U.S. Department of Justice
Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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MAY - 2 2012

Via First Class Mail and E-Mail (jacqueline.longnecker@evrinc.com)

Jacqueline Longnecker
1575 DeLucchi Lane, Suite 207B
Reno, NV 89502

Dear Ms. Longnecker:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to the e-mail you sent OSC on April 4, 2012, in which you inquire about how staffing companies should respond to employers who make discriminatory staffing requests based on citizenship status. Specifically, you indicate that employers sometimes specify to a staffing agency that they want "no one with temporary work authorization" or that they want "only U.S. citizens" (when the job does not require this).

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits four types of unlawful conduct: (1) citizenship or immigration status discrimination; (2) national origin discrimination; (3) unfair documentary practices during the employment eligibility verification (Form I-9) process ("document abuse"); and (4) retaliation for filing a charge or asserting rights under the anti-discrimination provision. Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are pleased to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA. Please visit our website as well at http://www.justice.gov/crt/about/osc/, or call our employer hotline at 1-800-255-8155 for additional guidance.

The INA prohibits citizenship status discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with more than three employees. This means that employers may not treat individuals differently because of their citizenship status or immigration status. The INA provides that U.S. citizens, recent lawful permanent residents, refugees, asylees, and certain temporary residents are protected from citizenship status discrimination.

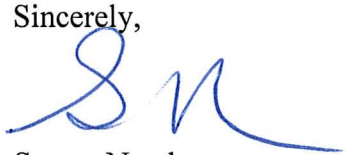
An employer may not limit consideration to "only U.S. citizens" for a job unless required to do so by "law, regulation, or executive order, or required by Federal, State or local government contract." 8 U.S.C. § 1324b(a)(2)(C). Similarly, an employer may not limit consideration to "green card holders only."

If an employer requesting temporary labor makes a discriminatory request (i.e., the client seeks "U.S. citizens only" when not required to do so by law, regulation, or executive order, or by government contract) and the staffing agency complies with the request, each entity may be liable for discrimination under the INA. Depending on the facts, liability may accrue to the staffing company either as an employer of the individual who is not placed based on the client's discriminatory request, or as a recruiter or referrer for a fee. *Cf. EEOC v. Kelly Services, Inc.*, 598 F.3d 1022, 1032 (8th Cir. 2010) ("An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification.") (citations and internal quotation marks omitted). A staffing agency may also face liability for discriminating in the placement process if it is considered a joint employer. *See United States v. General Dynamics Corp.*, 3 OCAHO no. 517 (1993). Accordingly, we discourage a staffing agency from complying with a client's request that the staffing agency provide "U.S. citizens only" or a similar discriminatory request unless required by law, regulation, executive order, or government contract.

With respect to whether a staffing agency can limit a job to exclude those with temporary work authorization, the individuals protected from citizenship status discrimination are limited to U.S. citizens, certain lawful permanent residents, asylees, and refugees. *See* 8 U.S.C. § 1324b(a)(3). Therefore, nonimmigrant visa holders, such as H visa holders, are not protected from citizenship status discrimination. If an employer chooses not to employ persons who require sponsorship for an employment visa, such as an H-1B visa, the employer may state in its job postings that it will not sponsor applicants for work visas. For similar reasons, an employer may ask candidates for the position whether they will require sponsorship for a visa. *See* OSC technical assistance letter dated September 27, 2010, available at http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2010/132.pdf. However, all work-authorized individuals, including many non-immigrant visa holders, are protected under the INA's prohibitions against national origin discrimination and document abuse (the request for more or different documents, or the rejection of reasonably genuine-looking ones, in the employment eligibility verification process). 8 U.S.C. § 1324b(a)(1)(A), (a)(6). Therefore, an employer that rejects a document from any work-authorized individual simply because it contains a future expiration date may be committing unlawful document abuse.

We hope this information is of assistance to you. Please feel free to contact us through our toll free number at 1-800-255-8155 if you have any further questions.

Sincerely,



Seema Nanda
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