U.S. Department of Justice
Civil Rights Division

Office of Special Counsel for Immigration-Related Unfair Employment Practices - NYA
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MAR 2 8 2012

Via First Class Mail and E-Mail (jena.satchell@solutionsstaffing.com)

Jena Satchell
Cincinnati Market Leader
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Suite 222
Cincinnati, OH 43207

Dear Ms. Satchell,

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to the e-mail you sent OSC on December 28, 2011.

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits four types of unlawful conduct: (1) citizenship or immigration status discrimination; (2) national origin discrimination; (3) unfair documentary practices during the employment eligibility verification (Form I-9) process ("document abuse"); and (4) retaliation for filing a charge or asserting rights under the anti-discrimination provision. Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are pleased to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA. Please visit our website as well at http://www.justice.gov/crt/about/osc/, or call our employer hotline at 1-800-255-8155 for additional guidance.

Your e-mail contains two questions: first, you ask "is it illegal to require [] that all employees read, write and speak English?" Second, you ask whether you can tell potential employees "that our positions require they write, read and speak English." You explain that your company does "not have any bi-lingual staffers" and that all of the company's "jobs require that the associate be able to communicate with managers, and read and write in English (pick tickets, etc, are in English with no Spanish version available)."

The INA prohibits national origin discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four to fourteen employees. This means that employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent, or because they are perceived as looking or sounding "foreign." U.S. citizens and all work authorized individuals are protected from national origin discrimination. 8 U.S.C. § 1324b(a)(2)(B). For employers that have fifteen or more employees,

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the Equal Employment Opportunity Commission ("EEOC") has national origin jurisdiction under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., as amended (Title VII). Employers in this category should contact the EEOC at 1-800-669-4000, or email info@eeoc.gov for guidance.

With respect to employers considering English language abilities in hiring, analysis of the anti-discrimination provision of the INA has largely been informed by decisions applying Title VII. See Yefremov v. NYC Dep't of Transp., 3 OCAHO No. 562, 15 (1993). Employers may not be deemed to have violated Title VII by requiring employees to be able to read, write, and speak English if such skills can be considered a bona fide occupational qualification reasonably necessary to the normal operation of that particular business. See Int'l Union, Unite Auto., Aerospace & Agr. Implement Workers of America UAW v. Johnson Controls, Inc., 499 U.S. 187, 200 (1991). To require employees to have certain English skills, there must be objectively verifiable job skills or aptitudes that are specifically related to a particular employee's position. Id. at 201; see also EEOC Compliance Manual Sec. 13-V(B) (2002), available at http://www.eeoc.gov/policy/docs/national-origin.html, (level of English proficiency required for potential hires should be commensurate with the level necessary to effectively perform the job for which person applied).[1] For information on interviewing applicants, we recommend consulting the EEOC compliance manual. See EEOC Compliance Manual, at 13-III(B)(2).

We hope this information is of assistance to you. Please feel free to contact us through our toll free number at 1-800-255-8155 if you have any further questions.

Sincerely,

Seema Nanda
Acting Deputy Special Counsel

[1] Workplace restrictions placed on employees after hiring, such as English only rules, would be governed by Title VII and not the INA. See Garcia v. Spun Steak Co., 998 F.2d 1480, 1487-89 (9th Cir. 1993).

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