



## Employer Fact Sheet

# Information for Employers About Citizenship Status Discrimination

**Under federal law, employers generally cannot make hiring, firing, or recruitment or referral decisions based on a worker's citizenship status.**

This fact sheet provides information on how to avoid citizenship status discrimination under the Immigration and Nationality Act (INA) and does not address other types of prohibited employment discrimination.

### **1. What is employment discrimination based on citizenship status?**

Citizenship status discrimination generally occurs when an employer refuses to recruit, refer, or hire someone, or fires someone, because of the person's citizenship or immigration status. One example of citizenship status discrimination is when employers limit jobs to U.S. citizens without legal justification. Another example is when an employer refuses to hire people granted asylum or refugee status based on their immigration status.

Other federal or state laws may also prohibit discrimination based on citizenship or immigration status.

### **2. Who is protected from citizenship status discrimination in hiring, firing, and recruitment or referral for a fee?**

The INA protects U.S. citizens, U.S. nationals, recent lawful permanent residents, and workers granted asylum or refugee status from citizenship status discrimination in hiring, firing and recruitment or referral for a fee.

### **3. May I ask applicants for citizenship or immigration status information?**

Generally, an employer may ask job applicants if they have the legal right to work in the United States and if they will need sponsorship for an employment visa. In addition, asking for specific citizenship status information for purposes unrelated to any recruitment, hiring, or firing decision is unlikely to violate the law IER enforces.

**If you believe a certain position requires you to hire someone with a specific citizenship or immigration status, carefully review the legal support for the requirement.**

However, it is a best practice to avoid asking job applicants for their citizenship or immigration status because it may lead to discrimination or cause unsuccessful applicants who are subjected

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to these types of questions to believe that the employer based its decision on the applicant's citizenship status (which includes immigration status).

An exception to this best practice is if an employer needs information about an applicant's citizenship status because a law, regulation, government contract, or executive order requires the employer to limit a position to a particular citizenship status. This is rare and does not apply to the vast majority of jobs.

### 4. What kind of language in job postings could result in citizenship status discrimination claims?

An employer risks violating the law by using language that limits jobs based on citizenship status, such as:

- “Only U.S. Citizens”
- “Only U.S. Citizens or Green Card Holders”
- “Must present U.S. birth certificate”
- “H-1Bs or OPT Candidates Preferred”

An employer that has a legal requirement to restrict jobs to certain citizenship statuses should ensure that job postings are consistent with the requirement and do not exclude citizenship statuses incorrectly.

### 5. If my company engages in activity regulated by the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR), does the ITAR or the EAR require me to hire only U.S. citizens?

No. The ITAR and the EAR don't contain employment or hiring requirements, so they don't require employers or recruiters, including staffing agencies, to limit jobs or recruitment to U.S. citizens or workers with other citizenship or immigration statuses. For more information, see IER's [How to Avoid Immigration-Related Discrimination when Complying with U.S. Export Control Laws](#).

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## Contact



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- For people with hearing disabilities **1-800-237-2515**
- Calls can be anonymous.
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