

● **IMMIGRATION AND NATIONALITY ACT (*IMMIGRATION-RELATED EMPLOYMENT DISCRIMINATION*)**

STATUTORY CITATION: 8 USC § 1324b

RELATED REGULATIONS: 28 CFR Parts 0 and 44

GENERAL SUMMARY: As amended in 1986, the Immigration and Nationality Act outlaws certain forms of employment discrimination based on national origin or citizenship status, prohibitions which apply equally to agricultural and non-agricultural employers.

SPECIFIC TERMS AND CONDITIONS

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES — In general, no one who employs more than 3 employees may discriminate against any individual (other than an undocumented worker) with respect to hiring, firing, job recruitment or job referral, when such discrimination is because of the individual's national origin or the individual's status as (1) a U.S. citizen, or (2) a lawfully admitted permanent resident who applied for U.S. citizenship within 6 months of becoming eligible but has not yet been naturalized and is still within the prescribed 2-year window after application.

EXCEPTION — It is not regarded as unlawful for an employer or other entity to prefer to hire, recruit or refer a U.S. citizen over a non-citizen, if the two individuals are equally qualified.

COMPLAINTS — A person (or the authorized representative of a person) who has been subjected to an apparent act of unfair immigration-related employment discrimination may, within 180 days after the act occurs, file a written charge of violation with the enforcement agency. Within 120 days after receipt of the worker's charge, the agency must undertake an investigation and determine whether or not to file a formal complaint against the respondent. In the event the agency fails to file a complaint with an administrative law judge within 120 days after timely receipt of a worker's charge of unfair immigration-related employment discrimination, the worker has 90 days from the end of the 120-day period to file the complaint with an administrative law judge directly. A finding by an ALJ that the person named in the complaint has, in fact, engaged in an illegal act of employment discrimination will generally result in an order requiring the person to cease the unlawful practice. The order may also compel the respondent to hire or rehire the complainant and any other worker adversely affected by the violation, with or without back pay.

SPECIAL NOTES OR ADVISORIES

RETALIATION — It is illegal for anyone to intimidate, threaten or retaliate against a person because the person has filed a complaint, participated in an investigation, or exercised or attempted to exercise any other right under these provisions.

PREEMPTION OF JURISDICTION — The Immigrant and Employee Rights Section will not accept any complaint regarding an unfair immigration-related employment practice if the same complaint has been filed with the Equal Employment Opportunity Commission under the Civil Rights Act of 1964, unless the charge has been dismissed by the EEOC as outside the scope of that law. Charges filed incorrectly with either agency will be forwarded to the other.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Immigrant and Employee Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530 (202-616-5594; toll-free 800-255-7688)*. This agency is responsible for investigating charges and prosecuting administrative complaints relating to unfair employment practices under the Immigration and Nationality Act. The agency's Special Counsel for Immigration-Related Unfair Employment Practices and the agency's hearing officers are authorized to examine evidence and subpoena witnesses in connection with the investigation of charges or any related hearing. Employers and other entities found out of compliance with the Act's anti-discrimination provisions are subject to civil money penalties of up to \$2,000 for each individual adversely affected by the first violation, and up to \$5,000 per individual for the second violation.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None.*