
IMMIGRANT AND EMPLOYEE RIGHTS
SECTION, CIVIL RIGHTS DIVISION,
U.S DEPARTMENT OF JUSTICE

NEWSLETTER

30TH ANNIVERSARY COMMEMORATIVE EDITION
NOVEMBER 2017





CONTENTS

- 3 A Message from the Acting Head of IER
- 4 Our Name Has Changed, but Our Mission Has Not
- 5 Noteworthy Recent Cases
- 7 IER's Protecting U.S. Workers Initiative
- 8 IER Partnerships: Foreign Governments
- 9 Reflections from a Former IER Intern
- 10 Understanding IER's Investigations and Enforcement Activities

**Immigrant and Employee Rights Section,
Civil Rights Division,
U.S. Department of Justice**

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., N.W.
IER - NYA 9000
Washington, D.C. 20530

(202) 616-5594
ier@usdoj.gov
www.justice.gov/ier

Editors

Katelyn Davis

Sara-Daisy Dygert

Contributors

Katelyn Davis
Sara-Daisy Dygert
Craig Fansler
Jenna Grambort

Julia Heming Segal
Shivani Pampati
Michaela Olson

A MESSAGE
FROM
THE ACTING
HEAD OF
IER

Dear Readers:

November 6, 2016, marked the 30th anniversary of Congress amending the Immigration and Nationality Act (INA) to prohibit employment discrimination based on citizenship status and national origin. Through this amendment, Congress also created the Office of Special Counsel for Immigration-Related Unfair Employment Practices to enforce this anti-discrimination law. Although our office name has changed to the Immigrant and Employee Rights Section (IER), our mission remains the same -- to promote equal opportunity by combating unlawful barriers to employment.

Over the years, this office has helped thousands of people facing discrimination obtain or keep their jobs, and IER has recovered millions of dollars in back pay for discrimination victims. We have also obtained millions of dollars in civil penalties from employers that have violated the statute. Our enforcement work has been coupled with campaigns to educate the public about this anti-discrimination provision, including through free webinars, in-person public presentations, and IER's hotline. IER has also developed strong ties with federal and state agency partners, foreign embassies, and advocacy groups to further our mission.

In our anniversary year alone, IER has created new partnerships with the Departments of Labor and State as well as the Honduran and Peruvian governments; worked closely with legal aid partners to resolve discrimination claims; settled 13 pattern or practice claims; and saved hundreds of jobs through our hotline intervention program.

This commemorative newsletter celebrates IER's continued commitment to the law we enforce and highlights how our office employs innovative outreach methods, thoughtful policy initiatives, and strategic enforcement methods to achieve significant results. We recognize, however, that building successful policy, outreach, and enforcement programs ultimately requires collaboration among many groups, including stakeholders, advocates, workers, employers, and other agencies. We thank you for your continued support of our work and for helping us promote equal employment opportunities across the nation.

Sincerely,

Jodi Danis

Jodi B. Danis

IER

Our Name Has Changed, but Our Mission Has Not

JENNA GRAMBORT
Trial Attorney

Among the more noticeable changes in this office’s 30th year, the Office of Special Counsel for Immigration-Related Unfair Employment Practices changed its name and became the Immigrant and Employee Rights Section. The office’s name changed officially on January 18, 2017 as part of a series of updates to the anti-discrimination provision’s regulations. The name change should end public confusion between the Office of Special Counsel for Immigration-Related Unfair Employment Practices and a separate federal agency called the Office of Special Counsel. Although the office has a new name, our mission—enforcing the INA’s anti-discrimination provision, educating the public about their responsibilities and rights under this law, and furthering related policy work—remains the same.

In addition to the name change, the updated regulations now incorporate the anti-discrimination provision’s current language, revise IER’s procedures for filing and processing discrimination charges, amend and add definitions, and replace outdated references.

IER’s English website is www.justice.gov/ier, and our Spanish website is www.justice.gov/crt-espanol/ier.

If you or someone you know has suffered employment discrimination based on citizenship, immigration status, or national origin, contact IER’s worker hotline for assistance. The hotline (1-800-255-7688; 1-800-237-2515, TTY for hearing impaired) is available Monday-Friday from 9:00 a.m.-5:00 p.m. Eastern Time. For more information about worker protections under the INA’s anti-discrimination provision, you may also sign up for a free IER webinar, email IER@usdoj.gov, or visit IER’s English and Spanish websites.

TESTIMONIAL

Ahmed, a refugee from Vancouver City, Washington, shared, “I thought, why not? Let me call. This is the last chance for me...” Ahmed called IER because his employer fired him after rejecting his Social Security card for reverification, and IER contacted Ahmed’s employer to explain that an unrestricted Social Security card is a valid document and sufficient for reverification. Ahmed later explained, “When I came out from class the next morning, I had a missed call from my employer and from [IER].” Both IER and Ahmed’s employer called to say that the company decided to reinstate him. “I thought it would take a month. I didn’t expect it to take just one call—just one day.”

NOTEWORTHY RECENT CASES

BY: MICHAELA OLSON, PARALEGAL SPECIALIST

At the end of our 30th anniversary year, IER looks back at some of our major cases from the last five years and the impact our enforcement efforts have made nationwide. As we aim to protect U.S. citizens and work-authorized non-citizens from discrimination based on their citizenship status and national origin, we are proud of the work we have accomplished, but recognize that our mission is still as crucial as ever. In this article, we highlight representative cases that reflect some of the most common forms of discrimination we encounter. Although many of the settlements we describe predate IER's name change, we refer to the office as IER, rather than OSC, for the sake of consistency.

Panda Express

On June 28, 2017, IER reached a settlement agreement with Panda Restaurant Group, Inc. (Panda Express), a large nationwide restaurant chain. This case spotlights a common practice that many employers do not realize is discriminatory: treating non-U.S. citizens differently by reverifying their work authorization for the Form I-9 without a legal justification. IER's investigation determined that Panda Express engaged in a pattern or practice of requiring lawful permanent resident workers to reverify their work authorization when their Permanent Resident Cards expired because of their citizenship status, even though Permanent Resident Cards do not require reverification. Under the settlement agreement, Panda Express paid a civil penalty of \$400,000 to the United States, and established a back pay fund of \$200,000 to pay workers who lost wages due to the company's practices. Panda Express is also working with IER to train its human resources personnel on proper Form I-9 rules.

Omnibus Express

Some IER cases address discrimination involving employers that prefer temporary foreign workers over U.S. workers. In September 2014, IER settled a lawsuit against Autobuses Ejecutivos, LLC, d/b/a Omnibus Express, a bus company located in Houston, Texas. IER's suit claimed that the company discriminated against U.S. workers by preferring to hire workers on temporary H-2B visas for its bus driver positions. As a result of the settlement agreement, Omnibus Express paid \$208,000 in back pay to alleged victims of its discriminatory practices, which included U.S. citizens and lawful permanent residents. The bus company also paid \$37,800 in civil penalties to the United States and agreed to revise its policies to comply with the law.

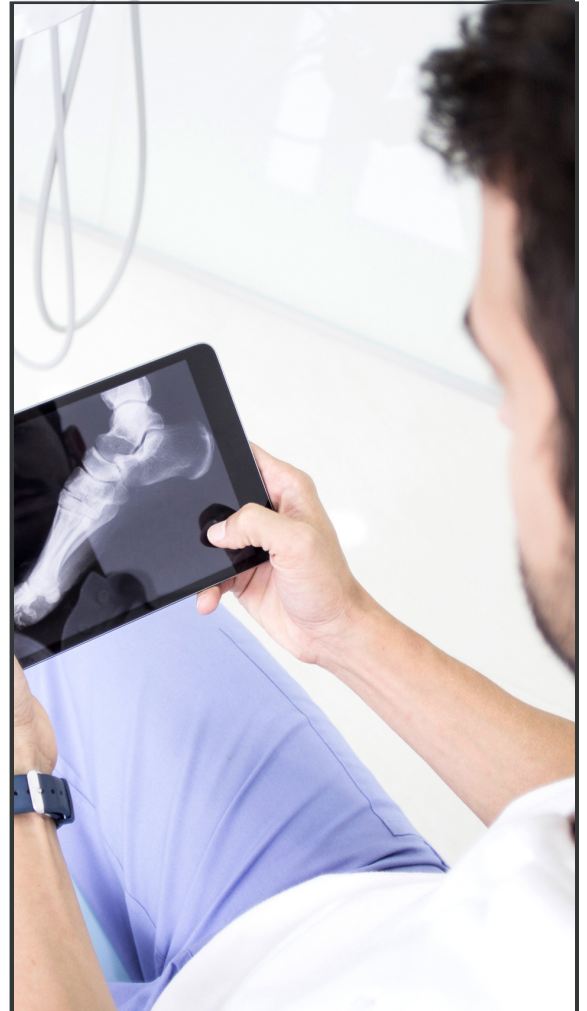
TESTIMONIAL

Michelle, an assistant at a staffing agency in San Antonio, Texas, calls IER's hotline to make sure she implements best practices as an employer. Michelle stated, "I am truly impressed by how fast you and your representatives answer incoming calls. It really blows my mind! I was expecting long hold times and to be transferred multiple times before reaching someone that could help me. However, that has never been my experience when calling the hotline and that is awesome. Thanks again!"

NOTEWORTHY RECENT CASES (CONTINUED)

American Association of Colleges of Podiatric Medicine

IER's settlements with 121 podiatry residency programs and the American Association of Colleges of Podiatric Medicine (AACPM) on June 20, 2016, underscore that employers must not impose U.S. citizenship requirements when not authorized by law to do so. These settlements resolved claims that AACPM and the residency programs discriminated against work-authorized non-U.S. citizens by creating and publishing job postings that required U.S. citizenship for podiatry residents, even though AACPM and the residency programs did not have legal justification for the citizenship requirement. Although the job postings were for podiatry residents working at the individual programs, the law still covered AACPM as a paid referrer for employment. The settlement agreements required the residency programs and AACPM to change their practices to prevent future discrimination. Several of the residency programs were also required to pay a civil penalty, totaling \$141,500, and AACPM was required to pay \$65,000. AACPM also agreed to reopen the 2016 residency "matching" process to allow non-U.S. citizen applicants to apply to certain programs.



Life Generations Healthcare, LLC

IER resolves the overwhelming majority of its enforcement actions without trial. However, in 2014, IER settled a case after first prevailing at trial. On December 4, 2014, IER signed a settlement agreement with Life Generations Healthcare, LLC, doing business as Generations Healthcare (GHC), which operates assisted living facilities throughout California. At trial IER proved that GHC engaged in a pattern or practice of making discriminatory document requests to newly-hired workers based on the citizenship status GHC assumed the workers had. GHC required workers it thought were non-U.S. citizens to produce more, different or specific documents than it required from U.S. citizens. After IER won the case, GHC and IER reached an out-of-court settlement to determine the proper remedies for the discrimination. GHC agreed to pay \$119,313 in back pay and other compensation to two discrimination victims and \$88,687 in civil penalties to the United States, for a total of \$208,000. IER also monitored GHC's hiring practices for two years, reviewed GHC's revised employment policies, and trained GHC's personnel.

BY: KATELYN DAVIS, PARALEGAL SPECIALIST

IER'S PROTECTING U.S. WORKERS INITIATIVE

This year, IER launched its Protecting U.S. Workers Initiative (Initiative) to identify, investigate, and, when necessary, sue companies that discriminate against U.S. workers in favor of temporary workers on foreign visas.

IER's Initiative stems from increased awareness and concern about visa-related discriminatory employment practices that harm U.S. workers, and builds upon IER's past experience. In the past, IER has litigated and settled several cases involving technology companies, growers, and employers in other industries that have had a hiring preference for foreign workers.

In its first lawsuit since launching the Initiative, in September 2017 IER sued Crop Production Services for discriminating against at least three United States citizens. IER's lawsuit claims that Crop Production refused to hire the U.S. citizens as seasonal technicians in El Campo, Texas, because the company preferred to hire temporary foreign workers under the H-2A visa program. The workers have also filed their own private suit, and are represented by Texas RioGrande Legal Aid.

IER is also partnering with other government agencies to address abuse, fraud and discrimination in employment visa programs. For example, in October 2017, IER formalized a Memorandum of Understanding (MOU) with the Department of State's Bureau of Consular Affairs, to protect U.S. workers from discrimination and combat visa fraud. The agencies will provide each other with technical assistance and training to encourage effective collaboration to identify visa-related employment discrimination and fraud.

IER will continue to work with these and other partners to protect U.S. workers from discrimination.

TESTIMONIAL

Mahmoud, an asylee in West Des Moines, Iowa stated that, "Contacting IER was a great decision. Their professionalism, timely response and positive attitude helped clear the confusion in regard to my employment eligibility with the employer. I would encourage anyone who faces potential employment discrimination to contact them."



IER

PARTNERSHIPS: Foreign Governments

SARA-DAISY DYGERT

Outreach Coordinator

Immigrants living in the U.S. often turn to their country of origin's embassy or consular network when facing problems in the workplace. Embassies and consular networks provide information and guidance to immigrant workers about their rights. When workers know their rights, they are better armed against employment discrimination.

Given embassies' and consulates' roles, IER has partnered with five foreign governments to date to broaden their reach in educating and assisting workers. These partnerships, formalized through Memoranda of Understanding (MOUs), strive to empower work-authorized immigrants by educating them about their rights and training embassy and consulate staff on free IER resources.

The Republic of Ecuador became the first foreign government to enter into an MOU with IER in December 2015. In 2016, IER entered into MOUs with El Salvador, Mexico, and Honduras. So far In 2017, IER has entered into an MOU with Peru.

IER looks forward to working with current and future foreign government partners to ensure that workers know their rights under the INA's anti-discrimination provision and how to get help if they suffer discrimination.

REFLECTIONS FROM A FORMER IER INTERN

SHIVANI PAMPATI AND JULIA HEMING SEGAL

A reflection on IER's work over the last thirty years would be incomplete without acknowledging the crucial contributions student interns make to IER's enforcement, outreach, and policy work. IER interns have also achieved great success in their careers. To get the intern perspective, Shivani Pampati, a summer 2017 Stanford University undergrad intern, interviewed Ana Consuelo Martinez. Ana interned with IER in 2008 while studying at New York University School of Law and is now a Trial Attorney at the Equal Employment Opportunity Commission (EEOC).

Shivani: What were your interests in the legal field originally?

Ana: I decided to go to law school to focus on either human rights or civil rights. I found immigration work and employment rights really interesting. In law school I discovered how much employment rights affect people's lives – people live and die by their jobs – [and] their jobs are one of the most important aspects of their life, other than their health. So I thought protecting someone's right to work and make a living in this country was extremely important and I wanted to be involved in that.

Shivani: What was your experience during the internship with IER?

Ana: My time at [IER] was my introduction into the federal government's role in enforcing laws to protect minority rights. It was also the first time that I was exposed to the EEOC, which is the agency where I work now. It was really a great summer overall, and it was really life changing for me. I fell in love with the area – the role of the agencies in enforcing non-discrimination statutes – and that is the area of law that I see myself practicing for the rest of my life, hopefully.

The office was small and I liked how everyone knew each other and worked as a team. Everyone helped each other. In particular, I remember working on a matter involving discriminatory job advertisements. In that case, the attorney built the case from the start. I really enjoyed the feel of a small office with everyone having the same goals. It was great.

Shivani: What led you to choose to dedicate your career to workers' rights?

Ana: After interning at a private law firm the summer after my [IER] internship, I had to decide if I wanted to go into private practice, practice law in the government,

or do plaintiff-side private practice. Based on my summer internship with [IER], I knew that I wanted to join the government because of the role that the government plays in enforcing the statutes. I joined the EEOC, which like [IER] combats employment discrimination. . . . Part of our job is educating people of the rights that they have and to enforce anti-discrimination laws in every way that we can.

Shivani: Is there anything else that you would like to convey about the office?

Ana: One of the things that I really liked about the office is the commitment that [IER] puts into its internship program and into mentoring students both during their internships and afterwards. It is important that people who work in civil rights today invest time in the next generation of civil rights attorneys. I hope that I can learn from what [IER] did and try to do the same.

UNDERSTANDING IER'S INVESTIGATIONS AND ENFORCEMENT ACTIVITIES

People often ask about the difference between IER's role when it investigates a possible violation and when it brings a lawsuit. Here, we summarize both roles.

IER Investigations

By 1986, when Congress established IER, courts had already differentiated the government's role during an investigation from its role after it makes a finding of discrimination and sues an employer. Agencies use investigations to determine whether a legal violation has occurred. IER is no different in this regard. IER opens investigations when it has information that a violation may have occurred. During an investigation, IER performs the role of a neutral factfinder to determine whether the facts indicate that an employer illegally discriminated against one or more employees.

IER conducts two types of investigations: charge-based and independent. If someone files a charge, IER will look into the matter and the worker will get a "right to sue" letter after 120 days even if IER does not yet know the outcome of the investigation. IER also may open an independent investigation without a person filing a charge. Often, IER opens these independent investigations based on tips from the public or from media reports. Regardless of how we open an investigation, our role is that of a neutral factfinder—we do not represent any alleged victims, and we do not represent the company. Ultimately, IER is looking to see whether there is a "reasonable cause to believe" that a violation occurred. This is the legal standard IER must meet to make a finding of discrimination.

Understanding What Might Determine the Outcome of an Investigation

Section 1324b contains some important requirements for people considering filing a charge, or for companies under investigation. These requirements may make the difference between IER being able to open a charge, or IER not having jurisdiction over a matter.

Some of the most important elements to keep in mind include:

- » Individuals (or their representatives) must file a charge within 180 days of the alleged citizenship status or national origin discrimination. If individuals do not file a charge within 180 days of the alleged discrimination, they may lose their right to pursue a claim.
- » Depending on the type of discrimination and the size of the company, IER may not have jurisdiction over the company. For some claims of national origin discrimination, IER investigates companies with 4-14 employees, whereas the EEOC investigates companies with 15 or more employees. For other types of claims, such as citizenship status discrimination or unfair documentary practices, the company size limitation does not apply, and IER would investigate any company with more than three employees.

Of course, anyone who believes he or she has been a victim of discrimination under the INA's anti-discrimination provision can reach out to IER through our free worker hotline to learn more about their rights under the law that IER enforces.

IER Enforcement Activities

If the evidence in an IER investigation does not establish reasonable cause to believe that discrimination occurred, IER closes its investigation.

If, after an investigation, IER determines that there is reasonable cause to believe that discrimination occurred, we explore options to address the legal violation. At that point, our neutral factfinder role shifts to a role of a government advocate tasked with enforcing the law and ending any discriminatory practice. This means that although IER may sue to get relief for victims of discrimination, IER does not represent the victims, and instead is seeking justice on behalf of the public. IER always prefers to resolve violations in collaboration with an employer, so IER typically will reach out to the employer to explore the possibility of a settlement that does not require filing a lawsuit. If that is not successful, IER may then sue the employer.

Charging Parties also have the right to sue an employer, regardless of whether IER believes a violation occurred. Some people are not aware that specially designated administrative law judges hear all of IER's cases. These judges are part of the Office of the Chief Administrative Hearing Officer—often referred to as “OCAHO”—under the direction of the Executive Office for Immigration Review within the Department of Justice.

.....

TESTIMONIAL

Tawni, an employment manager from a non-profit organization providing services to immigrants, wrote, “As an employment manager working in refugee employment, I use IER often as a resource and strongly encourage my staff to, also. I reference several of the handouts located on their website often and have made many calls and emails to IER with client situations. My experiences have always been positive and helpful. With a handful of client situations, we have helped our refugee clients obtain or maintain their employment. A great portion of my job is to educate those in our community about refugee employment and their rights. IER has been a valuable resource.”