



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

Citizenship/Immigration Status and National Origin Discrimination in Employment

The U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) works to ensure that employers do not discriminate against employment-authorized individuals based on their citizenship or immigration status or based on their national origin in violation of the anti-discrimination provision of the Immigration and Nationality Act (INA).

Under this law, employers discriminate when they treat workers differently in the hiring and firing processes because a worker is or is not a U.S. citizen, because of a worker's particular immigration status, or because of where a worker is from or appears to be from. Employers also may not treat workers differently for these reasons in the Form I-9 and E-Verify processes. This law protects workers from retaliation by employers as well.

OSC investigates and prosecutes such claims of discrimination. Employers found to be engaging in discriminatory activity may be required to pay civil penalties and back pay to injured parties.

AN EMPLOYER MAY BE DISCRIMINATING IN THE HIRING AND FIRING PROCESS WHEN IT:

- **Refuses to hire workers who sound or appear foreign.**
Example: In April 2011, an employer agreed to pay \$18,550 in back pay to a non-U.S. citizen and \$3,200 in civil penalties after the employer instituted a policy of refusing to hire any individuals believed to be non-U.S. citizens, which led the employer's human resources personnel to reject all applicants who sounded or appeared foreign.
- **Prefers to hire U.S. citizens (unless a law, regulation, government contract, or executive order requires that the position be filled by a U.S. citizen).**
Example: In March 2012, an employer agreed to pay \$100,000 in civil penalties after publishing numerous job advertisements that solicited job applications exclusively from U.S. citizens, even though there was no legal requirement that the advertised positions be filled by U.S. citizens.
- **Hires non-immigrant visas holders but rejects qualified U.S. citizens and lawful permanent residents who apply for the same jobs.**
Example: In September 2013, an employer agreed to pay \$59,617 in back pay to six lawful permanent resident applicants and \$2,250 in civil penalties after preferring to hire H-2B temporary visa holders over U.S. citizens and lawful permanent residents.

- **Hires undocumented workers instead of employment-authorized individuals.**
Example: In November 2010, an employer agreed to pay \$2,000 in back pay after the employer terminated a lawful permanent resident in favor of an undocumented worker employed in the same position.
- **Fires employment-authorized workers for misrepresenting their prior work status but does not fire other workers for misrepresenting other types of employment application information.**
Example: In May 2010, an employer agreed to pay a total of \$13,167 in back pay to several workers after the employer terminated them for misrepresenting their authorization to work when they were hired, without determining whether any other workers had provided other types of false information in connection with their employment applications, even though these workers had legalized their status and corrected their information with the employer years prior to their termination.

AN EMPLOYER MAY BE DISCRIMINATING IN THE FORM I-9 PROCESS WHEN IT:

- **Demands specific documents from non-U.S. citizen workers.**
Example: In January 2013, an employer agreed to pay \$250,000 in civil penalties because it had a policy of requiring non-U.S. citizens to produce specific types of “List A” immigration documentation, such as a “green card” or Employment Authorization Document, during the Form I-9 process before they were permitted to begin work, while permitting U.S. citizens to present their choice of acceptable documents.
- **Asks non-U.S. citizens and foreign-born citizens for more documents than needed to complete the Form I-9.**
Example: In October 2010, an employer agreed to pay \$257,000 in civil penalties because the employer required naturalized U.S. citizens and non-U.S. citizens to produce more documents than required by law for the I-9 process. Specifically, the employer demanded that non-U.S. citizens and naturalized U.S. citizens produce a “List A” document after having already presented “List B” and “List C” documents but permitted native-born U.S. citizens to choose which documents to present.
- **Rejects valid employment authorization documents from non-U.S. citizens.**
Example: In August 2013, an employer agreed to pay \$9,157 in back pay to a non-U.S. citizen and \$1,200 in civil penalties after rejecting the worker’s valid Social Security card and demanding additional documents to prove his employment authorization even though it routinely accepted Social Security cards presented by U.S. citizens.
- **Demands that lawful permanent residents present a new “green card” when the card expires.**
Example: In June 2013, an employer agreed to create a \$100,000 back pay fund to compensate affected workers and to pay \$175,000 in civil penalties because the employer required lawful permanent residents who presented “green cards” when initially hired to present renewed “green cards” when their cards expired, even though the employment authorization of lawful permanent residents does not expire.

AN EMPLOYER MAY BE DISCRIMINATING IN THE E-VERIFY PROCESS WHEN IT:

- **Terminates or suspends non-U.S. citizen workers for whom it receives tentative nonconfirmations (TNCs), or otherwise interferes with the TNC resolution process.**
Example: In September 2012, an employer agreed to pay \$6,800 in back pay to an employment-authorized non-U.S. citizen and \$2,000 in civil penalties after the employer interfered with the individual's ability to resolve his TNC by withholding E-Verify paperwork from the worker because he was a non-U.S. citizen. This interference led to an erroneous final nonconfirmation and the worker's consequent termination.
- **Uses E-Verify as a pre-screening tool on a selective basis.**
Example: A non-U.S. citizen is run through E-Verify before he or she is hired and is denied a job when E-Verify generates a TNC, but native-born U.S. citizens are not run through E-Verify before hire. Alternatively, the employer pre-screens every applicant through E-Verify but only non-U.S. citizen applicants who receive a TNC are eliminated from consideration.
- **Uses E-Verify to confirm the continuing employment authorization of non-U.S. citizen workers who are not subject to reverification.**
Example: In May 2013, an employer reinstated a number of workers who had been improperly terminated after the employer attempted to reverify their employment authorization on the basis of their citizenship status even though their employment authorization was not subject to reverification at that time.
- **Requires non-U.S. citizen workers to provide additional documentation establishing their employment authorization for E-Verify purposes.**
Example: In February 2013, an employer agreed to pay \$8,400 in civil penalties after requiring non-U.S. citizens to produce their "green cards" for E-Verify purposes even though they had already produced other acceptable documentation for the I-9 process.

AN EMPLOYER MAY ALSO BE VIOLATING THE ANTI-DISCRIMINATION PROVISION WHEN IT:

- **Retaliates against a worker who asserts rights protected under the INA's anti-discrimination provision.**
Example: In February 2013, an employer paid \$1,800 in back pay and \$3,000 in civil penalties for failing to hire a job applicant because the worker threatened to file a lawsuit under § 1324b after the employer refused to allow the job applicant to contest the results of a background check.

If you or a worker you know has suffered citizenship status or national origin discrimination, call the **OSC Worker Hotline at 1-800-255-7688, 9am-5pm, EST (TTY for the hearing impaired is 1-800-237-2515)**. Telephone interpreters are available. ***It is unlawful to threaten or retaliate against anyone for contacting the OSC Hotline or filing a charge of discrimination with OSC.***

Employers can call the **OSC Employer Hotline at 1-800-255-8155, 9am-5pm, EST (TTY for the hearing impaired is 1-800-237-2515)** for guidance on how to avoid citizenship status and national origin discrimination. For more information, visit <http://www.justice.gov/crt/about/osc>.