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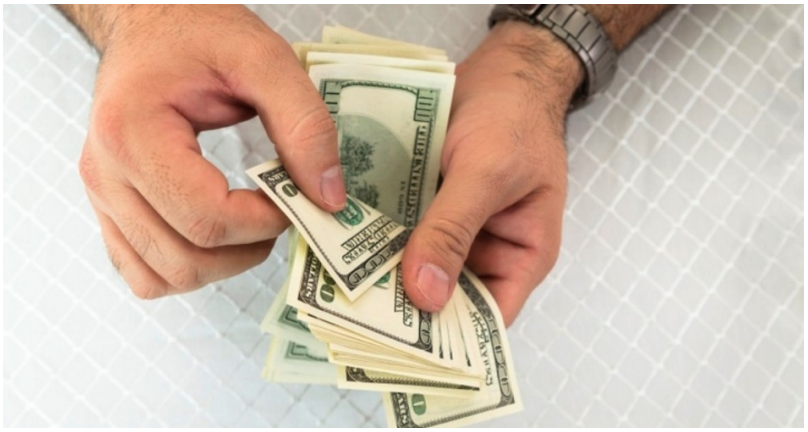
Justice Dept. Fines Company for "Citizenship Discrimination"



The U.S. Department of Justice announced in a press release on September 2 that it had "reached an agreement" with Culinaire International, a Houston, Texas-based catering and restaurant management company, resolving a claim that Culinaire had engaged in "citizenship discrimination" during the work eligibility verification process. DOJ said that the company's policies were in violation of the Immigration and Nationality Act (INA).

"Employers cannot discriminate against workers by requiring them to produce more documents than necessary in the employment eligibility verification and reverification processes," Acting Assistant Attorney General Molly Moran, speaking for the DOJ's Civil Rights Division, was quoted as saying in the press release. "The department applauds Culinaire's willingness to resolve this matter expeditiously and its commitment to changing its past documentary practices."

The DOJ release noted that under the settlement agreement, Culinaire will pay $20,460 in civil penalties to the United States, undergo training on the anti-discrimination provision of the INA, establish a $40,000 back pay fund to compensate potential economic victims, revise its employment eligibility reverification policies, and be subject to monitoring of its employment eligibility verification practices for 20 months.

In other words, Culinaire will have government bureaucrats looking over its shoulders for the next 20 months.

The irony in this case is that employers are *required* by both state and federal law (including the Immigration Control and Reform Act of 1986 and the above-cited Immigration and Nationality Act) to verify that employees are authorized to work in the United States. Employers are required to request a document proving the employee's identity, and a document that provides employment authorization. The Immigration Control and Reform Act of 1986 requires that all employees, citizens and non-citizens, hired after November 6, 1986, and working in the United States must complete a Form I-9. Furthermore, the employer is responsible for ensuring that Section 1 of Form I-9 is timely and properly completed.

Form I-9 states that "Employers CANNOT specify which document(s) they will accept from an employee," but does require the employer to examine one document from List A *or* examine one document from List B *and* one from List C, as listed on the reverse of the form. List A includes a passport, a Permanent Resident Card or Alien Registration Receipt Card, an unexpired foreign passport with a temporary I-551 stamp, an unexpired Employment Authorization Document that contains a photograph, or an unexpired foreign passport "with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant

status, if that status authorizes the alien to work for the employer."

If the applicant cannot provide one of the items on List A, they must provide one item from List B and one item from List C. List B includes a Social Security card, a State Department-issued certification of birth abroad, a U.S. birth certificate, a Native American tribal document, a U.S. citizen ID card, a Resident Citizen ID card, or a DHS-issued employment authorization document. List C includes a driver's license or ID card issued by a U.S. state or outlying possession; an ID card issued by federal, state, or local government agencies; a School ID card with a photograph; a voter registration card; a U.S. military card or draft record; a military dependant's ID card; a U.S. Coast Guard Merchant Mariner card; a Native American tribal document; a Canadian driver's license; or (for those under 18) a school report card; a clinic, doctor, or hospital record; or a day-care or nursery school record.

These comprehensive lists of documents required by the Department of Homeland security suggest that DHS wants employers to be very diligent about determining that everyone they hire is legally eligible to work in the United States. The employer must even sign a statement on Form I-9: "I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is eligible to work in the United States."

Since that sounds very serious, who could fault an employer for being a little hyper vigilant in making sure the employees they hire are legally eligible?

Apparently, the Department of Justice can. Their statement read:

> The Justice Department's investigation found that Culinaire required lawful permanent resident employees to produce a new Permanent Resident Card when their prior card expired, even though the Form I-9 and E-Verify rules prohibit this practice. Lawful permanent residents have permanent work authorization in the United States, even after their permanent resident cards expire. The INA's anti-discrimination provision prohibits employers from placing additional documentary burdens on work-authorized employees during the employment eligibility verification process based on their citizenship status.

Culinaire's crime, evidently, was "discriminating" against workers by requiring them to produce *more documents than necessary* in the employment eligibility verification and reverification processes.

Perish the thought that anyone should do more than is necessary and seek to go above and beyond the minimum requirements in an effort to comply with government regulations!

Found to be in violation of these bureaucratic regulations, the management of Culinaire apparently found that their only recourse was to give in to DOJ, pay the fine, establish a fund to compensate "potential economic victims," and submit to government monitoring for 20 months.

The DOJ said it had "reached an agreement" with Culinaire International, but, from the looks of things, the department made Culinaire "an offer they couldn't refuse."