# DISCRIMINATION AGAINST AMERICAN WORKERS IS AGAINST THE LAW

Title VII of the Civil Rights Act of 1964 protects employees or applicants from discrimination based on his or her national origin, including Americans. Title VII's protections apply equally to all racial, ethnic, and national origin groups. National origin discrimination involves treating workers (applicants or employees) unfavorably or favorably because they are from a particular country or part of the world. National origin discrimination can include preferring foreign workers, including workers with a particular visa status, over American workers.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The Equal Employment Opportunity Commission (EEOC) investigates EEOC charges and can file a lawsuit under Title VII against businesses and other private sector employers.

If you suspect you have experienced anti-American national origin discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000.

www.EEOC.gov

## What Can Anti-American National Origin Discrimination Look Like?

Under Title VII, employment policies, programs, or practices may be unlawful national origin discrimination if they involve an employer or other covered entity (like a staffing agency or recruiter) taking an action **motivated**—in whole or in part—by an applicant's or employee's national origin.

### Discrimination against Americans in the workplace might include the following:

- **Discriminatory Job Advertisements:** Title VII bars discriminatory job advertisements.
  - Evidence of discriminatory job ads can include ads that say the employer prefers or requires applicants from a particular country or with a particular visa status (for example, "H-1B preferred" or "H-1B only").

- **Disparate Treatment:** Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including, but not limited to, hiring; firing; job assignments; compensation; training; fringe benefits; promotion; and demotion.
  - Evidence of disparate treatment related to firing can include a company terminating American workers who are on the "bench" between job assignments at a much higher rate than employees who are visa guest workers.
  - Evidence of disparate treatment related to hiring can include an employer making it more difficult for applicants from one national origin to apply for positions (for example, subjecting U.S. workers to more laborious application methods than H-1B visa holders during the PERM labor certification process).

- **Harassment:** Title VII prohibits workplace harassment based on national origin, which may occur when an employee is subjected to unwelcome remarks or conduct based on national origin. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.

- **Retaliation:** Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing national origin discrimination at work, participating in employer or EEOC investigations, or filing an EEOC charge.

## Common Business Reasons Do Not Justify National Origin Discrimination

### The following considerations do not excuse an employer's decision to hire foreign workers over American workers:

- Customer or client preference;
- Lower cost of labor (whether due to "under the table" payment, or abuse of certain visa-holder wage requirement rules);
- Beliefs that workers from one or more national origin groups are "more productive" or possess a better work ethic than another national origin group.