



OSC UPDATE

Office of Special Counsel for Immigration-Related Unfair Employment Practices

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) investigates and prosecutes allegations of national origin and citizenship status discrimination in hiring, firing, and recruitment or referral for a fee, as well as unfair documentary practices during the employment eligibility verification process and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA). In addition, OSC conducts outreach aimed at educating employers, workers and the general public about their rights and responsibilities under the INA’s anti-discrimination provision.

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25th Anniversary Commemorative Issue

A Message from the Acting Deputy Special Counsel



PHOTO: Seema Nanda
Acting Deputy Special Counsel

Dear Readers:

It has been 25 years since the passage of the Immigration Reform and Control Act (IRCA), which led to the creation of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). As we commemorate 25 years of protecting the rights of work-authorized noncitizens and U.S. citizens in the workplace, we have much to be proud of, but many challenges lie ahead. OSC has helped scores of discrimination victims obtain back pay, investigated thousands of unfair employment practices, and educated workers, advocates, and employers throughout the country on their rights and responsibilities under the anti-discrimination provision, including how to complete the employment eligibility verification process in a manner that does not discriminate against noncitizens. In 2011, OSC collected over \$735,000 in civil penalties from employers, demonstrating OSC’s commitment to vigorously enforce the statute and to deter employers from violating it. But challenges to enforcing the anti-discrimination provision continue. With a staff of less than 30, all in DC, OSC works to ensure that employees and employers know of the protections and obligations of the anti-discrimination provision. Employers also have additional tools for verifying workers’ information—including background checks, E-Verify and the Social Security Number Verification Service—that have created a new landscape in employment verification and new challenges to enforcing IRCA’s anti-discrimination provision.

Given these challenges, OSC’s partnerships—with the employer community, employee advocates, and federal and state partners—are more critical than ever. As OSC looks forward, it will strive to build these relationships to increase its enforcement and educational reach. Working together, we can ensure that those who have a right to work are not deprived of that opportunity. This commemorative edition of the newsletter celebrates OSC’s historical

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Visit our website:
www.justice.gov/crt/about/osc

OSC Employer Hotline:
1-800-255-8155
1-800-237-2515 (TDD)

OSC Worker Hotline:
1-800-255-7688
1-800-237-2515 (TDD)

E-Mail:
oscrcrt@usdoj.gov

Message (cont'd)

and ongoing commitment to combine traditional legal enforcement techniques with innovative tools to accomplish our mission, including policy initiatives, a hotline intervention program and a diversified outreach and education program designed to both prevent and combat immigration-related em-

ployment discrimination. As always, we rely on our stakeholders to continue to bring to our attention ways in which we can improve upon our efforts—whether through referring charges, identifying new problematic areas of enforcement, or creating outreach opportunities to address previously overlooked audiences and geographic locations. *Seema Nanda*

OSC Expands the Depth and Breadth of its Outreach

OSC's enabling statute (8 U.S.C. § 1324b) requires it to conduct outreach and education regarding the anti-discrimination provision the office enforces. Currently, OSC conducts a nationwide education campaign that seeks to educate workers about their rights, and employers about their responsibilities, under the anti-discrimination provision of the Immigration and Nationality Act (INA). Below is an explanation of the types of outreach OSC currently conducts, as well as the new stakeholder and targeted outreach initiative OSC recently launched to enhance its education campaign.

Nationwide Outreach

OSC's jurisdiction covers the entire United States, as well as its territories, so the need to conduct outreach outside of the Washington, D.C. area is great. In Fiscal Year 2011, OSC directly participated in nearly 750 outreach events nationwide. Through these events, as well as through other means, such as mailings, OSC distributed over 136,000 pieces of written educational materials to the public.

OSC Employer and Worker Hotlines

Another major component of OSC's outreach plan is its hotline program, which handles questions from the public. Every week, Monday-Friday, from 9am-5pm (EST/EDT), OSC fields calls from employees who may have suffered discrimination, or who would like further information on their rights, as well as from employers who seek guidance on non-discriminatory practices, or information on how to resolve an employment issue in a way that avoids discrimination under the INA. In Fiscal Year 2011, OSC handled almost 5,800 calls through the hotline and saved over 190 individuals' jobs.

New stakeholder and Targeted Outreach Initiative

In the last year, OSC has developed a plan to forge new relationships -- and reinforce existing relationships-- with stakeholder organizations and other groups to ensure that workers know their rights under the anti-discrimination provision. Apart from reaching cities with sizeable immigration populations, OSC has also targeted non-traditional areas, such as towns that have seen spikes in immigrant populations.

With our new partnerships, OSC aims to enhance workers' knowledge of their rights under the anti-discrimination provision and to educate stakeholders on what they can do if they become aware of potential violations of the law, particularly in pattern and practice cases. To that end, we are also seeking to reinvigorate our Memoranda of Understanding (MOU) with state and local Fair Employment Practice Agencies (FEPAs), and to enter into new MOUs with FEPAs with which we have had no previous relationships.

OSC's enforcement work has been bolstered by a rise in referrals of potential discrimination from offices such as the U.S. Department of Labor (DOL), legal aid bureaus and immigrant advocacy organizations. For instance, OSC has received a number of referrals from DOL regarding agricultural employers believed to have a preference for hiring H-2A visa holders over domestic workers. Recently, OSC has renewed its dialogue with the Equal Employment Opportunity Commission (EEOC) and with DOL's Office of Federal Contract Compliance Programs to ensure that appropriate referrals are made in a timely fashion. It has also initiated discussions with DOL's Wage and Hour Division to identify appropriate cross-agency referrals.

In Fiscal Year 2011, OSC performed outreach to groups in 70 different cities in 27 states and the District of Columbia, as demonstrated in the map below.



ALABAMA

- Birmingham
- Huntsville
- Montgomery

ARIZONA

- Phoenix

CALIFORNIA

- Anaheim
- Hayward
- Oakland
- Sacramento
- San Diego
- San Francisco
- San Jose
- Santa Cruz
- Santa Rosa

COLORADO

- Denver

DISTRICT OF COLUMBIA

FLORIDA

- Hollywood
- Miami
- Tampa

GEORGIA

- Atlanta
- Calhoun
- Cartersville
- Dalton
- Glynco
- Rome

IDAHO

- Boise
- Idaho Falls
- Meridian

ILLINOIS

- Chicago

INDIANA

- Indianapolis

IOWA

- Iowa City

KENTUCKY

- Lexington

LOUISIANA

- Baton Rouge
- New Orleans

MAINE

- Augusta
- Portland

MARYLAND

- Annapolis
- Baltimore
- Potomac
- Silver Spring

MINNESOTA

- Minneapolis

MICHIGAN

- Dearborn
- Detroit

MISSISSIPPI

- Biloxi
- Jackson

MASSACHUSETTS

- Boston

NEW MEXICO

- Albuquerque
- Santa Fe

NEVADA

- Las Vegas

NEW JERSEY

- Newark

NEW YORK

- New York
- Queens
- Staten Island

NORTH CAROLINA

- Chapel Hill
- Charlotte
- Raleigh

SOUTH CAROLINA

- Charleston
- Columbia
- Greenville

TEXAS

- Austin
- Dallas
- Houston
- San Antonio

VIRGINIA

- Alexandria
- Arlington
- Crystal City
- Fairfax
- Harrisonburg
- Richmond
- Tysons Corner

WISCONSIN

- Milwaukee
- Oconomowoc

Recent Trends in OSC Enforcement

Snapshot of OSC's Fiscal Year 2011 Enforcement Work

Investigations	231
Suits Filed	3
Jobs Saved through Investigations and Hotline Interventions	194
Back Pay Obtained	\$151,353
Civil Penalties Collected	\$735,120
Settlements Reached	17

Growth in the Number of Settlements, Civil Penalties Collected, and Pattern or Practice Investigations

In 2011, OSC's enforcement work has been robust. The above chart lays out OSC's efforts in FY 2011, which included OSC's largest civil penalty amount to date, \$290,400. OSC's settlement agreements now routinely include back pay for identified economic victims, along with strong injunctive relief, such as training and monitoring. OSC has also pursued a rising number of pattern or practice claims, including a number of claims involving citizenship status discrimination and document abuse (discriminatory employment eligibility verification practices). In one recent settlement, OSC resolved allegations that a Missouri pork producer engaged in a pattern or practice of discrimination by imposing unnecessary and excessive documentary requirements on non-U.S. citizens and foreign-born U.S. citizens when establishing their authority to work in the United States. OSC's investigation had revealed that the company required all newly hired non-U.S. citizens and some foreign-born U.S. citizens at one of its plants to present specific and, in many cases, extra work-authorization documents beyond those required by federal law. In addition to ending its impermissible document requests and modifying its employment eligibility verification process, the company paid civil penalties, and further agreed to monitoring

and reporting provisions, as well as training for its human resources personnel. In another settlement, from April 2011, OSC found that the owner of several fast food restaurants in Maine had a policy of not hiring workers it believed to be non-U.S. citizens. Among other terms, the settlement agreement included back pay for an additional economic victim identified through OSC's investigation.

Impact of E-Verify

Congress required that employers verify their employees' work authorization at the same time it created OSC, but changes in the employment eligibility verification process have impacted OSC's enforcement work. Congress in 1996 authorized a pilot project that is now USCIS's E-Verify program (formerly referred to as the Basic Pilot Program). In recent years, OSC has seen a rise in the number of charges alleging discrimination using E-Verify, along with hotline calls and written inquires raising issues related to E-Verify. An employer could violate the anti-discrimination provision in its use of E-Verify by, for example, running only employees who identify themselves as non-U.S. citizens on the Form I-9; requiring that non-U.S. citizens show certain documentation for E-Verify (other than requiring that any List B document presented in-

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OSC Launches Webinar Initiative

Coinciding with its 25th Anniversary, OSC is bolstering its outreach efforts by launching a series of webinars covering topics related to the anti-discrimination provision of the INA. Beginning in December 2011, OSC will be using InstantPrester.com to host these webinars for employers, workers and service providers. OSC will also be posting some short educational videos on Vimeo.com. For more information, to recommend webinar topics, or to obtain webinar participation details, visit [OSC's webinar page](#).

Trends (cont'd)

clude a photo); or prescreening those who look or sound “foreign” using E-Verify. OSC recently filed a lawsuit against an employer that required non-U.S. citizens to present a List A document and claimed it did so for the E-Verify process (E-Verify rules do not permit this practice).

Recognizing the need for closer interagency collaboration, on March 17, 2010, OSC and USCIS signed a Memorandum of Agreement providing for enhanced information sharing and case referrals regarding the misuse, abuse, or fraudulent use of E-Verify and allegations of E-Verify-related employment discrimination. Through this information-sharing agreement, OSC has obtained E-Verify transactional data to investigate allegations of discrimination in the use of E-Verify. Since the implementation of the agreement, USCIS’s Verification Division has also provided personnel to work at OSC on rotating detail assignments and to function as liaisons between the two offices. One of the successes of this enhanced interagency cooperation has been the promotion of greater understanding between the agencies about each other’s work. Cross-referrals, data collection and the exchange of information have increased since the agreement and OSC looks forward to maintaining a cooperative relationship with USCIS’s Verification Division in the future.

Increase in Settlements Involving Particular Industries

OSC’s recent settlements have involved the health-care field and institutions of higher education more so than in the past. In October 2010, OSC reached a settlement with a hospital chain after finding a pattern or practice of requiring naturalized U.S. citizen and non-U.S. citizen workers to 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. OSC also entered into a recent settlement involving a recruiter for physicians, in which the recruiter was found to have advertised positions requiring U.S. citizenship with no legal justification. In 2010, OSC settled two cases with colleges that required all non-U.S. citizens to present certain work authorization documents, to the exclusion of other acceptable documents. OSC settled a case involving similar facts in May 2011 with a community college system. OSC has also entered into two settlements recently with agricultural employers based on allegations of citizenship status discrimination. In June 2009, OSC settled a matter with a nursery after finding the nursery had a preference for employing unauthorized workers. In addition, in March 2011, OSC entered into a settlement with a farm resolving an allegation that the farm preferred to employ temporary visa holders over U.S. workers.

OSC Hotlines

OSC’s telephone intervention program is an innovative form of alternative dispute resolution. It allows a caller to OSC’s worker or employer hotline to work informally with OSC’s staff to resolve potential immigration-related employment disputes within hours or minutes, rather than months, without contested litigation.



Worker Hotline: 1-800-255-7688
Employer Hotline: 1-800-255-8155

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Stay informed about OSC’s latest news and initiatives by signing up for e-mail alerts through [Gov-Delivery](#). On the subscriber preference page, click “Civil Rights Division” and then “Immigrant Rights and National Origin Discrimination.” You may select to receive OSC e-mail alerts about OSC News and Information, OSC’s Newsletter, or E-Verify and TPS Resources.

Longest-Serving OSC Attorney Reflects on IRCA's 25th Anniversary

Linda White Andrews, a Senior Trial Attorney, has worked at OSC since September 1987, making her the longest-serving attorney in OSC history.



PHOTO: Linda White Andrews

Andrews has been with OSC since its beginning and has enforced the anti-discrimination provision of the INA through litigation, numerous settlements, and outreach. She has helped many individuals who have been victimized by discrimination obtain relief and has educated employers and workers about the anti-discrimination provision of the INA.

Reflecting on IRCA's 25th Anniversary, Andrews fondly recalls her first days at OSC and believes OSC's work is as relevant today as it was in 1987. She observed, "as long as we have immigrants coming to the U.S., OSC is going to be relevant." Andrews continued, "Many immigrants come here for

the American dream, and this office allows us to help people work and not be discriminated against because they are perceived by some to look or sound 'foreign'." One of Andrews's most rewarding cases involved obtaining relief for refugees who were denied jobs by a company because they did not possess a Permanent Resident Card or "green card."

In another case, Andrews obtained relief for over a dozen U.S. citizens who were discriminated against by an employer who preferred to hire H-2A visa holders. She stated, "Many people do not realize IRCA also applies to U.S. citizens," and she appreciates the opportunity to educate the public on the anti-discrimination provision's coverage.

Although Andrews believes OSC has made tremendous progress in combating discrimination and educating the public about the anti-discrimination provision of the INA, she feels there is still work to be done. "I still find that many people are not aware that OSC exists and what our mission is," she stated. Nevertheless, Andrews is determined to continue to spread the word about OSC and to combat discrimination just as she has been doing for the past 25 years.

Anatomy of an OSC Investigation

The following timeline and short description explains how OSC investigates a claim of an immigration-related unfair employment practice.

OSC investigates every complete charge that it receives. Over the past three years, OSC has received an average of 300 charges per year, though some are dismissed as incomplete because OSC lacks jurisdiction, or because the "charging party" (the person or entity filing the charge) alleges facts that do not indicate a violation of the INA's anti-discrimination provision. OSC also conducts a number of self-initiated or independent investigations when it discovers information suggesting possible violations of the INA's anti-discrimination provision by an employer.

OSC has statutory deadlines that require certain outcomes based on when a charge is made complete.

The relevant dates occur 10 days, 120 days, and 210 days after a charge has been deemed within OSC's jurisdiction. OSC's independent investigations, in contrast, are not subject to this 10/120/210 day investigation timeline.

Within 10 days of receiving a complete charge, the Equal Opportunity Specialist (EOS) or attorney assigned to a case sends letters to the charging party, the Office of the Chief Administrative Hearing Officer (OCAHO, which is the administrative court responsible for hearing OSC's cases), and the alleged discriminating person or entity, who at this point is referred to as a "respondent." Each letter is different; the charging party letter notifies the individual that the charge has been made complete, and that the initial investigation will take 120 days. The OCAHO

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Investigation (cont'd)

letter notifies the court that a charge has been received. The respondent letter is the most detailed of the three, notifying the respondent of the initiation of the investigation and requesting information and documents.

The EOS/attorney will then investigate a charge for an initial 120-day period, conducting interviews, reviewing documents, and sometimes taking depositions. Occasionally, during the initial part of its investigation, OSC will discover what is known as a pattern or practice of discrimination, in which individuals other than the charging party have been injured by the respondent's actions; accordingly, OSC will broaden its investigation.

By the 120th day, OSC determines whether there is

reasonable cause to believe a violation of the anti-discrimination provision occurred, whether to continue investigating the charge for an additional 90 days, or whether to dismiss the charge. Regardless of what OSC decides, the office sends a letter to the charging party, notifying the Charging Party that he or she has 90 days from the date of the receipt of OSC's 120-day letter to submit a complaint with OCAHO, regardless of whether OSC will subsequently file its own complaint. At this time, OSC also sends a letter to the respondent notifying it of the status of OSC's investigation.

Where an investigation continues past the initial 120-day investigatory period, OSC decides by the 210th day whether to dismiss the case, initiate settlement negotiations, or file a lawsuit. In some instances, OSC will enter into an agreement with a respondent to extend the complaint filing deadline.

OSC's Educational Materials

Since the statute that created OSC mandates a rigorous outreach program to educate employers and workers about their rights and responsibilities under the INA, OSC staff members engage in a variety of forms of outreach, including participation in seminars and conferences, live trainings, webinars, and telephone conference outreach events. OSC regularly distributes—in conjunction with participation in the above events and in addition to its participation—a variety of outreach materials tailored to particular audiences.

The most commonly requested outreach item is OSC's 18" x 24" glossy poster bearing the words, "If You Have the Right to Work, Don't Let Anyone Take It Away." The poster is available in English, Spanish, Haitian Creole, Korean, Traditional Chinese, and Vietnamese.

OSC's outreach materials target both worker and employer audiences. [OSC's worker outreach materials](#) include materials for asylees and refugees, recently naturalized U.S. citizens, individuals with Temporary Protected Status (TPS), and workers who receive Social Security number "no-matches." [OSC's employer materials](#) touch on subjects ranging from "10 Steps to Avoid Discrimination," E-Verify guidance, Social Security number no-match

guidance, and information about the types of Form I-9 documents that refugees, asylees, and individuals with TPS may present.

In addition to outreach materials generated by OSC, information about our office is included in two publications issued by the Civil Rights Division, both of which are available on the [Civil Rights Division's website](#). The first publication provides a comprehensive overview of the Division's work, including the work of OSC. The second publication is titled "Federal Protections Against National Origin Discrimination." Available in 18 languages, this brochure lays out the federal government's protections against national origin discrimination and the offices (including OSC) that enforce those rights.

In addition to a variety of other printed materials, OSC also has multimedia presentations including videos and a PowerPoint presentation with video vignettes.

To request outreach materials or discuss how OSC can participate in your training or conference, or to schedule a webinar for a specific audience, please call OSC's main phone number at 202-616-5594, and ask to speak with OSC's public affairs specialist or outreach assistant.

Testimonials

OSC's telephone intervention program is an innovative form of alternative dispute resolution. It allows a caller to OSC's worker or employer hotline to work informally with OSC's staff to resolve potential immigration-related employment disputes within hours or minutes, rather than months, without contested litigation. An employee for whom OSC resolved an employment eligibility verification issue with the employer said this about OSC's hotline: "[When I called] I was transferred right away . . . my problem was resolved and I'm back to work. It was great customer service. I thank you for your help, I really appreciated it."

Here is what one refugee service provider had to say about OSC's hotline: "This is the third asylee client that retained his or her job because of OSC's help. We are really thankful, because we did not know what to do in such situations before we learned about OSC."

A company representative also found OSC's hotline helpful: "I have really enjoyed working with you and the OSC to resolve . . . issues at an early stage and put[] employees back to work as soon as possible. You have always been professional and fair in your dealings with our company and we really appreciate it."

An Equal Employment Opportunity Commission (EEOC) regional attorney, who has worked with OSC over the years had this to say about OSC's hotline program: "In my experience as a Regional Attorney for the EEOC, OSC really answers their phones and helps employees and employers in a very timely and completely accurate manner with difficult and complex questions. They are one of the most effective and accessible federal agencies I have ever dealt with in my 33 years of practicing law."

Featured Long-Term OSC Grantee: Catholic Charities of Dallas

In 1991, Catholic Charities Immigration and Legal Services of Dallas received a public education grant to conduct outreach on behalf of OSC. Under this initial grant and subsequent grants, this organization convened approximately 1,750 antidiscrimination outreach events for workers, reaching nearly 100,000 individuals. Catholic Charities also convened nearly 150 employer seminars, attended by more than 7,000 employers. By partnering with fellow Catholic Charities offices in other regions of Texas and neighboring states, it reached workers and employers far beyond the Dallas/Fort Worth metroplex.

Over the years Catholic Charities has homed in on the best methods for reaching even the most underserved refugee and immigrant groups. For instance, Catholic Charities' multi-lingual staff conducts outreach events in a variety of venues, including mosques, Islamic festivals, Islamic associations, Buddhist temples and African cultural events. In addition, Catholic Charities employs a word of mouth marketing technique it calls "Tell 10 More," whereby it educates members of underserved communities about their rights, prompting those members to serve as messen-

gers to "tell 10 more" about their rights, and so on. By using these techniques, Catholic Charities has made great strides in increasing awareness of immigration-related discrimination. But the struggle continues: Catholic Charities Director Vanna Slaughter stated: "We still find a continuing need in this region to inform immigrant workers, employers and human service providers about the anti-discrimination provisions of the INA."

OSC values its relationships with all of its grantees, and especially appreciates the training that Catholic Charities provided to two of its former employees, Dimitar Barzakov and Beau Blank, who have subsequently joined OSC as equal opportunity specialists, greatly contributing to OSC's mission.

Note: OSC's grant program is currently on hold based on a lack of discretionary funds. Information on a possible resumption of the grant program will be available on OSC's website in the future.

U S D E P A R T M E N T O F J U S T I C E

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(Language interpretation available)

Employer Hotline: 1-800-255-8155 or 1-800-237-2515 (TDD for hearing impaired)

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