



# DOJ Targets Citizenship Status Discrimination and Unfair Documentary Practices

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Since the start of 2024, the US Department of Justice (DOJ) Civil Rights Division has pursued and settled several cases involving violations related to citizenship status and unfair documentary practices.

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The Immigrant and Employee Rights (IER) section of the Civil Rights Division enforces the antidiscrimination provision of the Immigration and Nationality Act. This federal law prohibits:

- 1) Citizenship status discrimination in hiring, firing, or recruitment or referral for a fee.
- 2) National origin discrimination in hiring, firing, or recruitment or referral for a fee.
- 3) Unfair documentary practices during the employment eligibility verification process (generally, Form I-9 and E-Verify).
- 4) Retaliation or intimidation.

The IER has targeted companies ranging from higher education institutions to nursing homes. The civil penalties ranged from a few thousand dollars to over six figures paid to the government and, in some cases, back pay to the affected workers. In addition to the monetary portion of the settlement, other settlement provisions include retraining employees, revising eligibility verification policies and instituting multiyear monitoring periods.

**Employers at risk for violating federal, state or local immigration laws will find these violations are typically not covered by basic employment practices liability insurance (EPLI) coverage.**

## How to Avoid Immigration Discrimination

Federal law requires employers to follow Form I-9 and E-Verify rules consistently, regardless of an employee's citizenship or immigration status. When completing Form I-9, the employee should complete Section 1 and the employer should complete Section 2. The employer must allow the employee to show their choice of **acceptable documentation**. In addition, employers should not ask employees to prove their citizenship or immigration status when they complete Form I-9. This could be deemed unlawful. If you use E-Verify, do not create an E-Verify case for someone before hiring them. The case creation should only come after completing Form I-9. We recommend that employers check the **Employer Fact Sheet** located on the DOJ website.

## NFP Can Help You Secure Insurance Coverage

Employers at risk for violating federal, state or local immigration laws will find these violations are typically not covered by basic employment practices liability insurance (EPLI) coverage. However, immigration violation coverage can be added to EPLI policies via endorsement.

The immigration violation coverage endorsement typically addresses three types of costs that are normally excluded by standard EPLI provisions:

- 1) Defending managers/supervisors charged with criminal violations of federal, state and local immigration laws.
- 2) Criminal fines and penalties related to immigration law violations.
- 3) Civil fines and penalties related to immigration law violations.

In addition to allegations of immigration law violations, claims of discrimination may be made against an entity, particularly those based on national origin of the claimant. Such claims would typically trigger coverage under an employment practices liability policy.

We recommend contacting NFP to discuss the coverage under your policy, what other coverage may be available, and to discuss the necessary steps to take if any related correspondence is received.

## Questions? Contact:

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