



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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Washington, DC 20530
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August 24, 2015

BY EMAIL (meghan.dressler@Thepgcgroup.com)

Meghan Dressler, Esquire
General Counsel
The PGC Group
135 West 29th Street, Suite 1102
New York, NY 10001.

Dear Ms. Dressler:

This is in response to your email dated June 24, 2015, to the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC" or "Office"). You request guidance on whether a staffing agency can, consistent with the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b, selectively use the E-Verify program with respect to referrals for employment to one client but not others. Specifically, your company is a staffing agency that does not currently use E-Verify, but a client company has requested that you run temporary employees assigned to work for that client through E-Verify.

OSC cannot provide an advisory opinion on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding employer compliance with the anti-discrimination provision of the INA. The anti-discrimination provision prohibits four types of employment-related conduct: (1) citizenship or immigration status discrimination; (2) national origin discrimination; (3) unfair documentary practices during the employment eligibility verification (Form I-9 and E-Verify) process ("document abuse"); and (4) retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision, 8 U.S.C. § 1324b. For more information about OSC, please visit our website at: <http://www.justice.gov/crt/about/osc>.

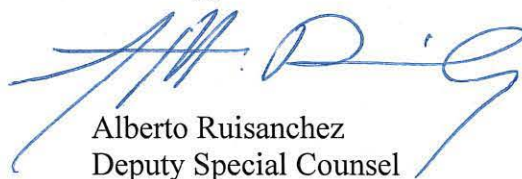
U.S. Citizenship and Immigration Services ("USCIS") is the agency that administers E-Verify and issues guidance on proper E-Verify procedures, including E-Verify enrollment. E-Verify is a voluntary program for most employers, but mandatory for some, such as employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify clause and employers in certain states that have legislation that mandates the use of E-Verify for some or all employers. A staffing agency may enroll as an E-Verify Employer or an E-Verify Employer Agent with limited participating hiring sites. Further guidance regarding enrollment

and use of E-Verify by staffing agencies is found on the E-Verify website and in the applicable E-Verify Memorandum of Understanding.¹

Regarding your specific question about preventing discrimination, the INA's anti-discrimination provision and E-Verify's terms and conditions prohibit treating individuals differently in the E-Verify process based on their citizenship status or national origin. An employer that selectively creates E-Verify cases for employees based on citizenship status or national origin may violate the anti-discrimination provision. For example, an employer should not designate participating hiring sites for E-Verify based on the citizenship status or national origin of the employees hired at those locations. Moreover, we recommend against selective use of E-Verify based on client demands because it could, at a minimum, create the appearance of prohibited citizenship status or national origin discrimination, which may lead to workers filing discrimination charges with this Office. However, to the extent that an employer or E-Verify Employer Agent uses E-Verify selectively for reasons wholly unrelated to an individual's citizenship status or national origin, that selective use would likely not violate the anti-discrimination provision.

We hope this information is helpful. Thank you for contacting OSC.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Ruisanchez', is written over the typed name and title.

Alberto Ruisanchez
Deputy Special Counsel

¹ USCIS provides assistance to employers with determining the most appropriate E-Verify access method, including through: [E-Verify Enrollment Webinars](#), an [E-Verify Enrollment webpage](#), the [E-Verify Enrollment Quick Reference Guide](#), and E-Verify customer support (888-464-4218 or E-Verify@dhs.gov). The latest versions of all E-Verify MOUs, Guides, and Manuals referenced in this letter are available at <http://www.uscis.gov/e-verify/publications>.