

National Origin Discrimination

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Coming Soon!

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I. Overview

Oregon law prohibits discrimination based on national origin in employment, housing, places of public accommodation, and in vocational and public schools.¹ Generally, national origin discrimination means discrimination because an individual is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group.

Oregon law prohibits actions that have the purpose or effect of discriminating against persons because of their actual or perceived national origin.

National origin discrimination includes discrimination by an individual of one national origin against an individual of the same national origin, as well as discrimination because of an individual's or their ancestor's place of origin. The place of origin may be a country or a former country, including the United States, or a geographic region that is closely associated with a particular national origin group, for example, Kurdistan or Acadia.

National origin discrimination also includes discrimination against individuals because of their national origin group generally defined as a group of people sharing a common language, culture, ancestry, race, and/or other social characteristics.

These types of discrimination can involve treating people differently because of:

- **Ethnicity:** discrimination because of a person's ethnicity, for example, discrimination against someone because they are Hispanic or Latinx. National origin discrimination can include discrimination against a person because they do not belong to a particular ethnic group, e.g. less favorable treatment of employees who are Hispanic or Latinx as compared to others who do not share the same ethnic identity.
- **Physical, linguistic, or cultural traits:** discrimination against an individual because they have characteristics closely associated with a national origin group. For example, subjecting an individual to an adverse action because of their African-sounding accent or traditional African style of dress could constitute discrimination based on African origin.
- **Perception:** discrimination based on the belief that an individual (or their ancestors) is from one or more particular countries or belongs to one or more particular national origin groups. For example, the law prohibits discrimination based on the perception that someone is from Asia or is of Asian ethnicity, regardless of how they identify themselves or whether they are, in fact, from one or more Asian countries or are ethnically Asian.
- **Association:** discrimination against an individual because of their association with someone of a particular national origin. For example, it is unlawful to

¹ Note federal laws provide additional protections.

discriminate against a person because they associate with people of a particular national origin in the workplace.

- **Immigration status:** discrimination based on immigration status if it has the purpose or effect of discriminating based on national origin.

II. National Origin Discrimination in Employment

Under ORS 659A.030, it is unlawful for an employer, labor organization, or employment agency to discriminate against an individual because of their national origin or the national origin of anyone with whom that individual associates. Discrimination can take many forms. The following sections and scenarios provide examples of when and how employees may experience discrimination based on national origin.

A. Discriminatory Employment Actions

A tangible employment action occurs when an employer makes a decision that alters an individual's or group's employment status or any other term or condition of employment. Basing a tangible employment action on employees' national origin is a violation of ORS 659A.030. This law applies to all decisions, including but not limited to:

- Recruitment
- Hiring
- Promotion
- Work assignments
- Segregation and classification
- Transfer
- Wages and benefits
- Leave
- Training and apprenticeship programs
- Discipline
- Layoff and termination
- Any other terms and conditions of employment

1. Recruitment

Oregon law prohibits employers from engaging in recruitment practices that have the purpose or effect of discriminating based on national origin, as well as practices that disproportionately limit employment opportunities based on national origin. The law also prohibits employers from circulating or printing a statement, advertisement, publication, or application that expresses the intent to discriminate against prospective employees based on national origin.

Example:

Job Requirement that May Improperly Screen Out Individuals Based on National Origin

A Brick Company ("ABC") has several departments that handle different aspects of its business. It has manual laborers, factory workers, salespeople, customer service, accountants, etc. ABC requires that employees have a bachelor's degree to work in any of the office jobs – even jobs where a specific level of education is unnecessary for the position. In the town where ABC is located, 80% of college graduates are Asian, resulting in ABC's office workers being predominantly Asian and its laborers and factory workers predominantly being of other ethnic and national origins. ABC's requirement for all office workers to have a bachelor's degree could be found to improperly screen out potential employees based on national origin.

Staffing agencies that supply workers to other organizations are also covered as employers when each entity has the right to exercise control over the means and manner of a worker's employment. If both a staffing agency and its client employer have the right to control the worker's employment, then they would be considered "joint employers" who are both liable for unlawful discrimination. Thus, if a temporary agency learns that one of its employees was involuntarily transferred by a client employer from a position that involves public contact to a lower-paying position without public contact because of stereotypes about her national origin, the agency will be liable if it fails to take prompt corrective action within its control. Corrective action would include, for example, insisting that the client return the employee to the former position. If the client refuses, the staffing agency could take corrective action by offering to assign the worker to another client at the same rate of pay.

Example

Staffing Firm and Client Jointly Liable for National Origin Discrimination

Temporary Employment Company (TEC) assigns Gordon, who is from Germany, to work at Big Computer Company (BCC). After one week on the job, Gordon emails his recruiter, Tina, at TEC to let them know while he has received extremely positive feedback on his work, he has not had the best experience so far at BCC. His supervisor, Mike, regularly makes comments about how immigrants need to stay out of "his country" because they are lazy and stealing jobs from the Americans who deserve them. Gordon is not sure if this is directed to him because he doesn't think Mike knows he is not American. Tina reads Gordon's email and responds, telling him that she's heard things like that about Mike in the past and Gordon should just do his best to ignore the comments. Over the week, Gordon continues to be praised for his good work until one day he finds himself involved in Mike's rants about how immigrants are liars, thieves, and everything that is wrong with this country. Gordon interjects that he is, in fact, an immigrant from Germany and it seems like BCC has been very happy with his work, so he is not sure why Mike feels this way. The next day, Tina calls Gordon and lets him know that BCC has requested to end his assignment because he has been stealing office supplies. Gordon objects, stating that he doesn't even have access to office supplies, and he is certain that Mike is simply targeting him based on being German. Tina apologizes that Gordon feels that way, but states that TEC will no longer

be able to provide him with work assignments due to the theft.

In this scenario, since TEC is aware of Gordon's mistreatment but does nothing to intervene, both TEC and BCC could be found liable for unlawful discrimination.

Employers and employment agencies are also forbidden from advertising an intent to discriminate during the hiring process.

Example

Unlawful Advertisement

Mega Marble Menace (MMM) is getting ready to hire a new master marble maker and sends a job posting to their recruiter to start the process. MMM's hiring manager has put a note for the recruiter in the posting, intending for the recruiter to delete the note. The recruiter, however, has been having a very busy week and does not read the job posting before sharing it with the note that says, "Only white US citizens. No funny names. [Delete – do not share this with applicants.]" MMM has violated the law due to advertising its intent to discriminate against applicants based on national origin.