

FEDERAL EMPLOYMENT DISCRIMINATION LAWS

June 2009

	Immigration and Nationality Act	Title VII	Americans with Disabilities Act	Age Discrimination in Employment Act	National Labor Relations Act	Family and Medical Leave Act
Enforcement Agency	Office of Special Counsel	EEOC	EEOC	EEOC	NLRB	DOL
What Is Covered?	<ul style="list-style-type: none"> • Citizenship discrimination • National origin discrimination • Document abuse 	Race, gender (includes sexual harassment), national origin (includes language discrimination), and religion.	Physical and mental disabilities.	Age (40+ years).	Right to engage in concerted activities, including the right to join or assist a union; right to bargain collectively.	Serious health condition of self or family member.
Minimum Number of Employees	<ul style="list-style-type: none"> • Citizenship discrimination: 4+ • Document abuse: 4+ • National origin: 4-14, and those not covered by Title VII because workforce is seasonal 	15+ employees for at least 20 out of 52 weeks in either the current or preceding year.	15+ employees for at least 20 out of 52 weeks in either the current or preceding year.	20+ employees.	None; but employer's business must have an impact on interstate commerce.	50 people within 50 mile radius.
Who Is Covered?	<p><u>Citizenship:</u></p> <ul style="list-style-type: none"> • Citizens • Lawful permanent residents who apply for citizenship within 6 months of being eligible for naturalization • Lawful temporary residents • Refugees • Asylees <p><u>National origin and document abuse:</u></p> <ul style="list-style-type: none"> • Citizens/nationals • Work-authorized 	<p>All employees, regardless of immigration status.</p> <p><u>See <i>Rivera v. NIBCO, Inc.</i></u>, 364 F.3d 1057 (9th Cir. 2004).</p> <p><u>But see <i>Egbuna v. Time Life</i></u>, 153 F.3d 184 (4th Cir. 1998), which held that an individual without work authorization was not "qualified" for job and therefore the employer's refusal to rehire him was not prohibited by Title VII.</p> <p><i>Egbuna</i> has been distinguished in cases where individual's qualification for employment not at issue, as where employee subsequently gained work authorization (<i>Escobar v. Spartan Sec. Serv.</i>, 281 F. Supp. 2d 895 (S.D. Tex. 2003)) or where employer and employee anticipated that their efforts</p>	<p>All employees, regardless of immigration status.</p> <p><u>But see <i>Lopez v. Superflex</i></u>, 2002 U.S. DIST. LEXIS 15538 (S.D.N.Y. 2002), calling into question whether an undocumented worker can bring an ADA claim.</p>	<p>All employees, regardless of immigration status.</p> <p><u>But see <i>Reyes-Gaona v. North Carolina Growers' Assn.</i></u>, holding that ADEA does not extend to foreign national applying for an H-2A job because he was not authorized to work and therefore not covered.</p>	<p>All employees, regardless of immigration status.</p> <ul style="list-style-type: none"> • worked for employer for at least 12 months, or • worked at least 1,250 hours during the last 12 months before the leave. 	

ABBREVIATIONS: EEOC: U.S. Equal Employment Opportunity Commission • DOL: U.S. Department of Labor • NLRB: National Labor Relations Board



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		would lead to work authorization for employee (<i>Olvera-Morales v. Int'l Labor Mgmt. Corp.</i> , 322 F.Supp.2d 211 (M.D.N.C. 2008).				
Filing Deadline or Statute of Limitations	180 days from the discriminatory act.	180 days from the discriminatory act; deadline can be extended to 300 days if a state or local antidiscrimination law also covers the charge.	180 days from the discriminatory act; deadline can be extended to 300 days if a <i>state</i> or <i>local</i> antidiscrimination law also covers the charge.	180 days from the discriminatory act, which can be extended to 300 days if a <i>state</i> antidiscrimination law also covers charge.	180 days from the unlawful act.	2 years after the earliest discriminatory act; 3 years if willful violation.
Actions Covered	<ul style="list-style-type: none"> • Hiring • Firing • Recruitment (referral for a fee) • Retaliation 	<ul style="list-style-type: none"> • Hiring • Firing • Recruitment • Promotion • Pay & fringe benefits • Terms & conditions • Retaliation 	<ul style="list-style-type: none"> • Hiring • Firing • Recruitment • Promotion • Pay & fringe benefits • Terms & conditions • Retaliation 	<ul style="list-style-type: none"> • Hiring • Firing • Recruitment • Promotion • Pay & fringe benefits • Terms & conditions • Retaliation 	<ul style="list-style-type: none"> • Hiring • Firing • Promotion • Threats • Pay & fringe benefits • Terms & conditions • Retaliation 	<ul style="list-style-type: none"> • Retaliation • Firing • Benefits during leave
Possible Relief	<ul style="list-style-type: none"> • Hiring • Reinstatement • Back pay • Attorney fees • Injunctive relief (OSC can educate personnel, correct personnel files, lift restrictions on job assignments) • Civil fines paid to government 	<ul style="list-style-type: none"> • Hiring • Reinstatement (cannot subject employer to IRCA violation) • Front pay (maybe not for undocumented) • Back pay (maybe not for undocumented) • Attorney fees • Promotion • Injunctive relief to “make worker whole” • Compensatory and punitive damages 	<ul style="list-style-type: none"> • Hiring • Reinstatement (cannot subject employer to IRCA violation) • Front pay • Back pay (maybe not for undocumented) • Attorney fees • Promotion • Injunctive relief to “make worker whole” • Liquidated damages in cases of willful violations 	<ul style="list-style-type: none"> • Hiring • Reinstatement (cannot subject employer to IRCA violation) • Front pay • Back pay (maybe not for undocumented) • Attorney fees • Promotion • Injunctive relief to “make worker whole” • Compensatory and punitive damages 	<ul style="list-style-type: none"> • Hiring (cannot subject employer to IRCA violation) • Reinstatement (if work authorized) • Back pay (not for undocumented – <i>Hoffman Plastic Compounds, Inc. v. NLRB</i>, 535 U.S. 137 (2002)); however, has been found to be available where employer was aware of lack of work authorization and employees did not present false documents (<i>Mezonos Maven Bakery, Inc. and Puerto Rican Legal Defense and Education Fund</i>, 2006 WL 3196754, No. 29-CA-25476 (ALJ Dec. Nov. 1, 2006)(pending on appeal before NLRB)) • Injunctive relief • Contempt sanctions • Posting of notice • Other extraordinary relief available 	<ul style="list-style-type: none"> • Reinstatement • Promotion • Wages, benefits, compensation lost • Double damages • Liquidated damages • Attorney fees

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