

California Enacts New Protections Against National Origin Discrimination

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The California Office of Administrative Law recently approved new amendments to the California Fair Employment and Housing Act (“FEHA”), strengthening the protections afforded to applicants and employees, including individuals who are undocumented, on the basis of their national origin. Although the FEHA already prohibits discrimination and harassment on the basis of national origin, these new regulations broaden the definition of “national origin.” Originally defined to encompass “the individual’s or ancestors’ actual or perceived place of birth or geographic origin, national origin group or ethnicity,” these new regulations expand the definition to include an individual’s or ancestors’ actual or perceived:

1. Physical, cultural, or linguistic characteristics associated with a national origin group;
2. Marriage to or association with persons of a national origin group;
3. Tribal affiliation;
4. Membership in or association with an organization identified with or seeking to promote the interests of a national origin group;
5. Attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group, and
6. Name that is associated with a national origin group.

Additionally, the new regulations define what constitutes national origin discrimination to include the following:

1. Language restriction policies, including English-only policies, unless the restriction can be justified by business necessity and is narrowly tailored to further that business interest;
2. Discrimination based on an applicant’s or employee’s accent, unless the employer can show the accent materially interferes with the applicant’s or employee’s

ability to perform the job;

3. Discrimination based on English proficiency, unless the employer can show that the proficiency requirement is justified by business necessity;
4. Height and weight requirements (as such may have a disparate impact on the basis of national origin), unless the requirement can be justified by business necessity and the purpose of the requirement cannot be met by less discriminatory means;
5. Recruitment, or assignment of positions/facilities/geographical area, based on national origin; and
6. Inquiring into an applicant's or employee's immigration status, or discriminating against an applicant or employee based on immigration status, unless required to do so under federal immigration law.

These new regulations are set to take effect on July 1, 2018.

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