

Unlawful Discrimination and Penalties

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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As an employer, you can violate federal law by using the Form I-9 in a discriminatory manner. Employer sanctions and anti-discrimination provision of the Immigration and Nationality Act (INA) were added by the Immigration Reform and Control Act and prohibits four types of unlawful conduct:

- Citizenship or immigration status discrimination;
- National origin discrimination;
- Unfair documentary practices during the Form I-9 and E-Verify process (document abuse); and
- Retaliation or intimidation

Discriminatory documentary practices related to verifying the employment authorization and the identity of employees during Form I-9 or E-Verify process is called "document abuse" according to the handbook. Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship or immigration status in the Form I-9 or E-Verify process. Document abuse can be categorized into four types of conduct:

- Improperly requesting that employees produce more documents than are required;
- Improperly requesting that employees present a particular document;
- Improperly rejecting documents that reasonably appear to be genuine and belong to the employee presenting them; and
- Improperly treating groups of applicants differently when completing Form I-9, such as requiring certain groups of employees who look or sound foreign to produce particular documents the employer does not require other employees to produce.

Immigration status or citizenship discrimination occurs when employees are treated differently based on their real or perceived citizenship or immigration status in regard to hiring, firing, or recruitment or referral for a fee. Employer must treat all groups the same.

When an employer treats employees differently in the employment process based on their national origin, that behavior constitutes national origin discrimination. An employee's national origin relates to the employee's place of birth, country of origin, ethnicity, ancestry, native language, accent or the perception that they look or sound "foreign".

The handbook [1] specifically states that "retaliation occurs when an employer or other covered entity intimidates, threatens, coerces, or otherwise retaliates against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participated in any immigration-related employment discrimination investigation, proceedings, or hearing; or otherwise asserts his/her rights under the INA's anti-discrimination provisions."

The Office of Special Council for Immigration-Related Unfair Employment Practices, Civil Rights Division, Department of Justice (OSC), enforces the anti-discrimination provisions of the INA. Title VII of the Civil Rights Act of 1964 (Title VII), as amended, also prohibits national origin discrimination, among other types of conduct. OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between four and 14 employees.

The DHS or an administrative law judge may also impose penalties if it is revealed that an employer knowingly hired or knowingly continued to employ an unauthorized worker, or failed to comply with the employment eligibility verification requirements with respect to employees hired after November 6, 1986. "If DHS or an administrative law judge determines that you knowingly hired unauthorized aliens, continued to employ aliens knowing that they were not authorized or have become unauthorized to work in the United States, or practiced unlawful discrimination, you may be ordered to cease and desist from such activities and pay a civil penalty. The penalty can also include possible imprisonment. Failure to properly complete, retain, and/or make available for inspection Forms I-9 could result in a civil penalty for each violation."

Links:

[1] <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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