



U.S. Equal Employment Opportunity Commission FACT SHEET

Employment Rights of Immigrants Under Federal Anti-Discrimination Laws

Immigrants are protected from employment discrimination by laws enforced by the Equal Employment Opportunity Commission (EEOC). This pamphlet answers questions often asked by people who think that they have suffered discrimination in employment. It describes what the law covers, how to file a complaint, and typical examples of employment discrimination.

What the Equal Employment Opportunity Commission does

The EEOC is a federal agency responsible for enforcing laws prohibiting employment discrimination and harassment because of race, color, sex, religion, national origin, age (40 and over and physical or mental disability). Employers with 15 or more employees (20 or more for age discrimination), employment agencies, unions, employer-union apprentice programs, and local, state, and federal agencies must obey these laws. If you think that you have been discriminated against on the job or while applying for a job, you should contact the EEOC. The law has strict time limits for filing a charge of discrimination, and in some cases the EEOC will not have jurisdiction unless the charge is filed within 180 days of the occurrence of discrimination. Because of these filing limits, we suggest that you contact our office as soon as the discrimination has occurred.

When a charge of discrimination is filed, EEOC conducts an impartial investigation to determine if the laws were violated. You may call 1-800-669-4000 to be connected with the nearest EEOC field office to you.

What you should know about National Origin Discrimination under Title VII

The law protects people against employment discrimination on the basis of their national origin. Following are some examples of employment discrimination based on national origin.

Discrimination Because of a Person's or His or Her Ancestor's Place of Birth

- Unlawful national origin discrimination may include discrimination because of a person's looks, customs, or language. It isn't necessary for a person to show that his or her ancestors are from a particular country or region to prove national origin discrimination. A claim can be proven if a person is discriminated against for having the characteristics for a different group. For example, a person might mistakenly be thought to be Haitian and may be discriminated against based on certain characteristics, even though he is not actually Haitian. Similarly, a person may be

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perceived as being foreign born or of foreign ancestry and may be discriminated against in violation of the law.

Discrimination Based on Association with Persons of a Different National Origin Group

- The law prohibits discrimination because a person associates with people of a national origin group, (discrimination because of attendance at schools or places of worship used by persons of a particular nationality, and discrimination because a person's or spouse's name is associated with a national origin group). For example, if someone is denied a promotion or otherwise discriminated against because she is married to a Hispanic man, that violates the law.

Practices May Have an Adverse Effect on Particular National Origin Groups

- Some employment practices, such as citizenship requirements, minimum height requirements, and policies against hiring individuals with arrest and conviction records, may screen out people of a particular national origin. For example, a minimum height requirement for certain jobs, such as police officers or firefighters, may disproportionately screen out people of certain national origins, such as Hispanics and Asians, and would be against the law unless the employer could prove that it is related to the job and needed for the employer to operate safely or efficiently. Another policy that may discriminate against certain national origin group members would be a high school diploma requirement, which may not be job related for certain positions such as laborers.

Harassment Based on National Origin

- Ethnic slurs and other verbal or physical conduct because of nationality are illegal if they are severe or pervasive and create an intimidating, hostile or offensive working environment, interfere with work performance, or negatively affect job opportunities. Examples of potentially unlawful conduct include insults, taunting, or ethnic epithets, such as making fun of a person's foreign accent or comments like, "Go back to where you came from," whether made by supervisors or by co-workers.

Discrimination Based on Accent

Treating employees differently because they have a foreign accent is lawful only if accent materially interferes with being able to do the job.

- Generally, an employer may only base an employment decision on accent if effective oral communication in English is required to perform job duties and the individual's foreign accent materially interferes with his or her ability to communicate orally in English.
- Jobs that may require effective oral communication in English include teaching, customer service, and telemarketing to English speaking clients.
- If a person has an accent but it is able to communicate effectively and be understood in English, he or she cannot be discriminated against.

Speak-English –Only Rules

The EEOC has stated that rules requiring employees to speak only English in the workplace violate the law unless they are reasonable necessary to the operation of the business.

- A rule requiring employees to speak only English in the workplace at all times, including breaks and lunch time, will rarely be justified.
- An English-only rule should be limited to the circumstances in which it is needed for the employer to operate safely or efficiently.
- Circumstances in which an English-only rule may be justified include: communications with customers or coworkers who only speak English; emergencies or other situations in which workers must speak a common language to promote safety; cooperative work assignments in which the English-only rule is needed to promote efficiency.
- Even if there is a need for an English-only rule, an employer may not take disciplinary action against an employee for violating the rule unless the employer has notified workers about the rule and the consequences of violating it.

Discrimination Based on Appearance

Discrimination based on a person's ethnic appearance violates the law.

- For example, suppose that Radika, a native of India, applies for a job as a receptionist. At her interview, the selecting official says that Radika would not be right for the job, because the company is looking for someone with "an all American front office appearance." She is dressed appropriately, and is certain that the only thing about her appearance that is not of the "front office" type is that she is of Indian ancestry. If Radika can show that the selecting official viewed her appearance as inappropriate because of her Indian features, she can establish a violation of the law. Similarly, if this employer refuses to allow an Indian employee to wear a sari, but imposes no dress restrictions on any other employees, this may also violate the law.

The Immigration Reform and Control Act of 1986

Discrimination based on citizenship is expressly prohibited by the Immigration Reform and Control Act of 1986, commonly referred to as "IRCA." IRCA also prohibits discrimination on the basis of national origin by employers with between four and fourteen employees.

- IRCA is enforced by the United States Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices, PO Box 65490, Washington D.C. 20035-5490. A memorandum of understanding between the EEOC and the Office of Special Counsel (OCS) provides for the EEOC to refer to the OSC charges filed with EEOC that allege IRCA violations. EEOC will forward these complaints to OCS in Washington for investigation. Examples of prohibited citizenship discrimination under IRCA:
- "U.S. citizen only" policy which discriminates against legal resident aliens authorized to work in the United States.
- "Green card only" policy which discriminates against legal resident aliens authorized to work in the United States who do not have a "green card."
- Requiring applicants for employment to provide certain specific or additional work authorization documents, rather than accepting any of the several forms of documentation an applicant is permitted to submit under IRCA.

What you need to know about other kinds of Employment Discrimination that may affect you

The laws enforced by the EEOC also prohibited employment discrimination based on race, sex, color, religion, age, and physical or mental disability. In addition you cannot be retaliated against for filing a charge, protesting or opposing employment discrimination, or participating or serving as a witness in an investigation or lawsuit. These laws cover all aspects of work including recruitment, hiring, promotion, demotion, termination, layoff, compensation, employee benefits, work assignments, and all other terms or conditions of employment.

Here are some examples of these other kinds of discrimination that often affect immigrant workers.

- When Mei Li applied for a job as a presser in a garment shop she was told that only men are hired as pressers. When Wah applied as a sewing machine operator he saw that only women are operating sewing machines. He was told that he would not be hired as an operator but was offered work as a presser. He is a qualified sewing machine operator. This is a job classification based on sex and is against the law.
- When Mae celebrated her 65th birthday the shop owner told her she was too old to be a sewing machine operator, and offered her work as a thread trimmer. This is unlawful age discrimination.
- Clara was pregnant and requested a 3 month paid leave of absence. Her company will give sick employees up to a 3 month paid leave of absence but denied her request for leave. This is pregnancy discrimination, which is a type of unlawful sex discrimination.
- Maria was told by the boss that if she wants to keep her job she should date him. This is sexual harassment and is against the law.
- John's co-workers consistently call him names that refer to his race and use racial slurs and epithets which he finds offensive and unwelcome. He has complained to his boss, but nothing has been done to stop it. This is a racial harassment that is against the law.
- Joan requested a change in her schedule to celebrate an important religious holiday. Her employer refused to consider her request although she could easily be accommodated. This is a form of religious discrimination that is against the law.
- Jasha noticed that Sarah was not being paid as much as he was although they were both doing the same job under similar working conditions. When he objected to the unfair treatment of his coworker, he was fired. The employer has violated the law because Jasha is protected from retaliation based on his opposing possible discrimination. Sarah may also be entitled to protection under the law because unequal pay based on sex is also against the law.
- Sang developed a back impairment that limited his ability to carry parcels weighing more than 5 lbs. Delivering parcels is an essential function of his job. He requests a low-cost cart with wheels to permit him to do his job. The employer refuses to provide the cart, even though it poses no undue hardship. By refusing to provide a reasonable accommodation, Sang's employer has discriminated against him on the basis of his disability.
- Omar went to his native country for a visit. When he returned, his boss refused to let him return to work until he had been checked out by a doctor, because the boss believed that Omar had contracted a contagious disease during his vacation. Unless the boss reasonably believes that Omar's medical condition endangers the health or safety of Omar's coworkers, the requirement that Omar be examined by a doctor is unlawful.
- Jose is from the Dominican Republic and worked for a company owned by a Dominican. Jose's skin is darker than the owner or any of the other employees. He is the only employee who was not given supervisory training. If the failure to provide supervisory training was based on the color of his skin, this violates the law.

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- Antoine, who is Black, and Claude, who is White, get into a fight at work. The employer investigates and is unable to determine who started the fight. Antoine is fired and Claude is suspended without pay for one week. This may be a case of race discrimination because the person of color was fired while the White employee was only suspended from work. If Antoine had a prior record of fighting on the job but Claude did not or if Antoine was a supervisory employee while Claude was not, then the harsher penalty imposed on Antoine may be justified by this difference.
 - When an EEOC investigator is about to interview Anne, her boss warns her that her job may be in danger if she doesn't lie to the investigator. This kind of intimidation violates the law because employees cannot be retaliated against because they participate in an EEOC investigation.

REMEMBER – IT IS YOUR RIGHT TO WORK WITHOUT BEING SUBJECT TO EMPLOYMENT DISCRIMINATION