

CITIZENSHIP DISCRIMINATION

WEI LIN, MARY, AND ARMANDO ALL have legal work authorization documents. Wei Lin is a lawful permanent resident from China. She has a “green card.” Mary and Armando are U.S. citizens, but Armando is a naturalized U.S. citizen and has a U.S. passport.

All three workers applied for jobs at Bob’s Computer Technology Company. A sign in the company’s personnel office said “U.S. Citizens Only.” Bob told the workers he had to check their work papers. The workers showed him their papers. Bob hired only Mary, the U.S.-born citizen. He told Armando that he had “checked” with the Department of Homeland Security (DHS) and they could not verify that he was a U.S. citizen. Bob didn’t give Armando any paperwork to show that he had “checked” his documents. He didn’t give Wei Lin any explanation for why he didn’t hire her.

Wei Lin and Armando called the Office of Special Counsel for Immigration Related Unfair Employment Practices for help. (This office, which is also known as OSC, is a government agency that looks into charges of immigration-related job discrimination. It has a toll-free number you can call: 1-800-255-7688.)

The OSC called Bob, the employer, and after they talked, Bob decided to hire Wei Lin once OSC explained that he cannot have a “Citizens Only” policy, except under very limited circumstances. Bob also decided to pay Wei Lin the wages she lost because he had illegally discriminated against her based on her citizenship status. OSC also found that the company was participating in the DHS electronic employment eligibility verification program, known as E-Verify, and that Bob had received a tentative non-confirmation from the program regarding Armando’s work authorization. OSC explained that as a participating employer in the E-Verify program, Bob is required to post a notice advising workers that his company is participating in E-Verify as well as an OSC poster explaining workers’ rights. OSC also explained that Bob may not use E-Verify for job applicants, but rather, only for newly hired employees. Finally, OSC explained that once a new hire is run through E-Verify, Bob is required to provide a copy of a tentative non-confirmation document to the employee so that he can correct any discrepancy with the appropriate government agency. After they talked, Bob hired Armando.

What Is Citizenship Status Discrimination?

WHEN AN EMPLOYER TREATS YOU differently from other workers because of your citizenship or immigration status, this can be citizenship status discrimination. A law protects workers who have legal work papers against citizenship status discrimination.

But the same law also requires employers to make sure that workers are legally eligible to work. To do this, the employer must fill out a special form for each person hired. This form is called the I-9 Employment Eligibility Verification Form.

In completing the I-9 Form, you must show the employer documents that prove your identity and your employment eligibility (legal work papers).

Some employers also participate in the Department of Homeland Security's (DHS) electronic employment eligibility verification program, also known as E-Verify. This program is a voluntary internet-based system that allows employers to verify workers' employment authorization documents with the DHS and the Social Security Administration (SSA). Employers cannot use E-Verify to pre-screen workers and can only use the program after hiring the worker and after completing the I-9.

If E-Verify cannot confirm that the employee is authorized to work, the employer receives a "tentative nonconfirmation." If the employer accurately entered the worker's information into the system, the employer must inform the worker and give the worker an opportunity to challenge the tentative nonconfirmation. If the worker decides to contest the discrepancy, the employer must provide the employee with a referral notice (generated by E-Verify) that provides specific instructions for the employee to contact SSA or DHS. The worker then has 8

federal government work days to contact the agency to begin resolving the discrepancy.

Many employers are confused about whom they can hire and are afraid of being fined by the government for knowingly hiring undocumented workers. Some employers will not hire workers who are not U.S. citizens, which is illegal in most cases.

THESE ARE EXAMPLES OF ILLEGAL CITIZENSHIP OR IMMIGRATION STATUS DISCRIMINATION:

1. Employer has a "citizens only" hiring rule

Example: Fly High Airline says it only will hire flight attendants who are U.S. citizens. The airline refuses to hire May Ling because she is not a citizen. But May Ling is a lawful permanent resident and has the right to live and work in the U.S. The airline has illegally discriminated against May Ling based on her citizenship status, unless its citizens-only hiring policy is required to comply with law, regulation, executive order, or government contract.

2. Employer has a "green card only" hiring rule for immigrants
Example: Mustafa is hiring Ruby for a job at a retail store and is filling out the I-9 form. He asks Ruby to show him her green card. Ruby explains she does not have a green card, though she does have other authorization to work because she has Temporary Protected Status (TPS). Mustafa decides not to hire Ruby. He has illegally discriminated against Ruby because of her citizenship or immigration status.

WHAT SHOULD YOU DO IF AN EMPLOYER HAS DISCRIMINATED AGAINST YOU?

If you are lawfully authorized to work and think you have been discriminated against, get help right away. The deadline for filing this type of discrimination complaint against employers is 180 days after the discrimination happened. Try to find a local legal aid office or community agency that will help you.

A government agency in Washington, D.C., also helps workers who think they have been discriminated against. It is called the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or OSC for short. The OSC will help you free of charge.

THE OSC HAS A FREE TELEPHONE NUMBER YOU CAN CALL

The OSC's free worker hotline is 1-800-255-7688. (The TDD number for the hearing-impaired is 1-800-237-2515.) Call the OSC hotline if you think an employer discriminated by:

- Not hiring you because you are or are not a U.S. citizen
- Not accepting your legal work papers
- Treating you differently because you were born in another country or you look or sound "foreign"

You also can write the OSC at:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair
Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530