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EEOC Issues Guidance on Remedies for Undocumented Workers Under Laws Prohibiting Employment Discrimination (1999)

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EEOC ISSUES GUIDANCE ON REMEDIES FOR UNDOCUMENTED WORKERS UNDER LAWS PROHIBITING EMPLOYMENT DISCRIMINATION

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) today issued an enforcement guidance modifying its position on remedies available to unauthorized workers under federal employment discrimination laws. The guidance addresses recent legal developments and explains the basic remedies available to this class of workers under EEOC-enforced laws.

"This guidance makes clear that the anti-discrimination laws under the Commission's jurisdiction protect all employees across the country, regardless of their work status," said EEOC Chairwoman Ida L. Castro. "Unauthorized workers are especially vulnerable to abuse and exploitation. It is imperative for employers to fully understand that discrimination against this class of employees will not be tolerated and that they will be responsible for appropriate remedies if they violate the civil rights laws."

Chairwoman Castro further explained that the new guidance is fully consistent with the nation's immigration laws, principally the Immigration Reform and Control Act (IRCA). "If employers were not held responsible for discrimination against unauthorized workers, it would create an incentive for unscrupulous employers to engage in unlawful workplace conduct," said Ms. Castro. "This would directly undermine the enforcement of the immigration laws by encouraging the employment of unauthorized workers. It would also harm authorized workers who might be denied jobs or be subjected to a work environment which tolerated discrimination."

The new guidance addresses the availability of remedies under the following statutes, where an employer has unlawfully discriminated against undocumented workers: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Equal Pay Act.

The guidance explains that undocumented workers are entitled to the same remedies as any other workers back pay, reinstatement if the employee was unlawfully terminated, hiring if the employee was denied a job due to discrimination, other appropriate injunctive relief, damages and attorneys' fees except in the very narrow situations where an award would directly conflict with the immigration laws. The guidance also emphasizes that unauthorized workers are fully protected by the retaliation principles of the federal anti-discrimination laws.

The new guidance replaces EEOC's Policy Guidance: Effect of the Immigration Reform and Control Act on the Remedies Available to Undocumented Aliens Under Title VII (N-915.040) issued on April 26, 1989. The Commission re-evaluated its position on back pay in light of important legal developments since 1989 regarding the availability of back pay to undocumented workers under the closely related National Labor Relations Act. In addition, the Commission addressed other changes in the law since 1989, principally the creation of a damages remedy under Title VII and the Americans with Disabilities Act.

The guidance will be available on EEOC's web site (www.eeoc.gov) shortly after release of the document. It can also be obtained by calling or writing to EEOC's Office of Communications and Legislative Affairs, 1801 L Street, NW, Washington, D.C. 20507.

The EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Age Discrimination in Employment Act, which protects workers 40 and older; the Equal Pay Act; the Americans with Disabilities Act, which prohibits discrimination against qualified individuals with disabilities in the private sector and state and local governments; prohibitions against discrimination affecting persons with disabilities in the federal government; and sections of the Civil Rights Act of 1991.

This Enforcement Guidance addresses the availability of remedies in cases where an employer⁽¹⁾ is found to have discriminated against unauthorized workers⁽²⁾ in violation of Title VII of the Civil Rights of 1964, the Americans with Disabilities Act (ADA), section 501 of the Rehabilitation Act, the Age Discrimination in Employment Act (ADEA), and the Equal Pay Act (EPA). Based on important legal developments, the Commission is replacing its April 26, 1989, guidance on Title VII remedies for undocumented workers. The Commission now concludes that unauthorized workers who are subjected to unlawful employment discrimination are entitled to the same relief as other victims of discrimination, subject to certain narrow exceptions which are discussed below. The pertinent legal developments include recent cases concerning remedies for unauthorized workers under the National Labor Relations Act, changes in the law regarding after-acquired evidence and mixed motive cases, and the addition of damages to the range of available remedies.

First, the National Labor Relations Board (NLRB) and the Second Circuit recently concluded that unauthorized workers are eligible for back pay under the National Labor Relations Act (NLRA). *A.P.R.A. Fuel Oil Buyers Group*, 320

N.L.R.B. 408, 151 L.R.R.M. 1209 (1995), *aff'd*, *NLRB v. A.P.R.A. Fuel Oil Group*, 134 F.3d 50 (2d Cir. 1997). The *A.P.R.A.* rationale, discussed in more detail below, applies equally to the federal employment discrimination statutes.⁽³⁾

Second, in the context of an after-acquired evidence case, the Supreme Court held that employee wrongdoing does not shield a discriminating employer from liability under the civil rights laws.⁽⁴⁾ Similarly, Congress amended Title VII to provide that employers are liable when discrimination is part of the reason for an adverse employment action, even if it can show it would have taken the same action absent the discrimination.⁽⁵⁾ Both changes recognize that deterrence is a central goal of the federal employment discrimination laws and that failure to penalize discriminating employers will undermine that goal.

Third, Congress has added compensatory and punitive damages to the range of available remedies under Title VII and the ADA. It did so because it had concluded that existing remedies were ineffective and that "additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace."⁽⁶⁾ Inasmuch as undocumented workers are particularly vulnerable to employer abuse, awarding monetary remedies irrespective of a worker's unauthorized status promotes the goal of deterring unlawful discrimination without undermining the purposes of the immigration laws.

Finally, the ADA had not been enacted when the 1989 document was issued. This guidance highlights the fact that the principles governing remedies for unauthorized workers apply to all of the federal anti-discrimination statutes enforced by the EEOC, including the Rehabilitation Act and the ADA, as well as Title VII, the EPA, and the ADEA.

The U.S. Equal Employment Opportunity Commission

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