



United States Department of Justice
Civil Rights Division

Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)

September 2013

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) investigates and prosecutes allegations of national origin and citizenship status discrimination in hiring, firing, and recruitment or referral for a fee, as well as unfair documentary practices during the employment eligibility verification process and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA). In addition, OSC conducts outreach aimed at educating employers, workers and the general public about their rights and responsibilities under the INA's anti-discrimination provision.

September 2013 NEWSLETTER - Also available in [Spanish \(pdf\)](#)!

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Dear Readers:



Photo: OSC's Deputy Special Counsel Seema Nanda and the NLRB's Acting Gen. Counsel Lafe Solomon sign an MOU formalizing a collaborative relationship between the agencies.

OSC Enters Into Memorandum Of Understanding With The National Labor Relations Board

On [July 8, 2013](#), the Office of Special Counsel entered into a [Memorandum of Understanding](#) (MOU) with the National Labor Relations Board (NLRB). The MOU provides that if one of the agencies, during an interview or case processing, determines that the alleged conduct falls within the jurisdiction of the other agency, the agency will, with the individual's consent, refer the charge to the other agency. Under the MOU, the NLRB shall be the OSC's agent for purposes of accepting charges and tolling the statutory time limit for charge filings. The MOU also provides for cross-training between agencies and for procedures for coordinating investigations where appropriate. "Employees deserve to benefit from the efficiency of government cooperation, and employers will continue to benefit from agency guidance on how to comply with the anti-discrimination provision and the National Labor Relations Act," said Seema Nanda, Deputy Special Counsel for OSC. According to NLRB Deputy Assistant General Counsel Aaron Karsh, "Cooperation between the Office of Special Counsel and the NLRB, which both serve workers' rights and both guide the business community, is necessary because labor laws and employment laws are rather complicated at the federal level." The [NLRB](#) is an independent agency that guarantees the right of certain private sector employees to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection; and to refrain from any of these activities.

The MOU is part of OSC's effort to reinvigorate [memoranda of understanding with numerous federal, state, and municipal agencies](#), and thereby increase accessibility to its services and resources. With the execution of this MOU, the NLRB now joins OSC's federal MOU partner list, which currently includes U.S. Citizenship and Immigration Services, the Equal Employment Opportunity Commission, and the Department of Labor's Office of Federal Contract Compliance Programs. Agencies can now review the [Referral Checklist](#) available on OSC's website to facilitate this process, or they may contact the OSC Referral Duty Attorney by calling our office or sending an email to OSCSReferral@usdoj.gov. Those agencies that wish to refer a charge to OSC should review these [instructions](#) on the information and documents that must be transmitted to OSC. As

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always, for more information about protections against employment discrimination under the immigration laws, call OSC's worker hotline at 1-800-255-7688 (1-800-237-2525, TTY for hearing impaired), [sign up for a free one-hour webinar](#), [email OSC](#), or visit [OSC's website](#). **If your agency is interested in exploring an MOU partnership with OSC or in scheduling staff training, please email oscrt@usdoj.gov.**

OSC's Recent Enforcement Activities

On [August 14, 2013](#), OSC reached a [settlement agreement](#) with a staffing agency after an investigation confirmed allegations of document abuse. The company rejected the valid documents of a refugee due to his status as a non-U.S. citizen during the reverification process. The company agreed to pay \$9,157.50 in back pay to the victim and \$1,200 in civil penalties.

On [August 14, 2013](#), OSC reached a [settlement agreement](#) with a national retailer resolving allegations that the company was requiring specific documents from work-authorized individuals as a condition of employment. The company agreed to pay \$1,705.50 in back pay to the victim and \$280 in civil penalties, as well as undergo OSC training.

On [July 3, 2013](#), OSC reached a [settlement agreement](#) with a staffing agency after an independent investigation uncovered evidence of unlawful documentary practices. The company agreed to pay \$2,250 in civil penalties and undergo a year of monitoring by OSC.

On [July 2, 2013](#), OSC reached a [settlement agreement](#) with a warehouse and distribution company resolving allegations that the company required non-citizens to present specific work-authorization documents while not making similar requests of U.S. citizens. The company agreed to pay \$43,092 in civil penalties, and also set up a \$30,000 back pay fund to compensate injured individuals.

On [June 27, 2013](#), OSC reached a [settlement agreement](#) with a national retailer resolving allegations that the company engaged in unfair documentary practices against work-authorized immigrant employees during the employment eligibility reverification process; some employees suffered economic harm through lost work or seniority as a result. The company agreed to pay \$175,000 in civil penalties, and also set up a \$100,000 back pay fund to compensate injured individuals.

On [May 23, 2013](#), OSC reached a [settlement agreement](#) with an international facilities company employing approximately 15,000 employees in the U.S. alone, resolving allegations that certain company offices were requiring non-citizens to present specific work authorization documents while not making similar requests of U.S. citizens. Additionally, the company agreed to pay \$49,800 in civil penalties, and to identify and compensate any individuals who may have suffered economic injuries due to its practices.

On [May 23, 2013](#), OSC issued a letter of resolution following the independent investigation of a company in Hano-ver, Maryland engaged in real estate development, general contracting and construction management. The company was improperly using E-Verify on certain existing employees and at least one job applicant.

OSC's Recent Hotline Interventions

OSC's Telephone Intervention Program allows OSC's staff to work informally with workers and employers to resolve potential discrimination issues within hours or minutes, circumventing the longer process of litigation. On a daily basis, OSC handles calls about E-Verify, Form I-9 document issues, and Temporary Protected Status. OSC's interventions may result in reinstatement, back pay, or training. Here are some recent examples of successful interventions:

On Aug. 12, 2013, a worker with Deferred Enforcement Departure status from Jacksonville, FL was wrongfully terminated by her employer when her EAD expired. Her status had been automatically extended, and after four months of unemployment she heard about OSC's Hotline and called. An attorney immediately called the employer and provided them with the necessary information. The worker was subsequently rehired, and the employer offered to pay over \$7,000 in back pay for the four months of work missed.

On Aug. 12, 2013, a U.S. Citizen from Chicago, IL called OSC's hotline after his employer rejected

a receipt for a replacement Social Security Card during the Form I-9 process. An OSC investigator called the employer and explained that the Social Security Card receipt was a valid document for 90 days. After receiving this information from OSC, the employer allowed the worker to begin work immediately.

On Aug. 6, 2013, a TPS recipient from Houston, TX called OSC after she was wrongfully terminated by her employer. She possessed an EAD that had been automatically extended, so an OSC attorney called the employer and explained that she was in fact eligible for continued employment. Soon after, the worker was reinstated to a supervisory position in her preferred location.

OSC Releases New Charge Form

On July 15, 2013, OSC updated its [charge form](#) available on the website. The new form is written more plainly so that workers understand the process and OSC can obtain the information it needs to investigate a charge. The new OSC charge form is available in English, Spanish, Chinese, Vietnamese, Arabic, Haitian Creole, Korean, Russian, and Tagalog. Following receipt of a charge of discrimination, OSC investigations typically take no longer than 7 months. Victims may obtain various types of relief, including reinstatement and back pay. To file a charge, please mail (or fax (202) 616-5509) the charge form to:

Office of Special Counsel for Immigration-Related Unfair Employment Practices
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW (NYA)
Washington, DC 20530

Individuals can also print and sign the charge form and send it as an email attachment to our OSC mailbox at: oscrt@usdoj.gov.

OSC's Commitment To Language Access

OSC has been updating its [educational materials](#) and [videos](#) which are available in various languages including Spanish, Chinese, Carolinian, Chamorro, Japanese, Korean, Tagalong, Bengali, Somali, Gujarat, Hindi, Arabic, Nepali, French, Russian, and Vietnamese. Recently, OSC translated its "E-Verify Know Your Rights," "Know Your Rights," and "Name and Social Security Number (SSN) 'No-Match' Information for Employees" into Arabic, Chinese, Haitian Creole, Korean, Spanish, Tagalog, and Vietnamese. OSC's flyer for refugees and asylees was translated into Amharic, Arabic, Armenian, Burmese, Farsi, French, Kayah, Nepali, Russian, Sgaw Karen, Chinese, Somali, and Tigrinya, based on an investigation of the language needs of refugee/asylee communities. All of the flyers will be posted on OSC's website by October 2013. Also, beginning with this issue, OSC will be releasing its newsletter in Spanish.

In addition to written and multi-media materials, OSC's staff can handle hotline calls in over 100 languages. Since January of 2013, OSC has handled over 4,000 hotline calls, and 25% of those calls were in a language other than English; over 1,000 of those calls were in Spanish. OSC has several bilingual hotline specialists, attorneys, and investigators, as well as immediate access to an interpreter service that can assist any OSC staff member with calls in almost any language a worker may speak.

New Educational Video

OSC [recently](#) launched a new educational video to assist employers in avoiding charges of discrimination in the employment eligibility verification form I-9 process and in the use of E-Verify. OSC's new video highlights some practices that are not permissible and may lead to claims under the anti-discrimination provision. "OSC is committed to educating the public," said Seema Nanda, Deputy Special Counsel at OSC, "and our staff is always looking for ways to creatively explain these complex issues." You can watch the new video [here](#).

Did You Know?

OSC hears from workers and employers on a daily basis and sees many recurring problems in the employment verification process. Here are some tips to avoid discrimination:

- Employers should not request identification or immigration documents before the worker has been offered and has accepted a position, even when an employer is using E-Verify.
- Workers have the right to choose which documents to show employers during the Form I-9 process.
- Employers should not use E-Verify to pre-screen job applicants, and should only use the program after the worker has been hired and the I-9 Form has been completed.
- Workers should beware of "U.S. Citizen" only job postings. Unless it is required by federal law, most employers do not have a reason to screen out legally-authorized workers based on immigration status.

How Can OSC Be A Resource For You?

Email OSC at oscrt@usdoj.gov to request:

- A customized webinar or a live presentation for your company or organization.
- An OSC article for your company or organization's newsletter.
- Outreach materials to distribute in your waiting room, at one of your conferences, or in your community.

Join Us For An Upcoming Webinar

September 17, 2013 at 2:00 pm EST

Click [here](#) to register for OSC Worker/Advocate webinar

September 18, 2013 at 1:00 pm EST

Fair Employment Practices Agencies (FEPA) webinar. For registration information for this customized webinar, you may contact OSC by sending an email to oscrt@usdoj.gov.

September 25, 2013 at 3:00 pm EST

Click [here](#) to register for OSC Employer/HR Representative webinar

October 10, 2013 at 1:00 pm EST

Click [here](#) to register for OSC Worker/Advocate webinar

October 23, 2013 at 2:00 pm EST

Click [here](#) to register for OSC Employer/HR Representative webinar

October 24, 2013 at 2:00 pm EST

OSC's IMAGE Member Webinar. For registration information for this customized webinar, you may contact OSC by sending an email to oscrt@usdoj.gov.

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Office of Special Counsel for Immigration-Related
Unfair Employment Practices
Civil Rights Division
950 Pennsylvania Avenue, NW (NYA)
Washington, DC 20530

Main Number: (202)616-5594
Fax Number: (202)616-5509
Website: <http://www.justice.gov/crt/about/osc>

OSC Leadership
Deputy Special Counsel

Seema Nanda

Special Litigation Counsels

C. Sebastian Aloit

Elise S. Shore

Special Policy Counsel

Jennifer Sultan

We Value Your Feedback! Is there a topic you would like to read about in our newsletter? Email us at oscrt@usdoj.gov

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