

MEMORANDUM OF UNDERSTANDING

I. Purpose

The purpose of this agreement is to foster cooperation and coordination between the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) of the U.S. Department of Justice (DOJ) and the Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL).

The agreement will clarify the enforcement role of each agency in areas of shared authority, ensure more efficient use of resources, allow the signatory agencies to maximize their enforcement resources, reduce duplication of effort, delineate respective enforcement responsibilities, as well as create the opportunity for joint enforcement and public outreach activities.

The Memorandum of Understanding (MOU) will facilitate investigation and prosecution of discrimination against persons based on their national origin or citizenship status, or "document abuse" (i.e., where employers require more or different documents than required for employment eligibility verification or refuse to accept documents that on their face reasonably appear genuine).

II. Background

OSC and OFCCP have historically had intersecting enforcement interests regarding immigration related employment discrimination and this agreement will expand the relationship.

OFCCP has primary responsibility for insuring that Federal contractors and subcontractors comply with laws protecting employees from discrimination based on race, color, gender, religion, national origin, as well as protecting persons with disabilities, disabled veterans and Vietnam Era veterans from discrimination. The Federal statutes/executive orders enforced by OFCCP are:

Executive Order 11246, as amended

Section 503 of the Rehabilitation Act of 1973, as amended

Vietnam Era Veterans' Readjustment Assistance Act of 1974

OSC has primary responsibility for investigating and prosecuting immigration related unfair employment practices in the form of national origin and citizenship status discrimination, document abuse and retaliation. The federal statutes enforced by OSC are:

Section 1324b of the Immigration and Nationality Act (INA), as amended;

Section 102 of the Immigration Reform and Control Act of 1986 (IRCA);

Sections 531-539 of the Immigration Act of 1990;

Section 421 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

III. Provisions

A. Appointment of Liaisons/Agency Contacts.

The national office components of OFCCP and OSC will appoint an agency contact point to maintain liaison concerning items of mutual interest, including matters set forth in this MOU. Information sharing at the headquarters level of each agency will include cooperation and coordination in the development of policy, procedures, regulations, training and activity reports that relate to the elements of this agreement.

B. Training

Reciprocal training is required to familiarize each agency with the other's jurisdiction and to recognize useful information that will identify and correct any instances of immigration related employment discrimination.

OFCCP will provide training and related materials to the staff of OSC by including OSC in any future management and staff training sessions.

OSC will also provide training and related materials to OFCCP management and staff in training sessions at OFCCP's national office and outreach presentations in the field.

C. Dissemination of Information to Employers

Both agencies agree to disseminate educational materials on behalf of the other agency to employers and to the public. The agency liaisons will arrange the distribution of the appropriate materials.

OFCCP will distribute OSC educational materials during compliance reviews, I-9 audits, and complaint investigations, as well as maintain copies of the materials in the local offices for use by the public. OSC will mail the materials directly to the OFCCP Regional and District Offices.

D. Information Sharing

OSC will provide OFCCP with information regarding the development of case law for immigration related employment discrimination

cases based on national origin, citizenship status, retaliation and document abuse. OSC will also share information with OFCCP concerning open cases; this information is to be considered sensitive and not in the public domain.

OFCCP will provide OSC with information concerning audits of government contractors and subcontractors, I-9 reviews, and complaints. Such information will include access to EEO-1 databases, research, analyses, and other relevant material in the possession of OFCCP as may be permissible by existing laws and regulations and subject to required legal safeguards.

OFCCP and OSC will meet on a periodic basis to coordinate all matters related to the development of immigration related employment discrimination policy and enforcement.

E. Referrals Involving Potential Discrimination Charges

1. Procedures

OSC will develop a questionnaire for use by OFCCP that will indicate whether a federal contractor or subcontractor may be engaged in some level of immigration related employment discrimination.

OFCCP will incorporate the questionnaire into all compliance reviews, I-9 audits and complaint investigations.

In addition, OFCCP will continue to utilize the ESA-91 Form to refer potential discrimination charges to OSC discovered as a result of OFCCP's I-9 audits.

Questionnaires and ESA-91 Forms that suggest discrimination falling within OSC's jurisdiction will be compiled by the Regions and transmitted to the Division of Program Operations, OFCCP for prompt transmittal to OSC. Procedures and guidance for completing these forms and referring potential charges of discrimination to OSC will be incorporated into OFCCP's Federal Contract Compliance Manual.

OFCCP will also notify OSC in a timely manner of any national origin discrimination complaints it refers to the Equal Employment Opportunity Commission (EEOC) that may involve citizenship status discrimination and/or document abuse.

F. Referral of Complaints For Possible Joint Inquiry

1. Procedures

Where appropriate, OFCCP will refer all complaints involving national origin discrimination against employers with between 4 and 14 employees and all complaints involving citizenship status

discrimination, retaliation and/or document abuse against employers with more than three employees to OSC for investigation and determination under the INA, as amended. Where appropriate, OSC will refer to OFCCP all complaints or inquiries of national origin discrimination affecting a class of employees at a Federal contractor or subcontractor for investigation and determination pursuant to Executive Order 11246. Upon referral of such complaints the agencies shall simultaneously notify the complainant and contractor/respondent of the referral. Procedures and guidance for referring such complaints will be incorporated into each agency's operating procedures manual.

2. Appointment of Respective Agents

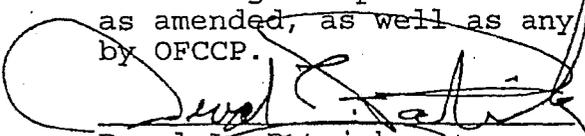
OFCCP and OSC hereby appoint each other to act as their respective agents for the purpose of allowing individuals to file charges or complaints of discrimination, retaliation, or document abuse within statutorily prescribed time limits. To ensure that filing deadlines are satisfied each agency will accurately record the date of receipt of the charge or complaint, and notify the other agency of this receipt date when referring the charge.

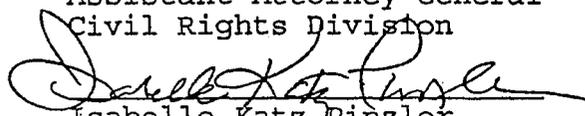
G. Coordinated Public Outreach Efforts

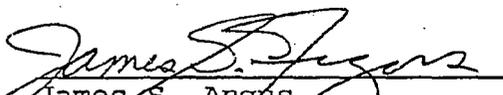
OFCCP and OSC will seek to coordinate their public outreach efforts to maximize dissemination of information to the public regarding immigration related employment discrimination.

IV. Agreement

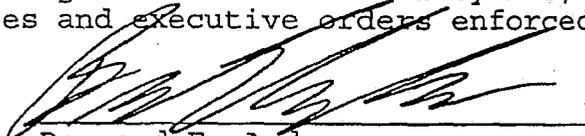
The provisions of this Memorandum of Understanding become effective on the date of signature. The provisions may be reviewed and jointly modified or terminated as appropriate when it is determined by either agency that such review and modification or termination is in the interest of efficiently enforcing the provisions of the Immigration and Nationality Act, as amended, as well as any statutes and executive orders enforced by OFCCP.

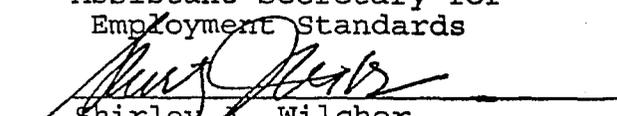

Deval L. Patrick
Assistant Attorney General
Civil Rights Division


Isabelle Katz Pinzler
Deputy Assistant Attorney
General
Civil Rights Division


James S. Angus
Acting Special Counsel for
Immigration Related Unfair
Employment Practices
U.S. Department of Justice

Dated: 1/2/97


Bernard E. Anderson
Assistant Secretary for
Employment Standards


Shirley S. Wilcher
Deputy Assistant Secretary for
Contract Compliance Programs

U.S. Department of Labor

Dated: 1/2/97