

Filing an Immigration-Related Employment Discrimination Charge

A Do-It-Yourself Packet
for Immigrant Workers

This Packet Contains:

- Basic Information Brief:
Employer Sanctions and Discrimination
- Sample I-9 Form
- Practical Tips on Dealing with a
Discriminatory Employer
- How to File a Discrimination Charge
- Instructions on Filling out the Charge Form
- Sample Charge and Complaint Forms



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Filing an Employment Discrimination Charge

In 1986, Congress passed the Immigration Reform and Control Act (IRCA), which made it unlawful for employers to knowingly hire an undocumented worker and established an employment eligibility verification procedure that employers must follow to verify that employees are authorized to work in the United States.¹ This procedure requires all employees to provide proof of their identity and authorization to work in the U.S. by filling out Form I-9. Given the increased immigration enforcement at the workplace, some employers may be afraid of being sanctioned (either with civil or criminal penalties) while others may be confused with the different types of new verification programs. As a result, some employers may refuse to hire immigrants and other workers who “look or sound” foreign. Other employers refuse to accept valid work authorization papers or will only hire individuals who are lawful permanent residents or U.S. citizens. For these reasons, IRCA also included anti-discrimination provisions that make it unlawful for employers to discriminate or retaliate against workers based on citizenship or immigration status; or to request certain or specific work authorization documents from workers.

If you think an employer did not hire you because you are not a U.S. citizen, you “look or sound” foreign, or the employer wouldn’t accept your valid work authorization documents, you may be the victim of illegal employment discrimination under federal immigration law. This packet will provide you with information about your right to be free of employment discrimination, and how to file a discrimination charge to help you protect your rights as a worker.

¹ For more information, see NILC’s Basic Information Brief: Employment Authorization and Reverification.

Basic Information Brief: Employer Sanctions and Discrimination

APRIL 2009

What are employer sanctions?

Federal law makes it unlawful for employers to knowingly hire workers who are not authorized to work in the United States. The law provides for penalties—referred to as “employer sanctions”—for employers that fail to complete Form I-9, who hire workers knowing they are not work-authorized, or that continue to employ workers knowing they are undocumented.²

How do sanctions affect immigrant workers?

It is important that workers, their unions and worker advocates understand the employer sanctions law to ensure that workers’ rights are protected. Some employers, concerned about the prospect of sanctions, may wrongly believe they can escape legal problems by hiring U.S. citizens only or avoiding workers who they think sound or look foreign. Others may attempt to use the verification procedures selectively, to get rid of workers they think are “troublemakers” or intimidate those who try to organize unions or otherwise assert their labor rights. To protect workers from such discriminatory practices, Congress, in enacting the employer sanctions provision, built important safeguards into the law. As a result, employers may also face legal penalties if they discriminate against lawfully authorized workers based on citizenship status or national origin or otherwise engage in what the law refers to as “immigration-related unfair employment practices.” After sanctions were enacted, a number of studies documented the discrimination that resulted. In a national study, the General Accounting Office (GAO) estimated that 14 percent of all employers began to hire only U.S. citizens after employer sanctions were put into place. These practices are illegal, but the antidiscrimination provisions can only be effective if workers are aware of their rights and know how to enforce them.

² Id.

Understanding Employer Sanctions and the I-9 Process

Prior to 1986, it was not unlawful for an employer to hire “undocumented” workers— workers who lack authorization to work in the United States. As a result of IRCA, however, it is now unlawful for any employer to knowingly hire a worker who is not authorized to work in this country. To comply with the law, employers are required to verify the identity and employment eligibility of all employees hired after November 6, 1986 and to complete a special government form— the I-9 Employment Eligibility Verification Form, or “Form I-9” for short—for each new hire. This procedure is binding on all employers, regardless of size.

HOW DO EMPLOYERS VERIFY EMPLOYMENT ELIGIBILITY?

The law requires that the employer complete Form I-9 for all new hires, not just those the employer believes are non-citizens or undocumented.

To enable the employer to complete the form, workers must provide the employer with documents that prove both the worker’s identity and eligibility to work, as explained further below. Workers generally must be allowed three business days to produce documentation and they should not be required to produce any documents until they have actually been hired for a position. If a worker has lost a document or documents necessary to establish identity or employment eligibility, an employer must accept a receipt issued by the U.S. Citizenship and Immigration Services (USCIS) showing that the worker has applied for a replacement document and must give the worker up to 90 days from the date of hire to provide a valid original document.

The employer is required to keep completed Forms I-9 on file for a specified period of time and must make them available for inspection, if requested, by the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE), the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), or the U.S. Department of Labor (DOL). Employers who fail to complete the forms, or who continue to employ workers they know lack valid

employment authorization, are subject to civil and criminal penalties.

WHAT IS FORM I-9?

Form I-9 is the document that the worker and the employer complete in order to verify the worker’s authorization to work in the U.S. Form I-9 contains three sections, as well as a list of documents which may be used to prove an employee’s identity and work eligibility. In April 2009, USCIS changed Form I-9 thereby modifying the number and type of documents that workers could use. USCIS may revise the Form I-9 in the future

SECTION 1

The first section of Form I-9 is to be completed by the worker and requires that she sign the form under penalty of perjury. The worker must supply his or her name, address, date of birth, and must check a box indicating whether she is a U.S. citizen or national, a lawful permanent resident, or an alien authorized to work in the United States. Noncitizen workers must also provide their Alien number (assigned to them by DHS and listed on all documents the agency issues to them) and the expiration date of their authorization to work, if any. Note that asylees’ and refugees’ authorization to work does not expire. While there is a space for the worker’s Social Security number, it is not required. However, if the worker provides a Social Security card as proof of her work authorization, the employer will need to list that in Section 2. If a worker needs assistance in completing section 1 (i.e. limited English proficiency or unable to write), someone can help the worker complete this section. That person would have to sign that he/she prepared or translated this section for the worker.

SECTION 2

The second part of the form requires the employer to list the documents which were produced by the worker to verify his/her identity and employment eligibility. As explained below, there are three groups of documents out of which a worker must choose. It is the worker’s choice, not the employer’s, as to which acceptable document or combination of acceptable documents to use.

“List A” documents are those that establish both a worker’s identity (who he or she is) as well as

eligibility to work (legal work papers). If a worker provides one document from List A, he/she is not required to provide any other document to complete Form I-9.

If a worker does not have, or chooses not to provide, a “List A” document to complete Form I-9, he/she must choose one document from “List B” and a second from “List C” to provide to the employer. “List B” documents establish a worker’s identity. “List C” documents establish a worker’s employment eligibility. Again, it is the worker’s choice, not the employer’s, as to which acceptable document or combination of acceptable documents to use. However, if a worker presents a valid Social Security card as a List C document that states on it “Not Valid for Work Without DHS Authorization,” the employer may indeed ask the worker for a DHS-issued document that establishes he/she is authorized to work.

The currently acceptable listed documents appear in the box at the end of this memo. This list of documents includes the recent changes USCIS made to Form I-9 in April of 2009. All employers as of April 3, 2009, are required to use the new I-9 form. However, employers are NOT required to reverify the work authorization documents of and complete new I-9 forms for workers who already have completed I-9 forms on file. It is important for workers and advocates to remember that the worker, not the employer, has the right to choose which of the listed documents or combination of documents to show to satisfy the I-9 requirements. An employer’s request for “more or different documents” than are required, or a refusal to accept certain documents that appear “reasonably genuine” and to related to the worker presenting them may violate the Immigration and Nationality Act’s (INA) antidiscrimination protections. Such violations are referred to as “document abuse” and are discussed more fully below.

SECTION 3

The third section of Form I-9 is entitled “Updating and Reverification.” It is used by an employer to reverify the employment eligibility of employees who, when they first completed Form I-9, presented a document showing that their employment authorization would expire on a certain date. In most but not all cases, when a worker’s employment authorization expires, the employer

must reverify on Form I-9 that the employee is still work-authorized and must do so no later than the expiration date on the employee’s work authorization. Please note that while the “green card” that lawful permanent residents often present bears an expiration date, an employer should NOT reverify a lawful permanent resident’s authorization. In addition, some individuals who have Temporary Protected Status (TPS) can continue to work with an expired Employment Authorization Document when DHS publishes a notice in the Federal Register automatically extending their work authorization.

Understanding the Antidiscrimination Protections

When it adopted the employer sanctions, Congress, as noted above, also added important antidiscrimination provisions to the law to protect workers’ rights. As a result, federal immigration law makes it illegal for employers to engage in what are called “immigration-related unfair employment practices.” Such practices include discrimination based on a person’s national origin or citizenship status, or committing unfair documentary practices while verifying an employee’s employment eligibility, as well as retaliation against employees who assert their rights under the immigration laws. The various types of discrimination prohibited by the law, as well as the procedures for enforcing and protecting employee rights, are outlined below.

WHAT DISCRIMINATION IS PROHIBITED?

Citizenship status discrimination

Citizenship status discrimination occurs when workers are denied employment or terminated by their employer because of their citizenship or immigration status. The most common form of citizenship status discrimination is a “citizens only” hiring rule. Rules requiring immigrant workers to produce “green cards” may also constitute citizenship status discrimination, as not all work-authorized immigrants possess green cards and all employees have the right to choose which acceptable document or combination of acceptable documents to present. U.S. citizens, lawful permanent residents, temporary residents, asylees

(individuals granted asylum), and refugees are all protected from citizenship status discrimination. Other examples of unlawful citizenship status discrimination include employers who refuse to employ asylees and refugees because of their time-restricted employment authorization documents.

National origin discrimination

National origin discrimination occurs when workers are denied employment or otherwise treated differently from other employees because of their place of birth, ancestry, native language, or accent or because they are perceived as looking or sounding “foreign.” Any one who is work-authorized is protected from national origin discrimination. There may often be overlap between citizenship and national origin discrimination.

Document abuse discrimination

Document abuse—the most common type of immigration-related unfair employment practice—occurs when an employer requests more or different documents from a worker than are required to complete Form I-9 or rejects documents provided by the employee that reasonably appear to be genuine. Not all work-authorized non-citizens are issued the same documents. As long as the documents are listed on the back of Form I-9, appear to be genuine on their face, and relate to the worker in question, the employer is obliged to accept them. Failure to do so, with the intent to discriminate, may constitute illegal document abuse. All work-authorized individuals are protected against document abuse.

WHAT CAN WORKERS DO TO ENFORCE THEIR RIGHTS?

The Office of Special Counsel for Immigration-Related Unfair Employment Practices—“OSC” for short—is a special government agency that was created to enforce the anti-discrimination provision of federal immigration law and protect worker rights. A part of the U.S. Department of Justice’s Civil Rights Division, OSC has multilingual staff and attorneys ready to assist workers, their unions, or other employee advocates, along with employers and the general public on matters involving employment discrimination. For information or assistance in filing a charge of

discrimination, workers may call the OSC’s toll-free hotline at 1-800-255-7688 or 1-800- 237-2515 (TDD for hearing impaired). There is also an automated employer hotline at 1-800-255-8155 or 1-800-237-2515 (TDD).

Charges of discrimination should be faxed to OSC at 1-202-616-5509. You can also write to the OSC at the following address:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Website: <http://www.usdoj.gov/crt/osc>.
E-mail Address: oscrcrt@usdoj.gov

Workers who think they have been discriminated against should contact the OSC or seek legal help right away from a community organization, legal aid office, or other nonprofit agency that assists immigrants and refugees with legal matters. The OSC has grantees throughout the country that conduct outreach and education efforts to help educate workers and their advocates, employers, and the general public about the antidiscrimination protections under the federal immigration law. These grantees may also be able to assist workers with filing a charge with OSC. A list of OSC grantees can be obtained through OSC’s website: <http://www.usdoj.gov/crt/osc/htm/news.htm>. Generally, complaints of discrimination, including the immigration-related unfair employment practices discussed above, must be filed within 180 days of the time the discrimination occurred. Victims of discrimination may be entitled to back pay and/or reinstatement, and their employers may be subject to additional monetary penalties.

Workers who are represented by unions should be sure to notify their union representative, as well as the OSC, if they believe they have been discriminated against. In addition to the rights and protections of federal law, unionized employees may have additional protection from discrimination under their collective bargaining agreements. Deadlines for filing grievances under a labor contract are usually very short so it is important to act quickly to get help.

Finally, the anti-discrimination protections in federal immigration law, discussed above, supplement the broad prohibitions against discrimination contained in Title VII of the Civil Rights Act of 1964, another federal law. Title VII makes it unlawful for employers to engage in employment discrimination based on race, national origin, religion, color, and sex. Charges of discrimination in violation of Title VII must be filed with the Equal Employment Opportunity Commission (EEOC). The OSC and the EEOC

have an agreement to cooperate in the handling of discrimination charges filed with one of the agencies which involves questions of discrimination within the other agency's area of responsibility.

For questions about Title VII, contact the EEOC at:

1-800-669-4000

1-202-275-7518 (TDD)

1-800-669-6820 (TTY)

www.eeoc.gov

Practical Tips on Dealing with a Discriminatory Employer

WHAT SHOULD I DO IF I THINK AN EMPLOYER HAS DISCRIMINATED AGAINST ME?

Educate yourself about your rights on the job.

If you think you have been treated unfairly on the job, it is important for you to find out about your rights. Local legal aid offices, community-based organizations, workers' centers, unions, or churches may have written information about your rights on the job. You might be able to find a listing of some of these groups in your local telephone directory under "community resources."

Get help right away.

Most complaints against employers must be filed within 180 days. Try to find a local legal aid office or community organization to help you. Find out if there are any workers' rights clinics in your area where you can talk to an employment law expert about why you think you are being discriminated against.

Document the problem.

Even if you are not sure that you have a legal claim, make sure to document the problem well. For example, if an employer refused to hire you because you did not show a specific immigration document, or because you look or sound like you were born outside the U.S., you should make sure to get the name of the person who refused to hire you. Make sure you write down the date you went to apply, and the name and address of the employer. If you filled out an application, keep a copy (if possible) for your records. If you saw a job announcement stating that only U.S. citizens should apply or that English is required for the job when you think it should not be, keep a copy of the announcement. Keeping records of this kind of information will help you if you decide to file a discrimination charge later.

If you have been hired but start experiencing unfair treatment once on the job, it is important to

document the problem in case you are ultimately fired. For example, if you are mistreated because of your accent or because you were born in another country, it is important that you write down as soon as possible a description of any specific incidents, when they took place, who was present, who said what, and the names of any potential witnesses. These notes will help you assess the strength of your case if you decide to file a discrimination charge.

Keep good records.

If the employer has fired you or refused to hire you, continue to look for a new job. Keep written notes about your job search (where you have gone to apply for work, dates when you applied, what kinds of jobs you've applied for). If possible, keep business cards with the name and address of the companies where you applied. If you are collecting unemployment benefits, keep copies of all that paper work, including the forms showing your job search efforts. Keep copies of the payments you get under unemployment. If you get a new job, keep a record of how much money you make (save your pay stubs, make copies of your checks before you cash them, or write down the dates and amounts you were paid in a calendar or notebook). This will help you if you decide to file a case against your old employer.

WHERE CAN I GO FOR ASSISTANCE IF I WANT TO FILE A CHARGE?

A government agency in Washington D.C. can help workers who think they have been discriminated against. It is called the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, or "OSC" for short. The OSC investigates charges of employment discrimination. The OSC will not charge you any money.

The OSC has a telephone number you can call for free. You can ask questions and find out if the OSC thinks you may have a basis for filing a charge of discrimination against an employer. OSC will also

call your employer if it has done something wrong and try to get it to fix the problem right away, so that you can get back to work and don't have to file a charge. If you think an employer did not hire you because you are not a citizen, because the employer did not want to accept the work papers you provided, or because you "look or sound foreign," call the hotline for help at:

Office of Special Counsel (OSC)

1-800-255-7688

1-800-237-2515 (TDD for the hearing impaired)

Charges of discrimination should be faxed to OSC at 1-202-616-5509. You can also write the OSC.

The address is

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

If you have access to the Internet, you can contact them through:

Website: www.usdoj.gov/crt/osc

E-mail Address: oscrt@usdoj.gov

IF I CALL THE OSC, WILL THEY CONTACT IMMIGRATION?

OSC is separate from DHS and ICE, and does not have anything to do with detaining or deporting immigrants. No one who calls OSC's hotline will be referred to immigration authorities. If you are an undocumented worker, you can still call the OSC to report an employer which you believe may be violating the INA's anti-discrimination laws. You may also wish to remain anonymous. However, you are not eligible to file a charge with the OSC- only workers lawfully authorized to work are protected by the immigration law's antidiscrimination provisions.

If you are undocumented and you have a potential claim under some other law, the OSC would refer you to the appropriate agency enforcing that law. The OSC could also refer you to a community-based organization that might be able to assist you in asserting your workplace rights. Remember, you may also choose to remain anonymous and still obtain helpful information.

How to File a Discrimination Charge

WHAT DOES IT MEAN TO “FILE A CHARGE” WITH THE OSC?

When you file a charge with the OSC, you are formally asking the OSC to find out whether the employer discriminated against you. You can file a charge by using the OSC Charge Form that is included with this packet. Once you have filled it out and mailed or faxed it to the OSC, you have filed your claims with the agency.

WHEN MUST I FILE A CHARGE?

It is best to file a charge as soon as possible after you think you have been discriminated against, even if you are unsure if you have a valid claim. You are required by law to file a charge within 180 days of the date the employer discriminated against you. But if more than 180 days have passed, do not give up. Call the OSC and explain what happened. Sometimes you may have a good excuse for being late, such as for circumstances beyond your control, and the OSC may still be able to help. Remember to call the OSC as soon as possible.

IF I CALL THE OSC, WILL MY EMPLOYER FIND OUT THAT I CALLED?

The staff person you talk to at the OSC may ask you if the OSC may call the employer you are complaining about. But if you ask the OSC not to use your name, the attorney will not tell the employer that you called the OSC.

When you call, an OSC staff person will ask you questions about why you think you have been treated unfairly. The staff person also may give you a phone number for another agency if he or she does not think the OSC can help you. Other government agencies protect workers from discrimination based on sex, age, race, religion, and disability. Other laws also protect workers from unsafe workplaces, unfair labor practices, and wage and hour violations.

If the OSC staff person thinks that OSC can help you, he or she may ask you if you want to file a charge. You will be asked to provide your name on the charge form. However, if you still do not want to provide your name, OSC may still be able to open an investigation based on the information that you provided.

WHAT IF I AM AFRAID OF FILING A CHARGE AGAINST MY EMPLOYER?

You may be worried that if you file a charge your employer will fire you and you will have a hard time finding another job. But if you file a charge, the law protects you from being fired or retaliated against in other ways because of it. You should discuss your concerns with the OSC staff person who helps you.

Many community-based agencies, legal services organizations, and worker centers also help people with employment problems. If there is one near you, call or visit to see if you can get help, especially if you have reason to believe the employer might take some other negative action against you.

Instructions for Filling Out the Charge Form

Following these instructions are two forms:

1. an OSC charge form, and
2. an Office of Chief Administrative Hearing Officer (OCAHO) questionnaire/complaint form.

You first need to file the charge form with the OSC so that it can investigate your case. Once it has finished the investigation, you might also need to fill out the second form called “Questionnaire/ Complaint Regarding Unfair Immigration-Related Employment Practices,” depending on the OSC’s findings. This will be discussed in the next section.

HOW DO I FILL OUT THE CHARGE FORM?

It is best to use the OSC Charge Form that came with this packet to file a charge against an employer. The form asks for all the information the OSC needs to investigate your case. It is available in English, Spanish, Chinese and Vietnamese. The following instructions are for the numbered items on the charge form. When you fill it out, type or print neatly using an ink pen rather than a pencil.

NUMBER 1:

If you are personally filing a charge, you are the “Charging Party.” Write your name, telephone number, and address in this space. If you do not have a telephone, write down a phone number belonging to someone who will take messages for you. You are also the “Injured Party.” Print “same” in the space for the injured party’s name.

You can also have a representative or an organization, such as a worker center, immigrant rights organization or union, file the charge on your behalf. If you have authorized an organization or other representative to file the charge for you, that organization would be listed as the “Charging Party.” You would then complete the “Injured Party” section of the form.

NUMBER 2:

Print the name, telephone number, and address of the employer you believe has discriminated against you.

NUMBER 3:

If the employer you are complaining about has fewer than 15 workers, but more than 3 workers, check the first box. If the employer has 15 or more workers, check the second box. If you do not know how many people work for the employer, check the box beside the words “Unable to estimate number of employees.”

NUMBER 4:

If you think the employer you named under Number 2 has treated you unfairly because you “look or sound foreign” or because of your nationality, check the box on the charge form next to “National Origin Discrimination.”

If you think you were treated unfairly because you are not a U.S. citizen or a permanent resident, check the box next to “Citizenship Status Discrimination.” Or if the employer told you that you have to show an USCIS issued document, check this box.

If the employer has threatened to fire you, or has already fired you, for filing a charge with the OSC, check the box next to the word “Retaliation.” Or if the employer is harassing you because you stood up for your right to be free from immigration-related discrimination by complaining about the employer’s discriminatory treatment of you, check this box.

If the employer would not accept your legal work papers or if the employer told you to show USCIS documents, check the box next to “Document Abuse” on the charge form.

It is often the case that the employer may have treated you unfairly in more than one way. For this reason, it is best to check each box on the charge form that applies in your case.

NUMBER 5:

If you are a United States citizen or national, check the first box. Then go to Number 6. (A national of the U.S. is a person born in the outlying possessions of the U.S., such as in American Samoa.)

If you are not a U.S. citizen, but you have lawful work authorization documents from the USCIS, check the second box “Alien authorized to work in the United States.” If you check this box, you must answer the other items in Number 5.

Write down your alien registration number (“A” number). Your “A” number is the number on your USCIS document that begins with the letter “A.” Also write the day, month, and year you were born in the space provided.

If you are a lawful permanent resident (if you have a “green card”), check the box beside the words “Is lawfully admitted for permanent residence.” In the blank space write the date you were granted permanent residency (if you know the date).

If you applied for amnesty or legalization under the IRCA and have a temporary resident card, check the second box.

If you are a refugee, check the box next to the words “Is admitted as refugee.” If you were granted political asylum, check the box next to “Has been granted asylum.”

If you have a work authorization from the USCIS, check the last box.

On the right-hand side of the form, check the first box next to the words “Has applied for naturalization” if you have applied to become a U.S. citizen. Write the date you applied to become a citizen on the line next to “Date of application.” If you have not applied to become a U.S. citizen, check the second box next to “Has not applied for naturalization.”

NUMBER 6:

Write the date that the employer treated you unfairly. This is the date the employer fired you, requested more or specific documents or rejected your documents, or the latest date that you were refused a job.

NUMBER 7:

Write the address of the place where you were treated unfairly. This will probably be the employer’s business address.

NUMBER 8:

If you have already filed an employment discrimination charge with the EEOC or another government agency against the employer you listed in Number 2 and Number 7, check the box next to “Yes.” Then write down the name and address of the government agency, the date you filed the charge, and the file number of your case with the other agency.

If you have not filed an employment discrimination charge with any other government agency, check the box next to “No.”

NUMBER 9:

On these lines, you must explain to the OSC why you think you were treated unfairly. Do not just write, “I was treated badly.” Instead, write down specifically what the employer did that you think is discrimination. Include as much information as possible such as the date, time, location, names of individuals responsible for the discrimination, their title or position, names of witnesses, and document what exactly the employer, or employer’s representative said and did. For example, if you think the employer treated you differently from other workers because the employer thinks you are a foreigner, you must write your reasons for thinking this and describe how you were treated. If the employer said that you had to be a U.S. citizen to get a job, write this. If you think the employer would not accept your legal work papers, write this. If the employer told you that it could not verify that you are authorized to work, write this. If the employer said you had to show a USCIS document, write this. If an employer told you that you could not be hired because there is an expiration date on your work authorization documents, write this in Number 9. If the employer told you that you could not be hired because your Social Security number is not good, write this.

Having as much information as possible enables the OSC to do a good job investigating your case. Try to write as much as you can about why you think you were treated unfairly. If someone saw you

being treated unfairly, write the name and telephone number of this witness on the lines in Number 9.

If you need more room to write down exactly what happened, you can add pages to the form and indicate on the form under No. 9 “see attachment.”

NUMBER 10:

If you are filing the OSC charge on your own, sign your name on the first line and print today’s date. By signing the form, you are swearing that everything you have written on the form is true. You are also giving the OSC permission to tell the employer your name during the investigation. If you do not want the OSC to tell the employer your name, call the OSC before you sign the form. Discuss the case with an OSC attorney and ask for advice.

WHAT IF I DO NOT HAVE ALL THE INFORMATION THE CHARGE FORM ASKS FOR?

The most important thing to do is file the form with the OSC within 180 days of the date you were discriminated against. If you do not have all the information the form asks for, give as much information as you can and file the form on time.

If you do not answer all the questions on the form, the OSC will contact you and ask you for more information. You must provide all the information the OSC asks for within 45 days. If you have trouble getting the information, call the OSC for help.

WHERE DO I SEND MY CHARGE FORM? •

After completing and signing the charge form, make a copy for your records. Charges of discrimination should be faxed to OSC at 1-202-616-5509. You can also mail your charge form to:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Or fax to: 202-616-5509

Remember, the form must be mailed or faxed within 180 days of the date you were treated unfairly.

Remember to keep a copy of the filled-out charge form for yourself.

CAN I CALL THE OSC FOR HELP FILLING OUT THE CHARGE FORM?

Yes. Call 800-255-7688 for help filling your charge form. OSC also has a telephone number for the hearing impaired: 800-237-2515.

Many of the people who work at the OSC speak several languages including Spanish. If you do not speak English or Spanish, you can still call the OSC and tell the person who answers what language you speak. The OSC will get a translator to speak with you. The OSC will not charge you any money. The hotline and assistance are free.

WHAT IF I MOVE AFTER I FILE MY CHARGE?

If you move or change your phone number, make sure you call or write the OSC and give your new address or telephone number. It is very important to let the OSC know immediately if you move. You can lose your case if you do not let the OSC know how to contact you.

WHAT HAPPENS DURING THE OSC’S INVESTIGATION?

The OSC attorney will try to find out if your employer illegally discriminated against you. First the OSC will notify you that it received your charge form. Within 10 days after getting your charge form, the OSC will also send a notice to the employer telling the employer about the investigation.

The OSC attorney will request information and documents from the employer. Meanwhile, you should gather as much evidence as you can to support your case. Try to find witnesses who can tell the OSC what really happened.

The OSC attorney will also ask you questions. He or she may visit you in person or talk to you over the telephone. If you are able to find an advocate or an attorney to help you, that person can also talk to the OSC investigator and explain your side of the story.

Initially, the OSC has 120 days to investigate your case. This period can be extended by an additional 90 days before the OSC must either dismiss your charge or file a lawsuit on your behalf. If the OSC decides that you were illegally discriminated against, it will try to settle the case with the employer.

WHAT DOES IT MEAN TO “SETTLE A CASE”?

If you and the employer agree to solve the problem without going before a judge, this is called a “bilateral resolution.” The employer may agree to stop discriminating and give you a job. The employer may also agree to pay you for lost wages and educate its employees on the law. In most cases, OSC will end its investigation following a bilateral resolution.

If OSC determines that you were illegally discriminated against, OSC may negotiate and enter into a formal settlement agreement, which may include some or all of the following terms: an agreement by your employer to stop discriminating; monetary penalties; reinstating you to your previous position with or without backpay; and an agreement to educate its staff members involved in hiring on non-discriminatory practices. If the OSC decides not to file a complaint with a judge, you must decide whether you want to file a complaint on your own. At the conclusion of the 120-day investigatory period, you will receive a notice from the OSC that it either is extending its investigation or has completed the investigation and is dismissing your charge (120-day letters). When you get that notice, you and the OSC, if it has extended its investigation, have 90 days to file a complaint with a judge. As discussed below, you may want to find an attorney to represent you if you decide to file your own complaint.

WHAT DOES “FILE A COMPLAINT” MEAN?

A complaint initiates a lawsuit and tells a judge why you think you were discriminated against. The judge may have a hearing to decide if the employer treated you unfairly. The hearing is very much like a trial.

If the OSC files a complaint against the employer, the OSC will not charge you any money, but OSC

will be representing the U.S. government, not the Charging Party.

WHAT IF THE OSC DOES NOT FILE A COMPLAINT?

After the conclusion of the initial 120-day investigatory period, the OSC will send you a letter if it decides not to file a complaint. The letter will tell you that if you want to file your own complaint before a judge, you must do so within 90 days after you receive the letter.

DO I NEED A LAWYER TO FILE A COMPLAINT?

You do not have to get a lawyer. You can represent yourself before the judge, but it is better to have a lawyer to represent you. Locate a legal aid office or community organization that helps people with immigration or employment problems. The OSC may be able to give you the name and telephone number of an office near you that you can call for help. If you cannot find a lawyer to help you, but you think that the employer acted illegally, you must still file a complaint within 90 days of getting the 120- day letter from the OSC if you want to continue with your case.

If you are thinking about filing a complaint with the judge on your own, *be careful*. If the judge later decides that the employer did not discriminate against you, the judge could order you to pay for the attorney your employer hired. This rarely happens. But before you file the complaint on your own, call OSC to ask for the name of a legal aid office or community organization where you can get help.

If you decide to file a complaint, fill out the complaint form included in this packet called “Questionnaire/Complaint Regarding Unfair Immigration-Related Employment Practices.” Type or print neatly and use an ink pen. Make sure you answer all the questions and sign and date the form. Make a copy of the filled-out form and keep it in a safe place.

The judge must receive the complaint form within 90 days after you received the 120-day letter from the OSC telling you the OSC is continuing its investigation or it not going to file a complaint. For example, if you got such a letter from the OSC

today, the judge would have to receive your complaint within 89 days of today. Make sure you allow plenty of time for the mail to get your complaint form to the judge.

When you send your complaint form to the judge, you must attach five copies of the *charge form* you filed with the OSC and five copies of the *120-day letter* the OSC sent you. (If you do not have a copy of the charge form you sent to the OSC, ask the OSC attorney to give you a copy.) Send your complaint and the attached copies by *certified mail* to this address:

United States Department of Justice
Executive Office of Immigration Review
Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041

This office will assign a judge to your case. The judge will send you a notice that he or she will be handling your case. The notice will have the judge's address. If you change *your* address, it is very important for you to let the judge know. Write or call the judge's office assigned to your case to inform the judge of your new address and phone number. If you need help contacting your judge, call 703-305-0864.

WHERE WILL THE HEARING BE HELD?

The hearing will be as close to where you worked for the employer as possible. You will get a chance to tell the judge what happened to you and why you think you were discriminated against.

WHO WILL REPRESENT ME AT THE HEARING?

If the OSC files a complaint against the employer, the OSC attorney will represent the U.S. government at the hearing. If you have your own attorney, he or she should be at the hearing to represent you.

If you have filed a complaint on your own and don't have an attorney to help you, then you will have to represent yourself at the hearing.

AFTER A COMPLAINT IS FILED, DOES THE CASE HAVE TO GO BEFORE A JUDGE?

In many cases, the case may be settled after the complaint is filed. You may reach an agreement with

the employer and not have to have a hearing before a judge. The settlement between you and the employer could be for the money you did not get paid, a job, or other things that will take care of the problem.

If you are not able to settle the case, a date will be set for a hearing with a judge. You will get a notice telling you the time and place of the hearing.

WHAT IF THE JUDGE DECIDES THAT THE EMPLOYER DISCRIMINATED?

If the judge decides that the employer discriminated against you, the judge will order the employer to stop discriminating. The judge may order the employer to hire you, or give you back your job. The judge can also fine the employer, but the money goes to the U.S. government, not to you.

The judge may also order the employer to pay you lost wages. But before doing this, the judge will want to know whether you have been looking for a job since you were fired or since the employer refused to hire you. So it is important that you keep written notes about your job search and a copy of all job applications you submit. Keep notes about what jobs you have been able to get. Keep a record of how much money you earn at these jobs. These notes and records will help the judge decide how much money the employer should pay you.

WHAT IF THE JUDGE DECIDES THE EMPLOYER DID NOT DISCRIMINATE?

If the judge decides that the employer did not illegally discriminate against you, then nothing happens to the employer. The judge can order you to pay the employer's attorney for the time the attorney spent representing the employer, but only if your lawsuit had no basis, and this hardly ever happens.

If you believe the judge made a wrong decision, you can appeal the decision to the federal circuit court of appeals. You will probably need the help of an attorney to file an appeal. You only have 60 days to file an appeal. If you have any questions about the instructions in this packet, call OSC at 1-800-255-7688.