

## **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

Title VII of the Civil Rights Act of 1964 (Title VII) <sup>1</sup> bars an employer from discriminating against an individual on the basis of race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission (EEOC), established by Title VII, enforces this law.

### **TITLE VII's PROTECTIONS**

In general, Title VII protects all individuals from employment discrimination in the United States regardless of their citizenship or work eligibility.<sup>2</sup> However an exception exists for workers in states that comprise the United States Court of Appeals for the Fourth Circuit because this Court has determined that unauthorized workers are not entitled to Title VII's protections.<sup>3</sup> Thus, unauthorized workers in Maryland, Virginia, West Virginia, North Carolina, and South Carolina may be unable to litigate successfully a Title VII discrimination claim against their employers. The EEOC has stated publicly that it disagrees with the Fourth Circuit and it has declared that it will work to ensure that unauthorized workers are protected to the same degree as all other workers.<sup>4</sup>

### **TITLE VII's PROHIBITIONS**

Title VII prohibits employers from discriminating in any aspect of employment. An employer cannot use discriminatory criteria when he or she hires, fires, transfers, promotes, assigns work, lays-off, advertises for jobs, recruits, trains, provides fringe benefits, compensates, or awards disability leave. Thus, for example, an employer violates the law when it assigns the Latino workers at poultry plant the least desirable jobs and fails to promote Latinos even though they are qualified. Similarly, a farm owner discriminates when he provides protective equipment to American migrant farm workers but fails to do the same for Mexican and Haitian workers. Additionally, an industrial laundry facility discriminates against Hispanic workers when managers at the facility request sexual favors from them in exchange for keeping their jobs.

Also employers violate the law when they retaliate against individuals for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices. Thus an unscrupulous employer, that calls the immigration authorities to retaliate against immigrant employees who file a complaint, violate Title VII.

### **EMPLOYERS COVERED BY THE LAW**

Title VII applies to: all private employers affecting commerce; state and local governments; and education institutions that employ 15 or more individuals. It also covers private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training programs. Part-time and temporary workers are counted for purposes of determining whether an employer has a sufficient number of employees.

## PROVING DISCRIMINATION

To demonstrate discrimination, an employee must establish a connection between the employment condition or decision and a prohibited basis. Such a connection may be established by pointing to individual instances of different or “disparate treatment” based on race, color, religion, sex and national origin, or neutral policies or practices that have a much harsher effect or “disparate impact” upon a protected class to which the employee belongs.

## FILING A CHARGE WITH THE EEOC

Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with the EEOC. Also, an individual, organization, or agency may file a charge on behalf of another person in order to protect the victim’s identity. A charge can be filed by mail or in person at one of the EEOC’s fifty field offices. Practitioners may call 1-800-669-4000 (voice) or 1-800-669-6820 (TTY) to determine where the nearest EEOC office is located.

The EEOC requests that the following information be included in a charge: (1) the complaining party’s name, address, and telephone number; (2) the name, address, and telephone number of the employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known; (3) a short description of the alleged violation; and (4) the date(s) of the alleged violation(s).

Title VII requires that a complaining party first file a charge with the EEOC before instituting a private lawsuit. A charge must be filed with EEOC within 180 days of the date of the alleged violation. If an aggrieved person initially files a charge with a state or local anti-discrimination agency, this deadline may be extended.

More information about Title VII can be obtained from the EEOC website at: <http://www.eeoc.gov>.

*The information contained in this article is for general informational purposes only. It is not intended to serve as legal advice and it does not substitute for legal counsel.*

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<sup>1</sup> 42 U.S.C. § 2000e et. seq.

<sup>2</sup> See *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95 (1973) (Title VII protects non-citizens against race, color, sex, religious, and national origin discrimination); *EEOC v. Hacienda Hotel*, 881 F.2d 1504, 1517 (9<sup>th</sup> Cir. 1989) (plaintiffs were subject to Title VII’s protections notwithstanding their status as undocumented workers); *Rios v. Enterprise Ass’n Steamfitters Local Union 638 of U.A.*, 860 F.2d 1168, 1173 (2d Cir. 1988) (same); *EEOC v. Switching Systems Div. of Rockwell Int’l Corp.*, 783 F. Supp 369, 374 (N.D. Ill. 1992) (Title VII’s protections extend to aliens who may be in this country either legally or illegally); *EEOC v. Tortilleria “La Mejor,”* 758 F. Supp. 585, 590 (E.D. Cal. 1991) (the protections of Title VII were intended by Congress to apply to aliens, whether documented or not).

<sup>3</sup> *Chaudhry v. Mobil Oil Corporation*, 186 F.3d 502, 504-05 (4<sup>th</sup> Cir. 1999) (foreign national employed overseas by U.S. employer was not protected by Title VII because he was not authorized for employment when the alleged discrimination occurred); *Egbuna v. Time Life Libraries, Inc.*, 153 F.3d 184, 188 (4<sup>th</sup> Cir.

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1998), cert. denied, 525 U.S. 1142 (1999) (applicant unauthorized to work in the U.S. has no cause of action under Title VII for an allegedly discriminatory refusal to hire).

<sup>4</sup> United States Equal Employment Opportunity Commission, “Enforcement Guidance on Remedies Available to Undocumented Workers Under Federal Employment Discrimination Laws, Number 915.002,” (October 26, 1999).