

Avoid Immigration-Based Violations in Hiring Process

PUBLISHED ON

February 9, 2021

Two prominent companies - Quantum and SpaceX - caught the ire of the U.S. Department of Justice recently for allegedly making employment decisions based on immigration status, underscoring the importance of taking proactive measures to prepare for government enforcement actions.

Both cases involve alleged violations of the Immigration and Nationality Act's anti-discrimination provisions, which prohibit employers from treating individuals differently in hiring, firing, recruitment or referral for a fee based on an employee's citizenship, immigration status or national origin. The INA also does not permit an employer to request more or different documents than are required by law to verify employment eligibility.

This latter type of discrimination was at issue in the DOJ's investigation of Quantum Integrators Group, an IT consulting and staffing company based in New Jersey. The DOJ found that Quantum had asked a noncitizen employee to produce a copy of her green card, and conditioned further consideration for an employment opportunity (referral to a client for a fee) on her compliance with this request. [According to a settlement agreement](#), Quantum will pay a civil penalty of \$4,500, train its employees on the requirements of the INA's anti-discrimination provision, and be subject to DOJ monitoring and reporting requirements for 30 months.

To avoid this type of situation, employers should **not** ask for specific documents to verify employment eligibility. For purposes of the Form I-9, an employee is required to provide documentation establishing their identity and permission to work, but they have the right to decide which valid documentation they want to show. An employer cannot ask for or require such individuals to provide more or alternative documents for the I-9 form. Employers may not require noncitizen employees to produce green cards.

Employers should also refrain from asking detailed questions about immigration or citizenship status in their interview and recruitment processes because it could be considered a violation. SpaceX, Elon Musk's California-based rocket company, is [currently under investigation](#) for allegedly asking a job applicant about his citizenship and then excluding him from further consideration because of his immigration status. While the SpaceX case is still under preliminary review, it's a good reminder that recruiters should treat all applicants the same way and use caution if asking any immigration-related, pre-hire questions.

Employers should also avoid "citizen-only" or "permanent resident/green card-only" hiring policies unless required by law, regulation or government contract. In general, it is illegal to require applicants to be U.S. citizens or have a particular immigration status, and proof of work authorization is not required until after an employee has been hired and is completing Form I-9. A uniform and consistent policy for hiring and onboarding protects employers from potential national origin and citizen status discrimination claims.

The Barley Snyder Immigration Practice Group can assist you in creating or evaluating your company's immigration

compliance protocols. Please contact any of the attorneys in the [Barley Snyder Immigration Practice Group](#) to get started.

Also read:

[Fixing the U Visa Backlog](#)