



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

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 flyer provides information on how to avoid citizenship status discrimination under the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b(a)(1), and does not address other types of prohibited employment discrimination. You may contact the Immigrant and Employee Rights Section (IER) for more information. IER enforces the INA's anti-discrimination provision found at 8 U.S.C. § 1324b. The regulations for this law are at 28 C.F.R. Part 44.

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 employers reject U.S. worker applicants because of a preference for temporary visa workers. Employers may prefer to hire an equally-qualified U.S. citizen or national after fully considering other applicants, including non-U.S. citizens. This exception is found at 8 U.S.C. § 1324b(a)(4).

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

The INA protects U.S. citizens, U.S. nationals, refugees, asylees, and recent lawful permanent residents from citizenship status discrimination in hiring, firing and recruitment or referral for a fee. You can get more information on which workers are protected from citizenship status discrimination by contacting IER and at 8 U.S.C. §§ 1324b(a)(1), (3).



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. Asking for specific citizenship status information for purposes unrelated to any recruitment, hiring, or firing decision is unlikely to violate the law IER enforces. However, unsuccessful applicants who are subjected to these types of questions may believe that the employer based its decision on the applicant's citizenship status (which includes immigration status). Therefore, it is a best practice to avoid asking applicants for this information.

Sometimes, employers may need more information about an applicant's citizenship status when a law, regulation, government contract, or executive order requires an employer to limit a position to a particular citizenship status. This is rare and does not apply to the vast majority of jobs. 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 and 8 U.S.C. § 1324b(a)(2)(C).

4. 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. Nothing under the [ITAR](#) or the [EAR](#) requires or allows an employer to limit jobs to U.S. citizens. However, the ITAR or the EAR may require your company to obtain authorization if certain employees require access to technology that is regulated under the ITAR or the EAR, and such requirements may affect these employees' scope of employment. In particular, a company may need to obtain authorization to release covered technology to employees who are not U.S. citizens, U.S. nationals, lawful permanent residents, asylees, or refugees. Contact the [Department of State's Directorate of Defense Trade Controls](#) for more information on requirements under the ITAR and the [Department of Commerce's Bureau of Industry and Security](#) for more information on [deemed export](#) requirements under the EAR.

5. 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:

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

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.



Immigrant and Employee Rights Section

1-800-255-8155

www.justice.gov/ier

Calls can be anonymous and language services are available.

TTY 1-800-237-2515

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