



**U.S. Department of Justice**

**Civil Rights Division**

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*Office of Special Counsel for Immigration-Related  
Unfair Employment Practices - NYA  
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February 7, 2014

Via E-Mail ([binshteynn@gtlaw.com](mailto:binshteynn@gtlaw.com))

Nataliya Binshteyn, Esq.  
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Suite 1200  
McLean, VA 22102

Dear Ms. Binshteyn:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to your email to Byron Wong, dated January 8, 2014. For future reference, you may wish to email written inquiries to OSC's email inbox at [oscrt@usdoj.gov](mailto:oscrt@usdoj.gov).

In your email and follow-up clarification, you ask several questions pertaining to "Driver Authorization/Driver Privilege Cards," which you describe as cards issued by states "to individuals who are unable to document proof of lawful status," often to individuals who are not authorized to work in the United States. You further explain that "different States currently or may in the future have different formats for these documents and/or annotations that specifically reference whether such documents are acceptable for federal identification purposes on the face of the documents." Specifically, you ask whether: (1) such cards "constitute acceptable List B documents to evidence identity during the Form I-9 completion process;" (2) an employer may employ an individual who presents this type of card given that "such documents are statistically issued to predominantly undocumented individuals;" and (3) an employer employing an individual who has shown this type of card for I-9 or other purposes might be deemed to have knowingly employed an individual who is not authorized to work in the United States.

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits citizenship or immigration status discrimination, national origin discrimination, unfair documentary practices ("document abuse") during the employment eligibility verification (Form I-9) process, and retaliation for filing a charge or asserting rights under the anti-discrimination provision. More information on OSC, including a number of OSC technical assistance letters on the topic of pre-employment inquiries, can be found on our website: [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc).

Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are pleased to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA, 8 U.S.C. § 1324b.

As a preliminary matter, we note that states offering the types of driver's licenses and identification cards you refer to may or may not make those cards distinguishable in appearance from standard driver's licenses and identification cards, and states may vary in the documentation and information required in order to issue such cards. Regarding whether such driver's licenses and identification cards constitute acceptable List B documents, we note that U.S. Citizenship and Immigration Services ("USCIS") within the Department of Homeland Security publishes the Form I-9 and accompanying guidance. According to the Form I-9 Lists of Acceptable Documents, a "driver's license or ID card issued by a State or outlying possession of the United States [satisfies the criteria to be considered a List B document] provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address." OSC is unaware of any publicly available guidance issued by USCIS addressing your specific question. You may wish to contact USCIS directly by calling the USCIS Verification Division employer hotline at 1-888-464-4218, or by sending an email to [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov).

To the extent a driver's license or state identification card presented for I-9 purposes satisfies the criteria to be considered a List B document, and is paired with an unexpired List C document, an employer is cautioned against concluding that an individual is not legally authorized to work in the United States based on a perception that a List B document is "statistically issued to predominantly undocumented individuals." An employment-authorized individual whose List B document was rejected because an employer made this assumption may allege discrimination on the basis of national origin or citizenship status in violation of the anti-discrimination provision by filing a discrimination charge with OSC.

Finally, for guidance about the prohibition on knowingly employing an individual who is not authorized to work in the United States in violation of 8 U.S.C. § 1324a, we direct you to Immigration and Customs Enforcement ("ICE") within the Department of Homeland Security. Information about ICE's worksite enforcement activities can be found at [www.ice.gov/worksite](http://www.ice.gov/worksite), and contact information for Special Agent in Charge field offices can be found at [www.ice.gov/contact](http://www.ice.gov/contact).

We hope this information is of assistance to you. Please feel free to contact us through our toll free number at 1-800-255-8155 if you have any further questions.

Sincerely,



Alberto Ruisanchez  
Acting Deputy Special Counsel