



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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April 4, 2013

By First Class Mail & Email (arodriguez@acttoday.com)

Arnold Rodriguez
Human Resources Manager
Advanced Call Center Technologies
712 Morgan Blvd. Suite 114
Harlingen, TX 78550

Dear Mr. Rodriguez:

This letter responds to your email dated December 19, 2012, to the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). We apologize for our delay in responding to your inquiry. In your email, you ask whether it is a discriminatory practice to change an applicant's last name—such as removing the hyphen from the hyphenated name of an individual from a Latin American country—when submitting the applicant's name for a criminal background check. You explain that you rely on the applicant's Social Security card and "ID (usually Texas issued ID)" to establish the applicant's name for the criminal background check. You also state that "[t]he I-9 procedure is appropriately followed and the applicant is asked to provide acceptable identification documentation."

Please note that OSC cannot provide an advisory opinion on any set of facts involving a particular individual or entity. We can provide, however, some general guidelines regarding the anti-discrimination provision of the Immigration and Nationality Act (INA) enforced by OSC, 8 U.S.C. § 1324b, and employer actions under that provision. The anti-discrimination provision prohibits four types of employment-related discrimination: citizenship or immigration status discrimination; national origin discrimination; unfair documentary practices during the employment eligibility verification process ("document abuse"); and retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision. 8 U.S.C. § 1324b.

You have indicated that your company changes an applicant's name to lead to a favorable criminal background check result. We cannot offer you an advisory opinion as to whether adopting a practice of changing an applicant's name for criminal background check purposes could constitute a violation of the anti-discrimination provision. We note that treating people differently in the hiring process based on country of origin may constitute discriminatory treatment in the hiring process. To the extent that you are treating hyphenated names differently in the criminal background check process on the basis of the applicant's actual or perceived national origin, and such treatment results in the applicant failing the background check and

being rejected for employment, the applicant may perceive that his or her national origin played a role in the rejection. Applicants who believe that they have been discriminated on the basis of national origin may file a charge of discrimination with their local or state civil rights agency as well as with OSC or with the Equal Employment Opportunity Commission. If, as you have indicated, the hyphenated name needs to have the hyphen removed to clear the background check, you may wish to consider adopting a standard policy on how to treat all hyphenated names, regardless of national origin, to avoid the perception of having a different policy based on national origin or citizenship status. Although you do not indicate whether an applicant can be run through the background check multiple times, you may wish to consider adopting a policy where applicants agree to have their name run in a certain manner, or to be run through the background check process using different name combinations if necessary to achieve an accurate background check result.

With respect to your statement that “applicants” are asked to provide acceptable identification documentation in connection with the Form I-9, it is unclear whether your company is asking applicants, rather than new employees, to complete Forms I-9. Please note that you may not ask an applicant to complete a Form I-9 or request documents related to the Form I-9 process until you have offered the applicant a job and the applicant has accepted your job offer. *See Handbook for Employers: Instructions for Completing Form I-9*, www.uscis.gov/files/form/m-274.pdf, p. 3. Further, all employees have the choice of which documentation to present to satisfy the requirements of the Form I-9, and employers may not specifically require any particular documentation to be presented. *See id.*, pgs. 5, 31-32.

If you have further questions that pertain to the anti-discrimination provision of the INA, please contact OSC’s employer hotline, 1-800-255-8155, or visit OSC’s website at www.justice.gov/crt/about/osc. We hope this information is helpful and thank you for contacting OSC.

Sincerely,



Seema Nanda
Deputy Special Counsel