



U.S. DEPARTMENT OF JUSTICE  
IMMIGRANT & EMPLOYEE RIGHTS SECTION  
CIVIL RIGHTS DIVISION

## UNLAWFUL EMPLOYMENT DISCRIMINATION BASED ON CITIZENSHIP AND NATIONAL ORIGIN

**T**he U.S. Department of Justice Civil Rights Division's Immigrant and Employee Rights Section (IER) enforces a law that prohibits employers from discriminating against work-authorized individuals based on their citizenship, immigration status, or national origin. This law is known as the anti-discrimination provision of the Immigration and Nationality Act (INA) and can be found at [8 U.S.C. § 1324b](#) and the regulations are at [28 C.F.R. Part 44](#).

Under this law, the general rule is that employers are not allowed to hire, fire, or refuse to recruit or hire, a worker based on the worker's actual or assumed citizenship, immigration status, or national origin. 8 U.S.C. § 1324b(a)(1). Employers also are not allowed to treat workers differently for these reasons in the Form I-9 and E-Verify processes. 8 U.S.C. § 1324b(a)(6). This law also prohibits retaliation against workers. 8 U.S.C. § 1324b(a)(5).

IER investigates and prosecutes such claims of discrimination. Employers found to have discriminated may have to pay civil penalties and back pay to discrimination victims. 8 U.S.C. § 1324b(g)(2)(B).

### **Examples of unlawful discrimination in hiring and firing processes (8 U.S.C. § 1324b(a)(1)):**

#### **The employer makes hiring decisions based on national origin.**

In February 2018, IER settled a charge-based investigation after IER's investigation determined that a restaurant preferred to hire staff of Japanese or Korean national origin and denied employment to a qualified applicant with a different national origin. The employer paid the applicant back pay and, as part of the settlement, agreed to pay civil penalties and undergo IER training.

#### **The employer prefers to hire U.S. citizens without a law, regulation, government contract, or executive order that would require the restriction.**

In June 2018, an employer agreed to pay \$17,475 in civil penalties after IER's investigation concluded that the employer failed to consider non-U.S. citizen applicants and published job advertisements improperly restricting positions to U.S. citizens only.

#### **The employer hires temporary visa holders but rejects qualified and available U.S. workers who apply for the same jobs due to a hiring preference for visa holders.**

In June 2018, an employer agreed to pay up to \$85,000 in back pay to U.S. workers after IER determined through its investigation that the employer discriminated against U.S. workers in favor of H-2B temporary visa holders in the hiring process. The employer also agreed to pay \$15,600 in civil penalties and engage in enhanced recruiting efforts for U.S. workers.

#### **The employer prefers to hire undocumented workers instead of work-authorized individuals.**

In November 2010, an employer agreed to pay \$2,000 in back pay after IER's investigation determined that the employer terminated a lawful permanent resident in favor of an undocumented worker employed in the same position.

### **Examples of unlawful discrimination in the Form I-9 process (8 U.S.C. § 1324b(a)(6)):**

#### **The employer demands specific documents from non-U.S. citizen workers because of their citizenship or immigration status.**

In October 2015, an employer agreed to pay \$455,000 in civil penalties after IER, through its investigation, concluded that the company had a policy of requiring non-U.S. citizens to produce specific types of "List A" immigration documentation, such as a "green card," during the Form I-9 process before letting them begin work, while letting U.S. citizens choose which acceptable documents to present.

#### **The employer asks non-U.S. citizens and foreign-born citizens for more documents than needed to complete the Form I-9 because of their citizenship or immigration status.**

In December 2014, an employer agreed to pay over \$88,000 in civil penalties and almost \$120,000 in back pay to two discrimination victims, after an administrative law judge found that the company required foreign-born job applicants and employees to produce more, different, and specific documents to prove their employment eligibility verification, while native-born U.S. citizens were allowed to produce the documentation of their choice.

**The employer rejects valid employment authorization documents from non-U.S. citizens.**

In January 2016, IER settled a charge-based investigation after IER’s investigation concluded that the company improperly rejected a work-authorized non-U.S. citizen’s documents establishing employment authorization, even though it had routinely accepted such documents from U.S. citizens. Under the agreement, the employer paid back pay and civil penalties, and received training from IER.

**The employer demands that lawful permanent residents present a new “green card” when the card expires but does not make similar requests of U.S. citizens when their U.S. passports expire.**

In October 2017, an employer agreed to pay \$200,000 in civil penalties after IER’s investigation concluded that the employer, among other things, unnecessarily required lawful permanent residents (LPRs) to prove their work authorization again when their “green cards” expired, even though LPRs’ work authorization does not expire.

**Examples of unlawful discrimination in the E-Verify process (8 U.S.C. § 1324b(a)(1); 8 U.S.C. § 1324b(a)(6)):**

**The employer selectively terminates or suspends workers for whom it receives tentative nonconfirmations (TNCs), or otherwise interferes with the TNC resolution process, because of the workers’ citizenship or immigration status.**

In December 2012, an employer agreed to pay back pay to a naturalized U.S. citizen and a civil penalty after IER’s investigation concluded that the employer interfered with the individual’s ability to resolve her TNC by withholding E-Verify paperwork from the worker and requesting additional documentation because she was a naturalized U.S. citizen.

**The employer uses E-Verify to pre-screen workers selectively because of their citizenship or immigration status.**

An employer creates an E-Verify case for a refugee before the employer hires the worker and denies the refugee a job when E-Verify generates a TNC. The employer does not create E-Verify cases for native-born U.S. citizens before hire. Alternatively, the employer pre-screens every applicant through E-Verify but only eliminates from consideration non-U.S. citizens who receive a TNC.

**The employer uses E-Verify to confirm the continuing employment authorization of non-U.S. citizen workers not subject to reverification.**

In May 2013, an employer reinstated a number of workers the employer had terminated improperly. IER’s investigation determined that the employer attempted to reverify these workers’ employment authorization based on their citizenship status even though their employment authorization was not subject to reverification.

**The employer requires non-U.S. citizen workers to provide additional documentation to demonstrate work eligibility for E-Verify purposes because of their citizenship or immigration status.**

In February 2013, an employer agreed to pay \$8,400 in civil penalties after IER’s investigation concluded that the employer required non-U.S. citizens to produce their “green cards” for E-Verify purposes even though they had already produced other acceptable documentation for the I-9 process.

**Examples of unlawful retaliation (8 U.S.C. § 1324b(a)(5)):**

**The employer retaliates against a worker who asserts rights protected under the INA’s anti-discrimination provision.**

In October 2017, a staffing company agreed to pay the maximum civil penalty for retaliating against a worker. IER’s investigation determined that the company removed the worker from its pool of candidates for job placement after the worker complained about the employer’s request for a Permanent Resident Card during the employment eligibility verification process.

**The employer retaliates against a worker who files a charge with IER.**

In October 2015, an employer agreed to pay \$1,750 in civil penalties and \$15,000 in back pay to a work-authorized individual after IER’s investigation determined that the employer barred the worker from the company premises for filing a charge of discrimination with IER.

**Immigrant and Employee Rights Section (IER)**

**1-800-255-8155**

[www.justice.gov/ier](http://www.justice.gov/ier)

Calls can be anonymous and language services are available.

TTY 1-800-237-2515

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