



## Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

### 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 individuals who are permitted to work in the U.S. based on their immigration status or national origin.

Employers discriminate on these unlawful bases when they fail to give equal treatment to workers in the hiring and firing process on the basis of where the workers are from or appear to be from, or whether the workers are U.S. citizens or not. Employers may also discriminate when they treat workers differently on these bases in the Form I-9 and E-Verify employment eligibility verification processes.

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

#### ***AN EMPLOYER MAY BE DISCRIMINATING ON THE BASIS OF IMMIGRATION STATUS OR NATIONAL ORIGIN IN EMPLOYMENT IF AN EMPLOYER:***

- **Demands specific documents from a worker**

Example: In May 2011, OSC reached a settlement that provided for \$45,760 in civil penalties from an employer that had a policy of requiring newly-hired non-U.S. citizen workers to produce specific government-issued documentation before they were permitted to begin work, while U.S. citizen new hires were permitted to present their choice of documents to satisfy the Form I-9 process and to begin employment. For example, lawful permanent residents were not permitted to begin work unless they presented "green" cards, even if they had presented valid driver's licenses and unrestricted social security cards.

- **Asks certain workers for more documents than needed to complete the Form I-9**

Example: In October 2010, OSC reached a settlement with an employer that provided for \$257,000 in civil penalties after finding the employer engaged in a pattern and practice of requiring naturalized U.S. citizen workers and non-U.S. citizen workers to produce more documents than required by law for the Form I-9 process. Specifically, the employer demanded that non-U.S. citizens produce a List A document after having already presented List B and List C documents, while permitting native born U.S. citizens to choose which documents to present.

- **Rejects valid work authorization documents from non-U.S. citizens but accepts the same documents from U.S. citizens**

Example: In June 2010, OSC reached a settlement providing for \$8,586 in back pay to two non-U.S. citizen workers and \$2,200 in civil penalties after finding the employer rejected their

unrestricted Social Security cards and demanded to see additional documents to prove their work eligibility, but routinely accepted Social Security cards presented by U.S. citizen workers.

- **Demands that lawful permanent residents present new “green cards” when theirs expire but does not ask U.S. citizens to produce new documents when theirs expire**  
Example: In November 2010, OSC reached a settlement including \$10,200 in civil penalties against an employer that had a pattern and practice of requiring all lawful permanent resident workers who presented green cards for the Form I-9 to present renewed green cards when their cards expired, but did not require U.S. citizen workers to present renewed documents when their documents expired. Both lawful permanent residents and U.S. citizens are always work authorized, regardless of the expiration of their documentation.
- **Refuses to hire workers who sound or appear foreign**  
Example: In April 2011, OSC reached a settlement providing for \$18,550 in back pay to a non-U.S. citizen job applicant and \$3,200 in civil penalties after finding the employer instituted a policy of not hiring any immigrants, leading the employer’s human resources personnel to reject all applicants who sounded or appeared foreign.
- **Only hires U.S. citizens (unless that policy is specifically required by law)**  
Example: In May 2010, OSC reached a settlement providing for \$7,100 in back pay to a non-U.S. citizen job applicant who was denied a job because he was not a U.S. citizen and who was then retaliated against for reporting the employer’s refusal to hire him.
- **Hires workers on non-immigrant visas, such as H-2B or H-2A workers, but rejects U.S. citizens and other work-authorized individuals who apply for work**  
Example: In May 2010, OSC reached a settlement providing for \$11,173 in back pay to a U.S. citizen after finding the employer discriminated against him by preferring H-2B temporary visa holders.
- **Hires undocumented workers instead of work-authorized individuals**  
Example: In November 2010, OSC issued a letter of resolution providing for \$2,000 in back pay to a lawful permanent resident who was discriminated against in favor of an undocumented worker.
- **Fires work-authorized workers for lying about their prior undocumented status, but does not fire other workers for lying about different aspects of their background.**  
Example: In May 2010, OSC issued letters of resolution after an employer agreed to provide a total of \$13,167 in back pay to several workers, resolving a case where the employer terminated the workers for having misrepresented their authorization to work when they were hired, despite the fact that they had since legalized their status and corrected their information

with the company. OSC found that the company had not terminated other workers that corrected false information regarding other aspects of their background.

***AN EMPLOYER'S USE OF E-VERIFY MAY ALSO BE DISCRIMINATORY ON THE BASIS OF IMMIGRATION STATUS OR NATIONAL ORIGIN. DISCRIMINATION MAY OCCUR IF AN EMPLOYER:***

- **Terminates or suspends employees for whom it receives TNCs on a selective basis**  
Example: A non-U.S. citizen worker who receives a Tentative Nonconfirmation (TNC) is terminated or suspended during the resolution period while native-born U.S. citizen workers who receive TNCs are allowed to work while they resolve their TNCs.
- **Pre-screens using E-Verify on a selective basis**  
Example: A non-U.S. citizen job applicant 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. citizen job applicants are not run through E-Verify before hire.
- **Pre-screens all applicants using E-Verify but does not hire applicants for whom it receives TNCs on a selective basis.**  
Example: A non-U.S. citizen applicant who receives a TNC is not hired and/or not told that E-Verify generated a TNC, while U.S. citizen applicants who receive TNCs are hired and given an opportunity to resolve their TNCs.
- **Selectively requires employees who receive TNCs to provide additional documentation establishing their work authorization.**  
Example: Instead of, or in addition to, following the E-Verify instructions, the employer requests additional documentation establishing work eligibility from a non-U.S. citizen worker for whom it receives a TNC but does not request additional information when native-born U.S. citizen workers receive TNCs.
- **Re-runs employees through E-Verify when reverifying Employment Authorization Documents, and then terminates or suspends employees who receive TNCs on a selective basis**  
Example: Despite the instruction not to re-run employees through E-Verify at reverification, the employer does so and then terminates or suspends a non-U.S. citizen worker for whom it receives a TNC.

If a worker you know has suffered immigration status or national origin discrimination, call the OSC **Worker Hotline at 1-800-255-7688**, 9am-5pm, E.S.T. (TDD for the hearing impaired is at 1-800-237-2515). Telephone interpreters are available in many languages as needed. ***It is unlawful to intimidate, threaten, or retaliate against anyone for contacting the Hotline, assisting in any way in an investigation, or filing a charge of discrimination with OSC.***

Employers can call the **Employer Hotline at 1-800-255-8155** for guidance on how to avoid immigration status and national origin discrimination. For more information or to obtain outreach materials, call the Hotline or visit <http://www.justice.gov/crt/about/osc>.