



November 30, 2011

Labor & Employment Update

U.S. DEPARTMENT OF JUSTICE ISSUES WARNING ON DISCRIMINATION BASED ON IMMIGRATION STATUS OR NATIONAL ORIGIN

On November 28, 2011, the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) released a flyer on discrimination in the workplace based on immigration status or national origin. Employers must be careful not to discriminate against workers on those bases. Employers must provide equal treatment in the hiring and firing process, completion of Form I-9 and the E-Verify employment eligibility verification processes. The OSC flyer lists specific actions employers should avoid to shield themselves from discrimination claims from workers based on immigration status and national origin, including but not limited to:

- Demanding specific documents from non-U.S. citizen workers to establish employment authorization or complete Form I-9, that are not required;
- Rejecting valid work authorization documents from non-U.S. citizens;
- Refusing to hire workers who sound or appear foreign;
- Hiring workers on non-immigrant visas, but rejecting qualified U.S. citizens and other work-authorized individuals who apply for work;
- Hiring undocumented workers instead of work-authorized individuals; and,
- Firing work-authorized workers for lying about their prior undocumented status, but not firing other workers for lying about their background.

Employers using E-Verify can be further liable for employment discrimination based on immigration status or national origin if they engage in selective behavior, set forth with greater particularity in OSC flyer, which can be found at:

http://www.justices.gov/crt/about/osc/pdf/publications/fact_patterns_flyer.pdf

The employment and immigration lawyers at Murtha Cullina are ready to assist you, provide guidance on how to avoid these discrimination claims, and defend your companies should a complaint be filed. Please contact:

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If you have any questions about the issues addressed here, or any other matters involving Labor & Employment law issues, please feel free to contact:

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