Questions and Answers: Enforcement Guidance on National Origin Discrimination


The following questions and answers address a number of issues in the guidance. The guidance also contains promising practices for employers. A Small Business Fact Sheet on this topic is available at https://www.eeoc.gov/laws/guidance/national-origin-factsheet.cfm.

1. Overview of Title VII.

Title VII of the Civil Rights Act of 1964 (Title VII) applies to employers with 15 or more employees. It also covers employment agencies, the federal government, state and local government employers, and unions. Title VII prohibits discrimination in employment based on national origin, as well as race, color, religion, and sex. Title VII also prohibits employers from retaliating against people who oppose workplace discrimination or who participate in an Equal Employment Opportunity (EEO) complaint process.

Title VII's protection against national origin discrimination extends to all employees and applicants for employment in the United States, regardless of their place of birth, authorization to work, citizenship, or immigration status.

2. What is national origin discrimination under Title VII?

National origin discrimination means discrimination because an individual (or his or her ancestors) is from a certain place or shares the physical, cultural, or language characteristics of a national origin (ethnic) group.

- An individual’s place of origin may be a country (such as Mexico), a former country (such as Yugoslavia), or a place that is closely associated with an ethnic group but is not a country (such as Kurdistan).
- A national origin group is a group of people who share a common language, culture, ancestry, and/or other social characteristics (such as Hispanics/Latinos or Arabs).
- National origin does not refer to citizenship or immigration status.

3. How is national origin discrimination defined under Title VII?

Generally, national origin discrimination refers to: (a) treating an individual less favorably because he or she is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin (ethnic) group; or (b) using an employment policy or practice that disproportionately impacts people on the basis of national origin and is not shown to be job related and consistent with business necessity.

4. Who Does Title VII protect from national origin discrimination?

Title VII protects every employee or applicant against discrimination based on his or her national origin, including Americans. Title VII also prohibits employment discrimination because an individual is not American.

5. Does Title VII protect an individual from discrimination based on a perception of national origin, even if the perception proves to be incorrect?

Yes. Title VII prohibits employers from discriminating based on incorrect information or conclusions about an individuals (or his or her ancestors) ethnicity or nationality. For example, treating an employee less favorably because of the perception that he is Hispanic/Latino would be national origin discrimination, even if he is not in fact Hispanic/Latino.

6. Does Title VII protect an individual from employment discrimination based on the individuals
association with people of a particular national origin?

Yes. National origin discrimination includes treating someone less favorably at work because he or she associates with (for example, marries) someone of a particular national origin.

7. Can applicants or employees allege Title VII employment discrimination based on national origin and another basis, such as race, color, religion, or sex?

Yes. In fact, national origin discrimination often overlaps with other forms of discrimination, such as race, color, or religious discrimination.

A person also could challenge discrimination based on a combination of protected characteristics that are inseparable (often referred to as intersectional discrimination). For example, Title VII prohibits discrimination against an employee because she is an Asian woman, even if the employer has not also discriminated against Asian men or non-Asian women.

8. Can victims of human trafficking also allege national origin discrimination?

Yes. Title VII applies in trafficking cases when an employer uses force, fraud, or coercion to compel labor or exploit workers based on their national origin or another protected characteristic. Trafficking cases may involve multiple bases and allegations, such as national origin, sex, and retaliation.

9. How can employers avoid discriminating based on national origin when recruiting?

Employers and employment agencies must not discriminate during the referral process. Title VII prohibits employment agencies from referring only applicants and/or employees who are of a particular national origin group. Similarly, employment agencies may not comply with discriminatory recruitment or referral requests from employers.

- Avoid exclusive use of word-of-mouth recruitment: Word-of-mouth recruitment is the practice of asking current employees to tell their family, friends, or acquaintances about job openings and to refer potential candidates to the employer. Exclusive reliance on word-of-mouth referrals may reinforce the existing racial or ethnic makeup of the workplace and should generally be accompanied by additional recruitment techniques.

- Use diverse recruitment sources: Employers should attempt to recruit from diverse sources in order to attract a diverse applicant pool. Recruitment practices aimed at increasing overall diversity will not violate Title VII as long as they do not exclude any particular national origin group.

10. May an employer discriminate in order to satisfy the preferences of clients, customers, or employees?

No. Discrimination based on national origin is prohibited by Title VII even if employment decisions are made due to the discriminatory preferences of clients, customers, or employees. Employers covered by Title VII cannot justify employment discrimination because of the preferences of others.

11. May employers make job assignments based on national origin?

No. It is unlawful for an employer to assign or refuse to assign individuals to certain jobs, facilities, locations, tasks, or geographic areas; deny promotions; physically isolate employees; or otherwise segregate workers into jobs based on their national origin. For example, Title VII prohibits assigning individuals to non-customer contact jobs or to back room jobs based on their national origin.

12. Is it lawful to refuse to hire or to fire an individual who fails to obtain a required security clearance?

An employer may refuse to hire, refuse to refer, or decide to terminate an individual who fails to obtain a required security clearance if the requirement is imposed under a security program in effect pursuant to, or administered under, any federal statute or Executive Order in the interest of national security. It would, however, be discriminatory, for example, to require Hispanic applicants to obtain a confidential national security clearance in order to occupy a position without imposing the same requirement on non-Hispanics who seek to occupy the same position.

13. What is national origin harassment?

Unlawful harassment is conduct that is severe or pervasive enough to create a work environment that an individual perceives as hostile, and a reasonable person would find intimidating, hostile, or abusive. Title VII prohibits such harassment on the basis of national origin.

Harassment based on national origin can take different forms, including ethnic slurs, ridicule, intimidation,
workplace graffiti, physical violence, or other offensive conduct directed toward an individual because of his birthplace, ethnicity, culture, language, dress, or accent. Employer liability can result from the actions of supervisors, employees, or non-employees, such as clients, customers, or commercial contacts.

14. Why is it important to take steps to prevent national origin harassment?

Preventive efforts can help eliminate national origin harassment and limit the employers liability if there is a Title VII charge or lawsuit. The Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace outlines measures employers can take to prevent and remedy workplace harassment, including clearly communicating that harassment based on national origin will not be tolerated; adopting fair and impartial anti-harassment policies and procedures; and ensuring that employees who violate the prohibition on harassment are appropriately disciplined. Anti-harassment procedures will not be effective if managers and employees are unable to understand them due to language barriers or because they are unable to use the complaint process.

15. Is it lawful to consider language issues in the workplace?

Employers may have legitimate business reasons for making language-based employment decisions. It is important, however, to ensure that these decisions do not violate Title VII.

An employer may not base an employment decision on an accent unless the ability to communicate in spoken English is required to perform job duties effectively and the individuals accent materially interferes with that job performance.

A language fluency requirement is lawful if fluency is required for the effective performance of the position for which it is imposed.

A language-restrictive policy may violate Title VII if it is applied at all times in the workplace, but such a policy may be lawful in limited circumstances when needed to promote safe and efficient job performance or safe and efficient business operations. Of course, it should not be adopted for discriminatory reasons or applied in a discriminatory way.

16. Are employers required to accommodate national origin traditions or practices at work?

No. Title VII does not require accommodation of national origin traditions or practices. An employer would, however, need to grant a request for religious accommodation if doing so would not impose an undue hardship on the employer. For more information about religious accommodations, refer to EEOC Compliance Manual Section 12: Religious Discrimination and Religious Garb and Grooming in the Workplace: Rights and Responsibilities.

17. Are foreign nationals in the United States protected by Title VII?

Yes. Foreign nationals employed in the United States are protected by Title VII.

18. Does immigration status affect whether an applicant or employee is protected by Title VII?

No. Title VII protects job applicants and employees without regard to their immigration status.

19. Does Title VII prevent an employer from verifying a newly-hired noncitizens work authorization?

No. Through the Form I-9 process, employers must verify the identity and work authorization of newly hired employees. Employers, however, are not allowed to treat individuals differently during the authorization process based on their national origin. Nor may an employer retaliate against an individual for opposing discriminatory practices, or participating in a Title VII proceeding, by using the work authorization process for purposes of reprisal. Finally, the Immigration and Nationality Act (INA) prohibits unfair documentary practices, such as requesting more documents than are necessary to verify employment eligibility.

20. Does Title VII apply to a foreign employer in the United States?

Title VII applies to a foreign employer in the United States to the same extent as it applies to an American employer, unless the foreign employer is exempted from coverage by a treaty or international agreement. A foreign employer may discriminate in favor of its own citizens when permitted by a treaty.

21. How can a job applicant or employee report national origin discrimination?

An applicant or employee who believes his or her rights under federal EEO laws have been violated may file a complaint:

• **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or go to [https://www.eeoc.gov/employees/howtofile.cfm](https://www.eeoc.gov/employees/howtofile.cfm).

• **Federal government employees** may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at [https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm](https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm).

### 22. Where can employers obtain compliance assistance or more information?

For more information, visit [https://www.eeoc.gov/](https://www.eeoc.gov/), call the EEOC at 800-669-4000 (voice) or 800-669-6820 (TTY), or visit your local EEOC office ([https://www.eeoc.gov/field/index.cfm](https://www.eeoc.gov/field/index.cfm)). Ask for translation assistance if needed.