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EEOC Issues Updated Guidance on National Origin Discrimination

Law and the Workplace on **December 8, 2025**

The EEOC has issued a one-page technical assistance document, "Discrimination Against American Workers Is Against the Law" and updated its national origin discrimination landing page, reinforcing national origin discrimination protections with a focus on immigration-related issues. The latest guidance follows the EEOC's previous 2016 Enforcement Guidance on National Origin Discrimination, which remains in effect.

Title VII, which is enforced by the EEOC, prohibits employment discrimination because of race, color, religion, sex, or national origin, and applies to most private employers with 15 or more employees. Under Title VII, discrimination based on national origin with respect to compensation and other terms and conditions of employment is unlawful, and employers are prohibited from limiting, segregating or classifying employees in a way that could deprive them of opportunities based on their national origin.

The new technical assistance document defines national origin discrimination as "treating employees or applicants unfavorably or favorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background."

The landing page emphasizes that Title VII protects all workers, "including Americans," and explains that national origin discrimination can include preferring foreign workers, including workers with certain visa statuses, over American workers. It further highlights that discrimination can occur when the victim and the person engaging in the discrimination are of the same national origin.

The technical assistance document and landing page provide several examples of fact patterns that might constitute unlawful national origin discrimination, including:

- Using discriminatory job advertisements, such as ads that suggest an employer prefers or requires applicants from a particular country or with a particular visa status (e.g., "H-1B preferred" or "H-1B only");

- Terminating employees who are “on the bench” between assignments at a higher rate than employees who are visa guest workers;
- Making it more difficult for applicants of one national origin to apply for positions (e.g., subjecting U.S. workers to more laborious application methods than H-1B visa holders during the permanent labor certification (PERM) process);
- Paying visa guest workers less than similarly situated American workers; or
- Allowing harassment based on national origin, accent, or ethnicity that creates a hostile work environment.

The document also makes clear that the following considerations do not excuse an employer’s decision to hire foreign workers over American workers:

- Customer or client preference;
- Lower labor costs (whether due to “under the table” payment, or abuse of certain visa-holder wage requirement rules); or
- Beliefs that workers of one or more national origin groups are “more productive” or “possess a better work ethic” than others from different groups.

Takeaways

This most recent EEOC guidance builds upon the enforcement priorities previously laid out by the EEOC around “protecting American workers from anti-American national origin discrimination.” Under the leadership of current Chair Andrea Lucas, the EEOC has emphasized protecting American workers from perceived “foreign preference” practices. In February 2025, then-Acting Chair Lucas announced a priority to “rigorously enforce” Title VII against employers that “illegally prefer non-American workers,” and vowed to protect American workers from anti-American bias.

Employers should expect to see increased EEOC enforcement around national origin discrimination, including with regard to employment actions that favor – or may be perceived to favor – non-Americans to the detriment of American workers.

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Related Professionals

- **Arielle E. Kobetz**
  Associate
- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel
- **Melanie M. Speight**
  Special Employment Law Counsel
- **Reyzel Farkish**
  Associate
- **Steven J. Pearlman**
  Partner