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DOJ settlement is a painful – but helpful – reminder about employer review of authorization documents

By Will Krasnow
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A California staffing agency has recently settled a case brought by the U.S. Department of Justice regarding the employment authorization documents that its predecessor company reviewed before hiring.

According to the DOJ, from September 2020 through October 2022, the staffing agency South Bay Safety scrutinized employment authorization documents from non-U.S. citizens more than it did the equivalent documents from citizens. The DOJ went after South Bay's successor in interest, Selective Personnel, Inc., based on the alleged violations.

Section 1324b(a)(6) of the Immigration and Nationality Act states that it is "an unfair immigration-related employment practice" for an employer to do any of the following, if done with the purpose or intent of discriminating against a non-citizen:

- Request *more* documents than those that are required under the statute.
- Request documents that are *different* from those specified in the statute.
- Refuse to honor documents that on their face reasonably appear to be genuine.

According to the Immigrant and Employee Rights Section of the DOJ's Civil Rights Division, South Bay required that non-U.S. citizens "present specific types of documentation reflecting their immigration status to prove their permission to work. In contrast, U.S. citizens could present any acceptable document of their choosing."

Under the settlement, South Bay's successor, Selective Personnel, will pay civil penalties, and will also be required to train its employees on INA requirements, revise its employment policies, and be subject to continued monitoring by the DOJ.

The settlement serves as a reminder for all employers. Workers generally protected under Section 1324b are U.S. citizens or nationals, lawful



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permanent residents, individuals granted asylum or refugee status, and individuals admitted for temporary residence under certain provisions of the statute. Individuals in these categories are allowed to choose which valid, legally acceptable documentation they will present during the hiring process, regardless of their citizenship status, immigration status, or national origin. Again, the documents selected cannot be rejected by the employer if they reasonably appear on their face to be genuine.

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