

EEOC Issues New Enforcement Guidance On National Origin Discrimination

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On November 18, 2016, the EEOC issued new Enforcement Guidance on National Origin Discrimination including Questions and Answers and a Small Business Fact Sheet. This Guidance replaced the EEOC's previous compliance manual on the topic, which was issued in 2002. The Guidance defines national origin discrimination as 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. The Guidance makes clear that, similar to the "perceived as" concept under the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII) protects individuals from discrimination based on a perception of national origin, even if the perception proves to be incorrect. Additionally, as under the ADA, the Guidance provides that Title VII protects an individual from employment discrimination based on an individual's association with people of a particular national origin. Another point of emphasis is what the EEOC refers to as "intersectional discrimination," which is defined as discrimination based on the combination of two or more protected classes that are inseparable. As an example of intersectional discrimination, the Guidance offers the example of "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." Of particular interest to staffing agencies, the Guidance addresses that industry directly and makes clear that employers may not rely on any discriminatory instructions of their client. In other words, discrimination based on national origin is prohibited even if employment

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decisions are made due to the discriminatory preferences of clients or customers.