U.S. Department of Justice
Civil Rights Division
Immigrant and Employee Rights Section (IER)

How to Avoid Immigration-Related Employment Discrimination
Presentation Overview

1. Prohibited discrimination under the INA (8 U.S.C. § 1324b)

2. Avoiding citizenship status discrimination when seeking temporary visa workers

3. Avoiding national origin discrimination

4. IER’s enforcement and partnerships
Scope of IER’s Work

» Enforcement  
» Policy  
» Outreach
Worker Protections Under the INA’s Anti-Discrimination Provision 8 U.S.C. § 1324b

1. Citizenship, Immigration Status Discrimination
2. National Origin Discrimination
3. Unfair Documentary Practices
4. Retaliation
Citizenship Status Discrimination

The INA protects U.S. citizens, U.S. nationals, refugees, asylees, and recent lawful permanent residents from citizenship status discrimination in hiring, firing and recruitment or referral for a fee.
Workers left messages for a grower asking about picking work, but the grower ignores them because it intended to rehire H-2A workers from the prior season.

A grower posted a job with the local workforce agency and included a requirement for applicants to speak English fluently but recruits H-2A workers without requiring English fluency.
IER’s Protecting U.S. Workers Initiative
Flags Suggesting Intent to Discriminate

» Employer misrepresentations regarding U.S. worker availability or recruitment efforts

» Misrepresentation about location/site/employer where visa holders are to perform work

» Visa workers performing type or level of work different than position advertised in recruitment
Examples of Evidence in a Discrimination Claim

» Copy of job order and notes screens
» Names and contact information for referrals and self-referrals
» Information/requirements on DOL applications
» Recruitment reports
» Applicant’s reported experiences
» Other information and documentation on recruitment and referral process
Lessons From Recent H-2B Settlements

**Triple H Services, LLC** (June 26, 2018)
- $15,600 in civil penalties;
- enhanced recruiting efforts for U.S. workers
- back pay fund of $85,000 set aside to compensate workers
- Training, reporting, monitoring

**Palmetto Beach Hospitality, LLC** (Sept. 18, 2018)
- $42,000 in civil penalties
- $35,000 in back pay made available for affected workers
- Enhanced recruiting efforts for U.S. workers
- Training, reporting, monitoring
Is preference in hiring based on citizenship status ever permissible?

- When required by law, regulation, executive order, government contract
- With unprotected individuals, such as those without work authorization and those requiring sponsorship
National Origin Discrimination

» Hiring
» Firing
» Recruitment or referral for a fee
Unfair Documentary Practices

Form I-9 and E-Verify

Employers are not allowed to request more or different documents, reject reasonably genuine-looking documents, or specify certain documents based on citizenship status or national origin.

Request X  Reject X  Specify X
Lists of Acceptable Documents

Worker must show employer **worker’s choice** of either a List A document or a combination of List B and List C documents.

<table>
<thead>
<tr>
<th>LIST A</th>
<th>LIST B</th>
<th>LIST C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents that Establish Both Identity and Employment Authorization</td>
<td>Documents that Establish Identity</td>
<td>Documents that Establish Employment Authorization</td>
</tr>
</tbody>
</table>
| 1. U.S. Passport or U.S. Passport Card | 1. Driver’s license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address | 1. A Social Security Account Number card, unless the card includes one of the following restrictions:
   (1) NOT VALID FOR EMPLOYMENT
   (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION
   (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION |
| 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) | 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address | 2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240) |
| 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa | 3. School ID card with a photograph | 3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal |
| 5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:
   a. Foreign passport; and
   b. Form I-94 or Form I-94A that has the following:
      (1) The same name as the passport; and
      (2) An endorsement of the alien’s nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form. | 5. U.S. Military card or draft record | 5. U.S. Citizen ID Card (Form I-197) |
| 6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI | 6. Military dependent’s ID card | 6. Identification Card for Use of Resident Citizen in the United States (Form I-179) |
| For persons under age 18 who are unable to present a document listed above: | 7. U.S. Coast Guard Merchant Mariner Card | 7. Employment authorization document issued by the Department of Homeland Security |
| 10. School record or report card | 8. Native American tribal document |
| 11. Clinic, doctor, or hospital record | 9. Driver’s license issued by a Canadian government authority |
| 12. Day-care or nursery school record | 10. School record or report card |

Examples of many of these documents appear in Part 13 of the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.
Unfair Documentary Practices Cases Involving Agricultural Employers

www.justice.gov/crt/ier-cases-and-matters

» Crookham Company (2016)
» Luis Esparza Services, Inc. (2015)
Retaliation

» Intimidation
» Coercion
» Threats
IER Enforcement Process

Charge or Independent Investigation

- Dismissal
- Settlement
- Lawsuit
Possible Remedies

- Hire or rehire
- Back pay
- Training
- Monitoring
- Policy changes
- Civil penalties
Examples of IER Federal Partners

- Department of State
- Department of Labor
  - Wage and Hour Division
  - Office of Foreign Labor Certification
- Department of Homeland Security
  - USCIS Monitoring and Compliance
  - Fraud Detection and National Security
IER Hotlines

Employer 1-800-255-8155
Worker 1-800-255-7688
Mon – Fri 9am-5pm ET

Calls can be anonymous and language services are available.

1-800-237-2515 TTY