

EEOC Issues New Guidance on National Origin Discrimination

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On November 21, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) issued new [enforcement guidelines](#) regarding national origin discrimination. Since 2002, the EEOC has observed significant legal developments addressing national origin discrimination, warranting the need to replace its earlier guidelines. In 2015, approximately 11 percent of the 89,385 private sector charges filed with EEOC alleged national origin discrimination. These charges included unlawful failures to hire, unlawful terminations, harassment and language-related policies.

The guidance expands the definition of “national origin discrimination” to mean “discrimination because an individual (or his or her ancestors) is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group.” Thus, according to the EEOC, “Title VII prohibits employer actions that have the purpose or effect of discriminating against persons because of their real or perceived national origin. National origin discrimination includes discrimination by a member of one national origin group against a member of the same group.”

The revised guidelines address important issues such as job segregation, human trafficking, intersectional discrimination (e.g., discrimination against Asian females), citizenship requirements, language requirements, and retaliation.

The guidelines also provide a list of “promising practices” employers should follow to avoid discrimination.

1. Use a variety of recruitment tools, beyond word-of-mouth recruiting, to avoid inadvertently excluding national origin groups from employment;
2. Establish written, objective criteria for evaluating candidates, communicate the criteria to candidates, and apply the criteria consistently;
3. Develop objective criteria for identifying the unsatisfactory performance or conduct that can result in discipline, demotion, or discharge, such as a progressive discipline policy, clearly communicate those policies to employees, and document reasons for discipline;

4. Communicate to employees that workplace harassment will not be tolerated through written policies and training;
5. If languages other than English are spoken in the workplace, translate and provide training on workplace policies in your employees' native languages.
6. carefully scrutinize employment decisions that are based on language and accent to ensure they are based on legitimate, non-discriminatory business criteria.

For more information regarding issues related to national origin discrimination, please contact your regular Hinshaw attorney or Thaddeus Harrell in our Fort Lauderdale Office (954-375-1196) for more information or if you have any other questions.

Topics

Title VII, National Origin Discrimination, Title VII Of The Civil Rights Act Of 1964, Equal Employment Opportunity Commission (EEOC)