

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 13-59

August 9, 2013

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Anne Purcell, Associate General Counsel

Subject: Memorandum of Agreement with Office of Special Counsel for
Immigration Related Unfair Employment Practices

On July 8, 2013, Acting General Counsel Lafe Solomon entered into a Memorandum of Agreement with the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). The MOU, a copy of which is attached, formalizes a collaborative relationship that allows both agencies to share case-handling information and coordinate investigations as appropriate. The MOU also allows both the NLRB and OSC to refer charges, with the express authority of the charging party, to the other agency at any time during the charge intake or case handling process when a matter suggests a possible violation of the other agency's law. This MOU is consistent with other MOUs both the NLRB and OSC have independently entered into with other federal agencies with jurisdiction over employees in the workplace.

OSC, an agency within the Civil Rights Division of the US Department of Justice, enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), which prohibits certain employment-related discrimination against US citizens and other work authorized individuals. Employers that are found to have unlawfully discriminated may be required to pay back wages and civil penalties and to hire or rehire workers.

The INA's anti-discrimination provision contains four prohibitions.

- The INA prohibits **citizenship or immigration status discrimination** with respect to hiring, firing, and referring or recruiting for a fee. Citizenship status discrimination occurs when an employer treats an individual differently because of their citizenship or immigration status or because the individual is perceived as looking or sounding "foreign." All employers with more than three employees are covered by the INA's prohibition against citizenship or immigration status discrimination.
- The INA prohibits **national origin discrimination** with respect to hiring, firing, and referring or recruiting for a fee. Employers may not treat an individual differently because of their place of birth, country of origin, ancestry, native language, or accent. OSC covers national origin discrimination charges against

employers with four to fourteen employees; the Equal Employment Opportunity Commission has jurisdiction over national origin claims involving employers with 15 or more employees.

- The INA prohibits **unfair documentary practices** during the employment eligibility verification (Form I-9) process. In general, employers may not request more or different documents than are required to establish a worker's identity and eligibility to work in the United States or reject documents that appear to be reasonably genuine upon their face. All employers with more than three employees are covered by the INA's prohibition against unfair documentary practices.
- The INA contains **anti-retaliation protections**, which prohibit employer acts to intimidate, threaten, coerce, or retaliate against an individual who intends to or has filed a discrimination charge with OSC, has provided testimony or otherwise assisted OSC in an investigation, proceeding, or hearing, or has otherwise asserted their rights under the statute.

The MOU also provides for cross-training and technical assistance to ensure that staff within each agency can identify appropriate referrals. Attached to this Memorandum is an overview of OSC's jurisdiction, as well as charge referral instructions and a referral checklist. Please distribute these documents to all field attorneys and field examiners, and copies should be retained in the Information Officer's office. Please discuss the MOU, as well as the jurisdiction and mission of OSC, at an upcoming training or staff meeting. You can find the MOU and accompanying informational documents on the [Operations page](#) of the Insider. More information about OSC's mission and practices can also be found on their website, <http://www.justice.gov/crt/about/osc/>.

If you have any questions concerning this matter, please contact DAGCs Aaron Karsh or David Kelly.

/s/

A.P.

Attachments (4)