

New York City Issues New Enforcement Guidance on Discrimination Based on National Origin, Immigrant Status

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Continuing its pattern of issuing enforcement guidance on areas on which it focuses, the New York City Commission on Human Rights has released [guidance](#) reiterating the obligations of most employers, housing providers, and providers of public accommodations in New York City to avoid discrimination based on national origin and immigration status.

The guidance reiterates the following primary points to New York City employers:

- Discrimination or harassment in favor of U.S. citizens over other work-authorized individuals is generally prohibited.
- Questions about work authorization must be made in a non-discriminatory manner.
- All hired employees must be treated in a non-discriminatory manner.
- Employers must not engage in document abuse and ask for verification or reverification documentation beyond the documents authorized by federal law.
- Implementing an adverse action based solely on a “no match” letter from the Social Security Administration is problematic.
- Threatening investigations by U.S. Immigration and Customs Enforcement (ICE) for harassing purposes violates the New York City Human Rights Law (NYCHRL).
- Undocumented employees, if hired, are fully covered by the NYCHRL.
- Retaliation is prohibited if an individual opposes discrimination based on his or her national origin or perceived immigration status.

The guidance then provides these examples of conduct the Commission asserts violates the NYCHRL:

- A construction company sponsors a temporary worker for the summer with an H-2B visa. The company does not allow the worker to take any breaks for his 12-hour shift, while the company allows U.S. citizen workers to take two breaks during their 12-hour shifts. The company threatens to not sponsor the worker again for next season when he complains.
- An employee develops a medical condition and requests an accommodation to attend necessary medical appointments once a week. The employer denies her request. When the employee informs her employer that another employee may leave work for medical appointments, the employer tells her that she does not have that right because she is an undocumented immigrant. The employer then threatens to call ICE if she misses work for any reason.
- An employer refuses to accept a Social Security card and demands a birth certificate from a job applicant because the applicant speaks English with an accent.

- A hotel prohibits its housekeepers from speaking Spanish while cleaning because it would “offend” hotel guests or make them uncomfortable.
- An employer receives a No-Match Letter that lists an employee who immigrated from the Philippines. The employer has long looked for a reason to discharge the employee because of her accent. With receipt of the No-Match Letter, the employer discharges the employee.
- A construction company provides its Polish workers priority in scheduling and time off to the disadvantage of its U.S. citizen workers.

The guidance also discusses prohibited national origin and immigration discrimination in housing and public accommodations.

If you have any questions about this guidance, please contact a Jackson Lewis attorney.

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