



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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August 13, 2013

Via Email (pcronican@greenhall.com)

Patrick Cronican

GREEN & HALL, APC

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Roseville, CA 95661-4216

Dear Mr. Cronican:

This is in response to your email of June 10, 2013 to the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). We apologize for the delay in responding to your request. We understand that you represent a business that has been retained as a subcontractor on a construction project. You state that "the general contractor on the project is requiring that all employees of [your] client present the original documents (i.e. passport, DL, etc.) that were provided to [your] client during the I-9 verification process before they are allowed to commence their work on the project."

Specifically, you pose the following questions: (1) "whether the general contractor's practice of requiring [your] client's employees to produce their original documents evidencing authorization to work (that were previously presented and attested to by [your] client) is permitted"; and (2) "if this practice is not allowed, what remedies are available to [your] client?"

Please note that OSC cannot provide an advisory opinion on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding employer compliance with the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, enforced by OSC, 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 (I-9 and E-Verify) 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. For more information on OSC, please visit our website at: <http://www.justice.gov/crt/about/osc/>.

As you may know, an employer must complete the Form I-9 each time it hires any person to perform labor or services in the United States in return for wages or other remuneration. See 8 U.S.C. § 1324a(a)(1)(B); 8 C.F.R. §§ 274a.2(b)(1)(i) and (ii). Employers must have new hires complete Section 1 of the Form I-9 at the time of hire

and must then review documentation presented by the employee *within three days of hire* in order to complete Section 2 of the Form I-9. See Form I-9 Instructions, page 3. If a general contractor were to ask an employee of a subcontractor to produce such documents a second time, this could present a number of problems. Given the passage of time that likely would have transpired from when an employee was initially hired by a subcontractor, such as your client, to when the general contractor is requesting to see the employee's I-9 documentation, the employee may no longer have the documents originally presented for a number of reasons not limited to but including: (1) the document(s) has expired and the employee now has a newer version of the originally presented document(s); (2) the employee has a different document due to adjustment of immigration status (i.e., from a lawful permanent resident to a U.S. citizen) and has forfeited his or her originally presented document; or (3) the document has been lost, stolen or misplaced. To the extent such individuals are barred from employment, they may perceive that the general contractor and/or subcontractor has discriminated against them based on their citizenship or immigration status. Because the proposed practice relates to the original I-9 verification process, such employees might also allege discriminatory I-9 practices in violation of the anti-discrimination provision.

Regarding your inquiry about remedies available to the subcontractor, this does not raise issues within our authority. If you have further questions, please call OSC's toll-free hotline (1-800-255-8155) or visit OSC's website.

Sincerely,



Seema Nanda
Deputy Special Counsel