

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into between Walmart Inc. (“Respondent”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (together, “the Parties”).

I. BACKGROUND

WHEREAS, on October 18, 2017, IER received a charge filed by [REDACTED] (“Charging Party”), DJ#197-73-545 (“IER Charge”), alleging that Respondent rejected her valid driver’s license and unrestricted Social Security card, and requested that she provide a Permanent Resident Card to complete the employment eligibility verification process, based on her status as a non-U.S. citizen, in violation of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b(a)(6);

WHEREAS, on October 27, 2017, IER notified Respondent that it had initiated an investigation of the IER Charge;

WHEREAS on February 27, 2018, IER notified Respondent that IER also had initiated an independent investigation, DJ#197-73-558 (collectively with the IER Charge investigation, “Investigations”), to determine whether Respondent had engaged in a pattern or practice of unfair immigration-related employment practices in violation of 8 U.S.C. § 1324b;

WHEREAS, IER concluded based upon its Investigations that there is reasonable cause to believe that from at least December 10, 2016, to at least October 27, 2017, an employee of Store 3044, located in Fort Worth, Texas, maintained a practice of requiring some non-U.S. citizen employees, but not similarly situated U.S. citizen employees, to produce a List A document issued by the U.S. Department of Homeland Security to verify their employment eligibility under 8 U.S.C. § 1324a(b), and the human resources manager for Market 50 did not intervene to correct the unlawful document requests when informed of the Charging Party’s situation;

WHEREAS, Respondent denies that it has discriminated against Charging Party or any other person in the employment eligibility verification process, affirms that it is committed to protecting the right to work of all its employees and to cooperating with IER to ensure appropriate training for the human resources staff in Respondent's Market 50, and contends that it has cooperated fully with the Investigations;

WHEREAS, Respondent previously reinstated the Charging Party and provided her \$1,944 in back pay for the work that she missed;

WHEREAS, the Parties wish to resolve the Investigations without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the Investigations as of the date of this Agreement, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the “Effective Date.” The term of this Agreement is two (2) years following the Effective Date.
2. Respondent shall pay to the United States Treasury One Thousand Dollars (\$1,000.00) pursuant to 8 U.S.C. § 1324b(g). Respondent shall pay the monies discussed in this paragraph via the FedWire electronic fund transfer system within fifteen (15) days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent shall confirm via email to Craig Fansler at Craig.Fansler@usdoj.gov that payment was made.
3. This Agreement resolves any and all differences between the parties with respect to the Investigations through the Effective Date. IER shall not seek from Respondent any additional civil penalty beyond that referenced in paragraph 2, for the policy of unfair documentary practices at Store 3044 in violation of 8 U.S.C. § 1324b(a)(6) that is the subject of the Investigations through the Effective Date.
4. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against applicants or employees based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, and employment eligibility verification or reverification (together, “EEV”) process.
5. Respondent shall avoid discrimination in the EEV process by (a) honoring documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (b) not requesting more or different documents than are required by law; (c) not rejecting valid documents due to an individual’s citizenship status, immigration status, or national origin, and (d) permitting all employees to present any document or combination of documents acceptable by law.
6. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in IER’s investigation or exercise of any right or privilege secured by 8 U.S.C. § 1324b.
7. For the term of this Agreement, if it does not already do so, Respondent shall post at all stores within its Market 50 the IER “If You Have The Right to Work” poster (“IER Poster”), in color and measuring no smaller than 8.5” x 11,” an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in all places where notices to employees and job applicants are normally posted. Respondent will post the IER Poster in English and Spanish.
8. Within sixty (60) days of the Effective Date, Respondent shall revise its employment policies, to the extent the policies may not already meet the requirements in this paragraph, to:

- a. Prohibit requesting more or different documents, specifying documents, or rejecting valid documents, because of an individual's citizenship, immigration status or national origin;
 - b. Remove all instructions in training materials that require or imply that Respondent must verify a new employee's Form I-9, Section 1 citizenship attestation, alien registration and/or USCIS number by reviewing documentation that confirms that information;
 - c. Prohibit any reprisal action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.
9. No later than April 30, 2019, all personnel in Respondent's Market 50 who have any responsibility for training, supervising, participating in, or completing any portion of the employment eligibility verification process (including the Form I-9) (collectively, "HR personnel") shall participate in additional training regarding proper Form I-9 procedures and complete a training assessment tool to ensure the effectiveness of the additional training. The additional training shall consist of one or more of the following, at Respondent's option: 1) for those HR personnel who have not already done so, participation in a free IER Employer/HR Representative webinar presentation, for which participants may register at <https://www.justice.gov/crt/webinars>; 2) self-guided study of the United States Citizenship and Immigration Services Handbook for Employers (M-274); and/or 3) additional study of Respondent's internal training materials regarding proper Form I-9 procedures.
- a. The training assessment tool shall require HR personnel to answer at least fifteen (15) multiple-choice assessment questions.
 - b. Respondent shall review and score each HR personnel's responses to the assessment questions, or may email the responses to IER for review and scoring within three (3) business days of the assessment's administration. If any HR personnel has selected an incorrect response, Respondent shall, within five (5) days of scoring the assessment or receiving the scores from IER, inform the individual that the answer is incorrect, administer the question(s) again, and require the individual to indicate where in the M-274, Form I-9 Instructions or Respondent's training materials the individual found the correct answer. Respondent will re-administer the assessment tool questions until each HR personnel submits correct responses.
 - c. Within one-hundred eighty (180) days of the Effective Date, Respondent shall provide (via email to craig.fansler@usdoj.gov or to any other individual IER designates) a list confirming and identifying by name, title, and store number the HR personnel who completed the assessment tool; the number of times each individual was administered the assessment until all items were answered

correctly; and identification of any assessment question which was incorrectly answered by a majority of the HR personnel who took the assessment.

10. During the term of this Agreement, IER may make reasonable requests for documents and information to determine Respondent's compliance with the Agreement, and will act in good faith to avoid any such requests imposing an undue burden on Respondent. Respondent will comply with IER's requests within a reasonable period of time not to exceed thirty (30) days unless Respondent provides specific written reasons prior to the twenty-first (21st) day as to why it cannot respond within that timeframe and provides another specific timeframe, not to exceed an additional thirty (30) days, within which it will respond, or state a good faith basis for why the request imposes an undue burden on Respondent. Notwithstanding this paragraph, IER retains all of the statutory rights to obtain documents and information that it would have absent this Agreement.
11. This Agreement does not affect the right of any individual alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices that are not encompassed within the Investigations or that arise after the Effective Date.

III. ADDITIONAL TERMS OF SETTLEMENT

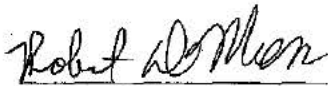
12. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the Investigations. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both Parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either Parties' right to argue that other terms in the Agreement are material.
13. This Agreement may be enforced in the United States District Court for the Northern District of Texas. This paragraph, or the initiation of a lawsuit to enforce the Agreement under this paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement.
14. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
15. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be

affected and the term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.

16. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
17. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by facsimile signatures.

Walmart Inc.

By:



Robert DeMoss
Vice President & General Counsel
Employment Division

Dated: 12/5/18

Immigrant and Employee Rights Section

By:



Jodi Danis
Special Litigation Counsel

Dated: 12/10/18

Liza Zamd
Acting Special Litigation Counsel

Craig G. Fansler
Trial Attorney

Katelyn Davis
Paralegal Specialist