



How to Avoid Immigration-Related Discrimination when Complying with U.S. Export Control Laws

The purpose of this fact sheet is to help employers avoid discrimination under the Immigration and Nationality Act (INA) when complying with export control laws. Civil Rights Division investigations have found that employers violated the INA based on a misunderstanding of export control laws.

Under the **INA**, it is generally against the law for employers to:

- make hiring, firing, or recruiting decisions based on workers' citizenship, immigration status, or national origin
- treat workers differently based on these characteristics when verifying their permission to work, including during the Form I-9 and E-Verify processes

Note: This fact sheet only addresses discrimination under the INA. It doesn't address other local, state, or federal laws that may prohibit discrimination based on citizenship, immigration status, or national origin.

What are export control laws and regulations?

U.S. export control laws and regulations include:

- The International Traffic in Arms Regulations (ITAR)
- The Export Administration Regulations (EAR)

These regulations restrict an employer's ability to export certain goods and software, technology, and technical data (referred to here as export-controlled items). Under these regulations, **U.S. persons** working for U.S. companies can access export-controlled items without authorization from the U.S. government.

U.S. Persons include

- U.S. citizens
- U.S. nationals
- Lawful permanent residents
- Workers granted refugee status
- Workers granted asylum

In addition to U.S. citizens, U.S. persons include U.S. nationals, lawful permanent residents, and workers granted asylum or refugee status. But employers might need authorization from the appropriate federal agency to “export” (in lay terms, share or release) export-controlled items to workers who are not U.S. persons. Employers apply for such authorization from either the U.S. Department of State or the U.S. Department of Commerce, depending on the item.

Contact the Department of State’s [Directorate of Defense Trade Controls](#) for more information on the ITAR or the Department of Commerce’s [Bureau of Industry and Security](#) for more information on the EAR.

How can employers avoid unlawful discrimination when filling jobs that involve access to export-controlled items?

To avoid discriminating under the INA, employers generally should not limit hiring or recruiting based on:

- national origin
- citizenship status or immigration status, unless *required* by a law, regulation, government contract, or executive order

The ITAR and the EAR don’t contain employment or hiring requirements. So they don’t require employers or recruiters, including staffing agencies, to limit jobs or recruitment to U.S. citizens, or workers with other citizenship or immigration statuses.

Best Practices to Avoid Discrimination

- Don’t state in job advertisements or otherwise tell job applicants that export control regulations require applicants to have a specific citizenship, immigration status, or national origin.
- Don’t use the ITAR or the EAR as a reason to limit jobs to candidates with certain citizenships, immigration statuses, or national origins (for example, don’t limit jobs to U.S. citizens because the job involves accessing export-controlled items).
- When discussing export control requirements with job candidates and current employees, make clear that **U.S. persons** include more than U.S. citizens.

How can employers avoid unlawful discrimination when checking whether workers need export-control authorization?

To avoid discriminating under the INA, employers should not combine **export compliance assessment** with the **Form I-9 process**.

Because a worker who isn't a **U.S. person** might need authorization from the U.S. government to access export-controlled items, employers may need to do an **export compliance assessment** to check if a worker is a **U.S. person**.

Export compliance assessment is different than the process employers use to check an employee's permission to work in the United States.

The **Form I-9 process** requires employers to review documentation to check if someone they've hired has permission to work in the United States. The Form I-9 process isn't used to check proof of someone's citizenship or immigration status. Often, employees decide to show documentation during the Form I-9 process that doesn't reveal their citizenship or immigration status. The Form I-9 and any Form I-9 attachments should generally be used only for checking someone's permission to work.

During the Form I-9 process, workers are allowed to present Form I-9 documentation of *their choice* from the **Lists of Acceptable Documents**.

It is against the law if, during the Form I-9 process, an employer takes any of the following actions based on a worker's citizenship, immigration status, or national origin:

- limits a worker's choice of documents from the Lists of Acceptable Documents
- requests more or different documents than necessary
- rejects valid documentation that reasonably appears to be genuine

When employers combine export compliance assessment with the Form I-9 process to save time, they risk violating the INA. For instance, if during the Form I-9 process an employer requires workers to present documents to prove they are a **U.S. person**, this may impermissibly limit the choice of documentation workers may present to prove work

Export compliance assessment

usually involves asking workers to present documentation proving their citizenship or immigration status, to allow the employer to assess whether authorization is required.

Form I-9 Lists of Acceptable Documents

For the Form I-9, workers may show their choice of:

- one List A document, or
- a combination of one List B document and one List C document

regardless of their citizenship, immigration status, or national origin.

eligibility or result in unnecessary requests for additional documents. This employer could also end up rejecting valid documentation.

Best Practices to Avoid Discrimination

Reviewing documents for export compliance assessment or the Form I-9

- Only do export compliance assessment for those workers whose positions require working with export-controlled items.
- If you ask workers whose positions require working with export-controlled items to provide documentation of their citizenship or immigration status, let them know you are doing so to determine if export authorization is required.
- Separate export compliance assessment from the Form I-9 process. Workers may decide to show the same documentation for each process, but separating the processes avoids a worker believing they are being asked to prove their citizenship or immigration status for the Form I-9 process.
- Don't require workers to present Form I-9 documents that prove their U.S. citizenship, specific immigration status, or show that they fall within the categories of workers who are **U.S. persons** for export control purposes. Instead, allow workers to choose valid documentation to present from the **Lists of Acceptable Documents**.
- Don't mark the Form I-9 with notes or other information related to export control requirements.

Storing documents

- If you copy documents as part of export compliance assessment, store them separately from Forms I-9 and any I-9 attachment. If an employer attaches or stores export compliance assessment documents with the Form I-9, it may appear that the employer asked workers for specific or more documentation, or limited their choice of documentation, during the Form I-9 process.

Training

- Make sure that the people who handle hiring and onboarding processes receive training on discrimination based on citizenship, immigration status, and national origin.
- Clearly explain in any applicable policies and trainings that the Form I-9 process is separate from export compliance assessment, and each has different procedures, purposes, and requirements.

Questions?

- Call the Immigrant and Employee Rights Section Employer Hotline at 1-800-255-8155 (TTY 1-800-237-2515). Calls can be anonymous and language services are available.
- Visit [justice.gov/ier](https://www.justice.gov/ier) for webinars, educational documents, and frequently asked questions for employers/HR professionals. (Available in Spanish at [justice.gov/crt-espanol/ier](https://www.justice.gov/crt-espanol/ier)).

Additional Resources

- [Department of State Directorate of Defense Trade Controls](#)
- [Department of Commerce Bureau of Industry and Security - Information on Deemed Exports](#)