

Retail Detail



EEOC Issues New Guidance On National Origin Discrimination For First Time In Fourteen Years

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Seyfarth Synopsis: On November 18, 2016, the EEOC issued new guidance on its enforcement of anti-discrimination laws related to national origin. The guidance provides clarification on the scope of national origin under Title VII and supersedes the 2002 update to the EEOC Compliance Manual, Volume II, Section 13.

Immigration, and thus the number of employed immigrants, has been steadily rising. In the wake of this increase in national origin diversity within the workplace, the EEOC issued an updated guidance to inform both employers and employees how it interprets, approves, and/or disapproves of court interpretation of national origin discrimination cases. Tellingly, this is the EEOC's first update to its [national origin guidance](#) since 2002, which reflects the EEOC's current focus on national origin discrimination, harassment, and retaliation.

The guidance clarifies the definition of "national origin," and what constitutes discrimination based on "place of origin" and "ethnicity" under Title VII of the Civil Rights Act of 1964:

- National Origin: "discrimination because an individual (or his or her ancestors) is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group."
- Employment Discrimination Based on Place of Origin: "discrimination 'because of an individual's, or his or her ancestor's, place of origin.' The place of origin may be a country . . . may be the United States . . . may be a geographic region, including a region that was never a country but nevertheless is closely associated with a particular national origin group."
- National Origin Group/Ethnic Group: "a group of people sharing a common language, culture ancestry, race, and/or other social characteristics." This includes discrimination based on ethnicity and physical, linguistic or cultural traits.

The EEOC has also added Native American, or tribe members, to the definition of national origin. The guidance then provides an analysis of the intersection of national origin discrimination and other protections under Title VII such as race, color and religion.

The guidance further includes a non-inclusive list of all aspects of employment to which Title VII applies, as well as a list of "promising practices" or employment practices which "may help reduce the risk of violations." Some highlights include:

- Recruitment: "use a variety of recruitment methods to attract as diverse a pool of job seekers as possible."
- Hiring, Promotion and Assignment: establish "written objective criteria for evaluation candidates; communicating the criteria to prospective candidates; and applying those criteria consistently to all candidates."

- Discipline, Demotion, and Discharge: develop “objective, job-related criteria for identifying the unsatisfactory performance or conduct that can result in discipline, demotion, or discharge.”
- Harassment: communicate clearly “to employees through policies and actions that harassment will not be tolerated and that employees who violate the prohibition against harassment will be disciplined.”

Other areas the new guidance covers are national origin as it relates to human trafficking, harassment, language barriers, citizenship, retaliation and foreign employers in the United States.

Lastly, the EEOC has also published a [FAQ](#) to be used in conjunction with the guidance and a small business [fact sheet](#).

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