

Alert

EEOC Issues New Guidance on National Origin Discrimination

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The U.S. Equal Employment Opportunity Commission (the “EEOC”) recently issued new guidance on national origin discrimination (the “Guidance”), updating its previous guidance on the topic for the first time since issuing a 2002 compliance manual. The [Guidance](#), coupled with a [Q&A](#) and [fact sheet](#) for small businesses, addresses uncertainties that have developed in the law.

The Guidance modernizes the definition of national origin discrimination to include treating an employee or job applicant differently because he or she has the physical, cultural or linguistic characteristics of a national origin group. Additionally, while in the past federal courts have failed uniformly to conclude that national origin discrimination includes an individual’s perceived ethnicity or national origin, the Guidance affirms the EEOC’s current position that treating an employee or job applicant differently because he or she is perceived to have a particular national origin is discrimination.

The Guidance also interprets Title VII to prohibit discrimination because of an individual’s association with someone of a particular national origin. For example, it is unlawful to discriminate against an employee or job applicant because he or she has a child with someone of a different ethnicity.

Employers must be careful in implementing “English-only” policies. The EEOC reasons that restrictive language policies implicate national origin discrimination because of the strong nexus between language and ethnic identity. The Guidance also explains when an employment decision may legitimately be based on an individual’s accent. For an employer to make an employment decision based on one’s accent, the employer must demonstrate that the accent “interferes materially with job performance.” To overcome this standard, an employer must show that: “(1) effective spoken communication in English is required to perform job duties; and (2) the individual’s accent materially interferes with his or her ability to communicate in spoken English.”

The Guidance addresses how national origin discrimination interacts with workplace harassment, offering hypotheticals as to what is and what is not conduct that creates a hostile work environment based on national origin. The Guidance offers “promising practices” for employers to adopt to reduce the risk of Title VII violations based on national origin discrimination. Among the “promising practices,” the EEOC recommends that employers:

- Use a variety of recruitment tools to attract a diverse group of applicants;
- Establish written objective criteria for evaluating candidates;
- Establish objective, job-related criteria aimed at identifying conduct that can result in discipline; and
- Clearly communicate to employees through policies, actions and trainings that harassment based on national origin will not be tolerated.

Employers are advised, in light of the increasing emphasis on diversity in the workplace, to consider their responsibilities with respect to national origin discrimination, and examine their materials, policies, trainings and recruitment processes to ensure compliance.

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