section following the first in Paris last year. It proved to be a highly successful conference with sessions on topical issues of global relevance, together with valuable social and networking opportunities, all taking place in the beautiful city of Barcelona. The delegates were welcomed on the Thursday morning by the conference co-chairs Keith Corkan, Salvador del Rey and Mariann Norrbom. Salvador had already welcomed many of the session chairs and speakers the evening before at his law offices for final preparatory sessions.

In the first working session, 'Screening for the perfect employee' the panel considered the questions which can be asked, the tests which can be imposed and the criteria which can be used to select employees for employment. These issues were considered in different jurisdictions in particular, the US, UK, Spain, France, Germany, Belgium and South Africa by private practitioners and in-house counsel. The chairs used a PowerPoint presentation to give delegates a sense of the different approaches in these countries to a wide range of questions that a prospective employer might wish to ask. Lively debate ensued between the panellists with the chairs raising questions and challenging the panellists on controversial issues. Delegates in the audience were encouraged to participate and to indicate what the position would be in their jurisdictions. It transpired that in Malaysia, pretty much anything can be asked when interviewing a prospective employee. The Malaysian delegate did caution however, that once appointed it is almost impossible to get rid of an employee in his jurisdiction.

Returning after lunch for the afternoon session, the conference considered the concept of the 'clean' employee. A panel of speakers (including in-house counsel) from the UK, Spain, USA, Canada and Portugal discussed what would be permitted in the form of internal policies in the workplace in relation to drugs, alcohol and smoking habits and whether it would be possible to control what an employee did outside of work. The debate revealed a strong connection between these issues and the law on disability

discrimination where many jurisdictions define a drug, alcohol or smoking habit or addiction as a disability which obliges employers to accommodate or rehabilitate.

At the end of the first day, the delegates strolled down Las Ramblas for a cocktail reception and dinner at the Gran Teatro del Liceu (Barcelona's restored opera house) where further networking took place and where dinner was interspersed with operatic performances.

Three shorter sessions were held on the second day, expanding on some of the themes and issues from day one. There was a debate about age discrimination with the focus on mandatory retirement and the promotion of diversity in the workplace. After tea, a different panel considered the issue of sexual harassment, the risks to and obligations of employers in this area, as well as the kind of internal policies employers should introduce. There was commentary on disclosure and prohibition of office romances and whether it is possible or desirable to have a wholly impersonal workplace. This was an area in which the cultural differences between jurisdictions were apparent and the session yielded some amusing anecdotes about office life.

The last working session dealt with the relevance of an employee's physical appearance and the extent to which an employer can set requirements or standards or dismiss employees for non compliance. Speakers from a variety of jurisdictions highlighted the key issues and the areas of difference created some surprises. In the US, for example, there is no bar to an employer discriminating against an employee who is obese unless the obesity amounts to a disability.

The final item on the agenda was an address (in Spanish with translation) by the President of the Spanish Constitutional Court in Madrid. Unfortunately, the quality of the translation (a literal rendition of the words without conveying real meaning) was such that the non-Spanish speakers were unable to appreciate the content of the talk. Next year the conference is in Copenhagen. Given the increasingly successful nature of this event, the Copenhagen conference should become a firm fixture for Employment and Discrimination lawyers.

Thanks should be made to the twelve Spanish law firms that hosted the closing cocktail reception and dinner at Casa Batllo, one of the famous Gaudi masterpieces on the Passeig de Gracia. Another splendid night of good food and wine and networking was enjoyed by the delegates and their guests.

