

by Brent J. Lehman

Closing Argument

Title VII Protections against National Origins Discrimination

Americans have a long way to go before seeing a downturn in discrimination claims regarding Title VII of the Civil Rights Act, which broadly prohibits employment discrimination based on race, color, religion, sex, and national origin. There seems to be no shortage of state and federal claims related to these protected groups. Allegations of discrimination based on national origin will continue to rise as the country—particularly Southern California—continues to become a melting pot of cultures.

Employers are often aware of potential discrimination and tensions between what they perceive as “clear” differences among employees. They often proactively try to get ahead of employment issues dealing with race or gender identity. Yet, employers are often unaware of issues in which an employee’s potential discrimination is based on a difference not always immediately visible, such as national origin.

The Equal Employment Opportunity Commission defines national origin discrimination broadly as including, but is not limited to, the denial of equal employment opportunity because of an individual’s, or their ancestors’, place of origin, or because an individual has the physical, cultural, or linguistic characteristics of a national origin group.¹

In large entities that

employ persons from widely differing backgrounds, discrimination allegations are as likely to arise from diversity of national origin as from race. A hiring manager from Mexico may be accused of failing to promote employees hailing from El Salvador. However, the law extends national origin protection beyond a person’s birthplace. The same hiring manager may also be engaging in discrimination by failing to hire or promote the child or grandchild of a Salvadorian, Honduran, etc., if it is determined that the national heritage of the individual is the reason for the discrimination.

Protections are also provided when an individual’s national origin is not tied to arbitrary lines drawn on a modern map. Our firm recently handled a matter in which the plaintiff and an individual defendant were both from Nigeria. The plaintiff—an applicant to a nursing program—was a

member of the Yoruba people while the individual defendant—the director of the nursing program—was a member of the Igbo people. The plaintiff was denied entry to the program.

While the plaintiff did not seem to have a claim for national origin discrimination, because both parties were Nigerian, the plaintiff did have a valid claim discrimination had occurred based on her national origin because “a claim of national origin discrimination arises under Title VII when discriminatory practices are based on the place in which one’s ancestors lived.”² Current political status of the nation or “place” at issue does not matter for Title VII purposes.

Title VII claims can range from obvious to nuanced. Native American tribal affiliations give rise to similar claims. In rare occurrences, a plaintiff can bring a claim based on national origin even if the claim does not demon-

strate a relationship to any particular county or region, e.g., a plaintiff identifying as a Gypsy may qualify for Title VII protections by virtue of being a member of an ethnic group not originally from the United States with ties to nomadic people.³

Though language is often associated with national origin identification, courts explicitly recognize a difference between classifying employees based on the language they speak, e.g., English-speaking versus non-English-speaking, and classification based on race or national origin. Language alone does not identify members of a suspect class, but an employer cannot refuse to hire or promote an employee simply because of an accent.

Incidentally, despite the claim that the Confederate States of America is a defunct former nation, courts have summarily dismissed this claim under Title VII.⁴

Southern California’s population continues to grow in terms of increasing diversity of national origins represented in the work force. Thus, attorneys and clients alike must keep national origin discrimination in mind when dealing with allegations of discrimination. ■

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¹ 29 C.F.R. §1606.1.

² See *Dawavendewa v. Salt River Project Agric. Improvement Power Dist.*, 154 F.3d 1117, 1119 (9th Cir. 1998).

³ *Janko v. Illinois State Hwy. Auth.*, 704 F. Supp. 1531 (N.D. Ill. 1989).

⁴ *Chaplin v. Du Pont Advance Fiber Sys.*, 293 F. Supp. 2d 622 (E.D. Va. 2003).