



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

UNDERSTANDING THE INA'S ANTI-DISCRIMINATION PROVISION

The Department of Justice Civil Rights Division's Immigrant and Employee Rights Section (IER) enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), which prohibits employers from discriminating against U.S. citizens and other work-authorized individuals based on their citizenship status or national origin. This law is found at [8 U.S.C. § 1324b](#), and the regulations for this law are at [28 C.F.R. Part 44](#). This document discusses the types of discrimination that this law prohibits. This document also discusses some specific situations that arise.

Citizenship Status Discrimination

Generally, employers are not allowed to treat individuals differently in hiring, firing, recruitment or referral for a fee because of their citizenship status. 8 U.S.C. § 1324b(a)(1)(B). Citizenship status includes a person's current or prior immigration status. U.S. citizens, U.S. nationals, asylees, refugees, and recent lawful permanent residents are protected from citizenship status discrimination. You can find more information at 8 U.S.C. § 1324b(a)(3). For example, an employer cannot have a policy of only hiring U.S. citizens unless a law, regulation, government contract, or executive order requires the employer to limit the specific position to U.S. citizens. You can get more information about this exception at 8 U.S.C. § 1324b(a)(2)(C). An employer that believes a certain position requires it to hire someone with a specific citizenship or immigration status should carefully review the legal support for the requirement and this part of the law. This is rare and does not apply to the vast majority of jobs.

National Origin Discrimination

Employers are not allowed to treat individuals differently in hiring, firing, recruitment or referral for a fee because of their place of birth, native language, accent, or other national origin indicator. The INA prohibits national origin discrimination against any worker with the legal right to work in the United States at 8 U.S.C. § 1324b(a)(1)(A). Another law, Title VII of the Civil Rights Act, also prohibits national origin discrimination against all workers, regardless of their work-authorization status, at 42 U.S.C. § 2000e-2. IER investigates national origin discrimination claims against employers with four to 14 employees.

The Equal Employment Opportunity Commission (EEOC) investigates national origin discrimination claims against employers with 15 or more employees.

Unfair Documentary Practices

Employers are not allowed to request more or different documents than are required by law to verify employment eligibility, reject reasonably genuine-looking documents, or specify certain documents over others based on citizenship status or national origin. This type of discrimination typically occurs in the Form I-9 and E-Verify processes, which are discussed in more detail below. The part of the law that prohibits unfair documentary practices is found at 8 U.S.C. § 1324b(a)(6).

Retaliation/Intimidation

Individuals who file charges with IER, cooperate with an IER investigation, oppose what they reasonably believe are violations of the law that IER enforces, or otherwise assert their own or others' rights under the INA's anti-discrimination provision are protected from intimidation, threats, coercion, and retaliation. This part of the law is found at 8 U.S.C. § 1324b(a)(5).

Form I-9 Process

Employers verify employees' employment authorization by completing the Form I-9. During the Form I-9 process, a worker must show documentation establishing the worker's identity and permission to work. You can get more information on Form I-9 document requirements by contacting IER or USCIS, and at 8 U.S.C. § 1324a(b)(1)(A). The [Form I-9 Instructions](#) explain that the worker has the right to choose which valid documentation the worker wants to show. An employer is not allowed, based on the worker's citizenship status or national origin, to request more or different documents than are required to establish a worker's identity and eligibility to work in the United States, require a worker to show specific documents, or reject documents that appear to be reasonably genuine and relate to the employee. This part of the law is found at 8 U.S.C. § 1324b(a)(6). For example, many individuals including non-U.S. citizens have a driver's license and unrestricted Social Security card and may choose to present those documents. Employers may not ask for or require such individuals to present other documents to verify their work authorization.

You can get more information by contacting IER, at 8 U.S.C. § 1324b(a)(6), and at 8 U.S.C. § 1324a(b)(1).

Similarly, employers may not require non-U.S. citizens to produce “green cards” or U.S. citizens who appear “foreign” to produce birth certificates or U.S. passports. Get more information about unfair documentary practices by contacting IER and at 8 U.S.C. § 1324b(a)(6).

E-Verify

[E-Verify](#) is a government program that verifies a worker’s employment eligibility electronically, using information from the Form I-9. Sometimes E-Verify does not verify a worker’s employment eligibility right away and issues a “tentative nonconfirmation” (TNC). If a worker decides to take action in response to a TNC, E-Verify prohibits employers from firing, delaying the employment of, or taking any adverse action against, employees because they are contesting their TNCs. This part of the E-Verify law is found at 8 U.S.C. § 1324a note Sect. 403(a)(4), and more information is in the E-Verify [Memorandum of Understanding](#), Art. II.A ¶ 13. In addition, an employer that rejects a worker’s documentation or asks a worker who gets a TNC to provide additional documentation based on the worker’s citizenship status or national origin might be violating the INA’s anti-discrimination provision at 8 U.S.C. § 1324b(a)(6).

Asylees and Refugees

[Refugee and asylum status](#) is granted to citizens of other countries who have been persecuted or have a reasonable fear that they will be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. Refugees and asylees have permanent permission to live and work in the United States and are eligible for several acceptable documents for the Form I-9, such as an unrestricted Social Security card. You can get more information on the types of documents that asylees and refugees might show for the Form I-9 by contacting IER and in [USCIS’s Handbook for Employers \(M-274\), Section 7.3](#).

Temporary Protected Status (TPS)

[TPS](#) is a temporary immigration benefit that allows qualified individuals from certain countries to stay and work in the United States for a designated time period, due to conditions such as war, environmental disaster, or other extraordinary conditions in the designated country. Sometimes, TPS recipients receive an automatic extension of their Employment Authorization Documents (EADs) to allow sufficient time to process EAD renewal applications. You can find more information on TPS at www.uscis.gov/tps. For more information on automatic extensions of EADs, read this [USCIS Fact Sheet](#), the [Handbook for Employers on Completing the Form I-9 Section 4.2](#), and 8 C.F.R. 274a.2(b)(1)(vii). You can also call IER for more information.

Social Security Number/Name No-Match

Employers sometimes receive notices from a variety of sources that an employee’s name and Social Security number (SSN) do not match the records on file with either the Social Security Administration or an outside entity drawing on publicly available Social Security number data. SSN no-matches can happen for a number of reasons, including an unreported name change, typographical errors, or inaccurate employer records. As the Social Security Administration states in its [Employer Correction Request letter](#), employers should not use the mismatch by itself as a reason for taking any adverse employment action against any worker. Doing so may violate the anti-discrimination provision of the INA at 8 U.S.C. § 1324b.

Immigrant and Employee Rights Section (IER)

1-800-255-7688

www.justice.gov/ier

Calls can be anonymous and language services are available.

TTY-1-800-237-2515

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