

COVID-19 and Discrimination Issues

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PRACTICES Employment Litigation, Labor and Employment

As employers react to the spread of coronavirus (COVID-19), they must be aware of the potential for unlawful discrimination based on an employee's race or national origin. The CDC has issued this [guidance](#) to employers regarding COVID-19: "To prevent stigma and discrimination in the workplace, use only the guidance described below to determine risk of COVID-19. **Do not make determinations of risk based on race or country of origin**, and be sure to maintain confidentiality of people with confirmed COVID-19." Because the outbreak originated in Wuhan, China, employees of Chinese origin are most likely to be affected by unlawful discrimination, as well as employees from other countries substantially impacted by the outbreak.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. National origin discrimination includes treating people unfavorably because they are from a certain country or part of the world, or because they appear to be of a certain ethnic background. Title VII also prohibits discrimination based on an employee's marriage to, or association with, an individual of a certain race or national origin. Discrimination can occur even among people of the same race or national origin. In addition, it is unlawful to harass a person because of his or her race or national origin (i.e., offensive or derogatory remarks about a person's national origin, accent or ethnicity). State and local laws provide similar protections.

Thus, employers are prohibited from subjecting employees to disparate treatment on the basis of the employee's race or national origin. For example, an employee's race or national origin alone (or marriage to or association with someone of a particular race or national origin) is not a sufficient reason to prohibit that employee from coming to work or demand that such employee work remotely. However, of course, an employer is not prohibited from following government directives or best practices concerning travel bans or requiring certain employees to stay away from the workplace after traveling to impacted areas regardless of their race or national origin.

Employers must also pay attention to whether certain employees are being subjected to disparate treatment or harassment from other decision-makers, supervisors or other employees. For instance, employees cannot demand that individuals who are from a certain country be restricted from the workplace or that they not be required to work with such persons based solely on race or national origin. Employers must also watch out for rumors or offensive statements among employees that might rise to the level of harassment based on race or national origin. Finally, in the event an employee or an employee's family member or associate contracts COVID-19, employers should remain cognizant of lingering discrimination and/or harassment once the employee recovers and returns to work

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[COVID-19 and OSHA](#)

[COVID-19 Employer Checklist When an Employee Tests Positive](#)

