



U.S. Department of Justice
Civil Rights Division

*Office of Special Counsel for Immigration Related
Unfair Employment Practices - NYA
950 Pennsylvania Avenue, NW
Washington, DC 20530*

DEC 29 2009

Via First Class Mail and Email (luried@gtlaw.com)

Dawn M. Lurie, Esq.
GreenbergTraurig
1750 Tysons Boulevard, Suite 1200
McLean, Virginia 22102

Dear Ms. Lurie:

Thank you for your letter to the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), seeking guidance on the impact of the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b, on an "Identity Theft ID Quiz" your client wishes to implement. Please pardon our delay in responding.

Your letter states that your client wishes to "implement a process by which an individual's identity is confirmed in part through the use of an identity-verifying test or 'quiz'" in order to prevent identity fraud by prospective or newly hired employees. You state that the quiz would call on an individual to answer a series of questions that draw from the individual's publicly available personal information, such as the individual's mortgage holders, previous addresses, and other information that only the individual should know about himself or herself. Individuals who do not pass the quiz would have an opportunity to take the quiz again or otherwise demonstrate their identity. The quiz would be administered consistently to all applicants or newly hired employees, and your client intends to provide interpretation services as needed. You ask OSC whether such a process may occur at the application stage or after the hiring decision is made, whether the quiz may ask an individual to provide or confirm part of his or her Social Security Account number, and whether any information needs to be excluded from the quiz.

OSC is responsible for eliminating national origin and citizenship status discrimination in the workplace, as well as discriminatory documentary practices in the employment eligibility verification process ("document abuse"), and retaliation under the anti-discrimination provision of the INA. This office cannot give you an advisory opinion on any set of facts involving a particular individual or company. However, we can provide some general guidelines regarding compliance with the anti-discrimination provision of the INA.

Citizenship status discrimination under the anti-discrimination provision of the INA

occurs when protected individuals are not hired because of their real or perceived immigration or citizenship status, or because of their type of work authorization. Under the INA, U.S. citizens and nationals and certain documented immigrants, including asylees, refugees, and recent lawful permanent residents, are protected from citizenship status discrimination. 8 U.S.C. § 1324b(a)(3).

National origin discrimination occurs when employment decisions are made based on an individual's place of birth, country of origin, ancestry, native language, accent, or based on a perception that an individual looks or sounds "foreign." All work authorized individuals are protected from national origin discrimination under the INA. See 8 U.S.C. §§ 1324b(a)(1)(A) and (a)(6). Whereas the INA's prohibition against national origin discrimination covers employers with 4 to 14 employees, Title VII prohibits national origin discrimination by employers with 15 or more employees. Title VII prohibits both intentional discrimination as well as employment practices that are neutral on their face but discriminatory in effect. See Griggs v. Duke Power Co., 401 U.S. 424 (1971).

Your description of the "identity-verifying quiz," even if administered consistently without regard to national origin, citizenship status, or other prohibited bases, raises several questions. For example, it is unclear how the process you have described will affect newly-arrived, work-authorized immigrants (e.g., refugees) whose personal information may not yet be found in publicly-available databases. Further, is it unclear whether certain work-authorized individuals may be subjected to a higher database error rate due to citizenship status (e.g., newly-naturalized citizens), cultural naming conventions, or other circumstances (e.g., women who are recently married or divorced, etc.).

I hope this response will be of some assistance to you. For further information on the INA's anti-discrimination provision, please feel free to consult OSC's website at <http://www.usdoj.gov/crt/osc/>, or call OSC at 1-800-255-8155.

Sincerely,

Katherine A. Baldwin
Deputy Special Counsel