

Federal Employment Discrimination Laws

NATIONAL IMMIGRATION LAW CENTER

	Immigration and Nationality Act	Title VII
Enforcement Agency	Office of Special Counsel	EEOC
What Is Covered?	<ul style="list-style-type: none"> ▪ Citizenship discrimination ▪ National origin discrimination ▪ Document abuse 	Race, gender (includes sexual harassment), national origin (includes language discrimination), and religion.
Minimum Number of Employees	<ul style="list-style-type: none"> ▪ Citizenship discrimination: 4+ ▪ Document abuse: 4+ ▪ National origin: 4-14, and those not covered by Title VII because workforce is seasonal 	15+ employees for at least 20 out of 52 weeks in either the current or preceding year.
Who Is Covered?	<p><u>Citizenship:</u></p> <ul style="list-style-type: none"> ▪ Citizens ▪ Lawful permanent residents who apply for citizenship within 6 mos. of being eligible for naturalization ▪ Lawful temporary residents ▪ Refugees ▪ Asylees <p><u>National origin and document abuse:</u></p> <ul style="list-style-type: none"> ▪ Citizens/nationals ▪ Work-authorized 	<p>All employees, regardless of immigration status.</p> <p><i>But see Egbuna v. Time Life</i>, 153 F.3d 184 (4th Cir. 1998), which held that an individual without work authorization was not "qualified" for job and therefore not covered.</p>
Filing Deadline or Statute of Limitations	180 days from the discriminatory act.	180 days from the discriminatory act; deadline can be extended to 300 days if a state or local antidiscrimination law also covers the charge.
Actions Covered	<ul style="list-style-type: none"> ▪ Hiring ▪ Firing ▪ Recruitment (referral for a fee) ▪ Retaliation 	<ul style="list-style-type: none"> ▪ Hiring ▪ Firing ▪ Recruitment ▪ Promotion ▪ Pay & fringe benefits ▪ Terms & conditions ▪ Retaliation
Possible Relief	<ul style="list-style-type: none"> ▪ Hiring ▪ Reinstatement ▪ Back pay ▪ Attorney fees ▪ Injunctive relief (OSC can educate personnel, correct personnel files, lift restrictions on job assignments) ▪ Civil fines paid to government 	<ul style="list-style-type: none"> ▪ Hiring ▪ Reinstatement (cannot subject employer to IRCA violation) ▪ Front pay ▪ Back pay (maybe not for undocumented) ▪ Attorney fees ▪ Promotion ▪ Injunctive relief to "make worker whole" ▪ Compensatory and punitive damages

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	Americans with Disabilities Act	Age Discrimination in Employment Act
Enforcement Agency	EEOC	EEOC
What Is Covered?	Physical and mental disabilities.	Age (40+ years).
Minimum Number of Employees	15+ employees for at least 20 out of 52 weeks in either the current or preceding year.	20+ employees.
Who Is Covered?	All employees, regardless of immigration status. <i>But see Lopez v. Superflex</i> , 2002 U.S. DIST. LEXIS 15538 (S.D.N.Y. 2002), calling into question whether an undocumented worker can bring an ADA claim.	All employees, regardless of immigration status. <i>But see Reyes-Gaona v. North Carolina Growers' Assn.</i> , holding that ADEA does not extend to foreign national applying for an H-2A job because he was not authorized to work and therefore not covered.
Filing Deadline or Statute of Limitations	180 days from the discriminatory act; deadline can be extended to 300 days if a <u>state</u> or <u>local</u> antidiscrimination law also covers the charge.	180 days from the discriminatory act, which can be extended to 300 days if a <u>state</u> antidiscrimination law also covers charge.
Actions Covered	<ul style="list-style-type: none"> ▪ Hiring ▪ Firing ▪ Recruitment ▪ Promotion ▪ Pay & fringe benefits ▪ Terms & conditions ▪ Retaliation 	<ul style="list-style-type: none"> ▪ Hiring ▪ Firing ▪ Recruitment ▪ Promotion ▪ Pay & fringe benefits ▪ Terms & conditions ▪ Retaliation
Possible Relief	<ul style="list-style-type: none"> ▪ Hiring ▪ Reinstatement (cannot subject employer to IRCA violation) ▪ Front pay ▪ Back pay (maybe not for undocumented) ▪ Attorney fees ▪ Promotion ▪ Injunctive relief to "make worker whole" ▪ Liquidated damages in cases of willful violations 	<ul style="list-style-type: none"> ▪ Hiring ▪ Reinstatement (cannot subject employer to IRCA violation) ▪ Front pay ▪ Back pay (maybe not for undocumented) ▪ Attorney fees ▪ Promotion ▪ Injunctive relief to "make worker whole" ▪ Compensatory and punitive damages

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	National Labor Relations Act	The Family Medical and Leave Act
Enforcement Agency	NLRB	DOL
What Is Covered?	Right to engage in concerted activities, including the right to join or assist a union; right to bargain collectively.	Serious health condition of self or family member.
Minimum Number of Employees	None; but employer's business must have an impact on interstate commerce.	50 people within 50 mile radius.
Who Is Covered?	All employees, regardless of immigration status.	All employees, regardless of immigration status, provided that claimant: <ul style="list-style-type: none"> ▪ worked for employer for at least 12 months; or ▪ worked at least 1,250 hours during the last 12 months before the leave.
Filing Deadline or Statute of Limitations	180 days from the unlawful act.	2 years after the earliest discriminatory act; 3 years if willful violation.
Actions Covered	<ul style="list-style-type: none"> ▪ Hiring ▪ Firing ▪ Promotion ▪ Threats ▪ Pay & fringe benefits ▪ Terms & conditions ▪ Retaliation 	<ul style="list-style-type: none"> ▪ Retaliation ▪ Firing ▪ Benefits during leave
Possible Relief	<ul style="list-style-type: none"> ▪ Hiring (cannot subject employer to IRCA violation) ▪ Back pay (not for undocumented) ▪ Injunctive relief ▪ Contempt sanctions ▪ Posting of notice ▪ Other extraordinary relief available 	<ul style="list-style-type: none"> ▪ Reinstatement ▪ Promotion ▪ Wages, benefits, compensation lost ▪ Double damages ▪ Liquidated damages ▪ Attorney fees