

EEOC Issues New Enforcement Guidance on National Origin Discrimination

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On November 18, 2016, the ***Equal Employment Opportunity Commission (EEOC)*** issued new [Enforcement Guidance](#) regarding national origin discrimination. The EEOC also published a parallel [question and answer](#) page, as well as a [fact sheet](#) on national origin discrimination applicable to small businesses. Although not carrying the force of law, like a statute or regulation, the Enforcement Guidance gives employers a clearer understanding of the EEOC's enforcement and investigative priorities, along with examples of workplace conduct that the EEOC may deem to violate ***Title VII*** of the ***Civil Rights Act of 1964***.

National origin discrimination is discrimination because an individual or his/her ancestors is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group (such as language, accent, or attire). Title VII prohibits employer actions that have the purpose or effect of discriminating against persons because of their actual or perceived national origin. National origin discrimination is prohibited in all phases of the employment life cycle, from recruitment to hiring to training to promotion to pay to discharge, as is harassment based on national origin.

National origin charges comprise approximately 11% of the private sector charges filed annually with the EEOC. The Enforcement Guidance addresses many common scenarios addressed in such charges. First, the Enforcement Guidance encourages employers to be mindful of intersectionality; that is, when employees may be the target of workplace decisions or actions due to multiple protected bases, e.g., race and national origin, or national origin and religion. The Guidance also addresses the subject of human trafficking, noting that an action to compel labor or exploit workers from foreign countries may violate not only criminal laws, but Title VII as well, if the action (for example, harassment, segregation, unequal pay, or unreasonable paycheck deductions) is directed at an individual or group based on their national origin.

The Enforcement Guidance also makes clear that customer preference, such as relenting to customer pressure not to work with an employee who appears "foreign" or based on unsubstantiated fears of "terrorists," likewise violates Title VII. So, too, do policies prohibiting employees from speaking in their preferred language during meal periods and breaks, or requiring English fluency for a job when it is not essential, or requiring U.S. citizenship when an employee has the necessary work authorization to hold a particular position. However, the Enforcement Guidance reinforces that

employers may justify employment decisions based on national security requirements, when applicable, and may require applicants to complete the Form I-9 process to verify employment eligibility without violating Title VII.

As the American workforce becomes increasingly ethnically diverse, employers are advised to be mindful of potential workplace conflicts, to address prohibited discrimination in their policies, and to implement procedures for promptly investigating and remedying reports of discrimination. While the Enforcement Guidance does not announce new law, its unique employment scenarios provide a helpful training tool for employers and a refresher on Title VII.

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