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the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 1594-92, 57 FR 27356, June 19, 1992, as amended by Order No. 3141-2010, 75 FR 9103, Mar. 1, 2010]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

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AUTHORITY: 8 U.S.C. 1103(a)(1), (g), 1324b.

SOURCE: 81 FR 91789, Dec. 19, 2016, unless otherwise noted.

§ 44.100 Purpose.

The purpose of this part is to implement section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

For purposes of 8 U.S.C. 1324b and this part:

(a) *Charge* means a written statement in any language that—

(1) Is made under oath or affirmation;

(2) Identifies the charging party's name, address, and telephone number;

(3) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(4) Identifies the name and address of the person or other entity against whom the charge is being made;

(5) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(6) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or involves intimidation or retaliation; or involves unfair documentary practices;

(7) Indicates the citizenship status of the injured party;

(8) Indicates, if known, the number of individuals employed on the date of the alleged unfair immigration-related employment practice by the person or other entity against whom the charge is being made;

(9) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Department of Homeland Security, indicates that the charging party has the authorization of the injured party to file the charge;

(10) Indicates whether a charge based on the same set of facts has been filed

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with the Equal Employment Opportunity Commission, and if so, the specific office and contact person (if known); and

(1) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An injured party who files a charge with the Special Counsel;

(2) An individual or entity authorized by an injured party to file a charge with the Special Counsel that alleges that the injured party is adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Department of Homeland Security who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred or is occurring.

(c) *Citizenship status* means an individual's status as a U.S. citizen or national, or non-U.S. citizen, including the immigration status of a non-U.S. citizen.

(d) *Complaint* means a written submission filed with the Office of the Chief Administrative Hearing Officer (OCAHO) under 28 CFR part 68 by the Special Counsel or by a charging party, other than an officer of the Department of Homeland Security, alleging one or more unfair immigration-related employment practices under 8 U.S.C. 1324b.

(e) *Discriminate* as that term is used in 8 U.S.C. 1324b(a) means the act of intentionally treating an individual differently from other individuals because of national origin or citizenship status, regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(f) The phrase “for purposes of satisfying the requirements of section 1324a(b),” as that phrase is used in 8 U.S.C. 1324b(a)(6), means for the purpose of completing the employment eligibility verification form designated in 8 CFR 274a.2, or for the purpose of making any other efforts to verify an individual's employment eligibility, including the use of “E-Verify” or any other electronic employment eligibility verification program.

(g) An act done “for the purpose or with the intent of discriminating against an individual in violation of [1324(a)(1)],” as that phrase is used in 8 U.S.C. 1324b(a)(6), means an act of intentionally treating an individual differently based on national origin or citizenship status in violation of 8 U.S.C. 1324b(a)(1), regardless of the explanation for the differential treatment, and regardless of whether such treatment is because of animus or hostility.

(h) *Hiring* means all conduct and acts during the entire recruitment, selection, and onboarding process undertaken to make an individual an employee.

(i) *Injured party* means an individual who claims to be adversely affected directly by an unfair immigration-related employment practice.

(j) The phrase “more or different documents than are required under such section,” as that phrase is used in 8 U.S.C. 1324b(a)(6), includes any limitation on an individual's choice of acceptable documentation to present to satisfy the requirements of 8 U.S.C. 1324a(b).

(k) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States;

(2) Is an alien who is lawfully admitted for permanent residence, other than an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization, or, if later, within six months after November 6, 1986; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Department of Homeland Security's processing of the application shall not be counted toward the two-year period;

(3) Is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a) or 8 U.S.C. 1255a(a)(1);

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(4) Is admitted as a refugee under 8 U.S.C. 1157; or

(5) Is granted asylum under 8 U.S.C. 1158.

(1) *Recruitment or referral for a fee* has the meaning given the terms “recruit for a fee” and “refer for a fee,” respectively, in 8 CFR 274a.1, and includes all conduct and acts during the entire recruitment or referral process.

(m) *Respondent* means a person or other entity who is under investigation by the Special Counsel, as identified in the written notice required by § 44.301(a) or § 44.304(a).

(n) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under 8 U.S.C. 1324b, or a duly authorized designee.

§ 44.102 Computation of time.

When a time period specified in this part ends on a day when the Federal Government in Washington, DC is closed (such as on weekends and Federal holidays, or due to a closure for all or part of a business day), the time period shall be extended until the next full day that the Federal Government in Washington, DC is open.

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General*. It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(1) for a person or other entity to intentionally discriminate or to engage in a pattern or practice of intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual’s national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(k), because of such individual’s citizenship status.

(2) *Intimidation or retaliation*. It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(5) for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or be-

cause the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Unfair documentary practices*. It is an unfair immigration-related employment practice under 8 U.S.C. 1324b(a)(6) for—

(i) A person or other entity, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), either—

(A) To request more or different documents than are required under § 1324a(b); or

(B) To refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual; and

(ii) To make such request or refusal for the purpose or with the intent of discriminating against any individual in violation of paragraph (a)(1) of this section, regardless of whether such documentary practice is a condition of employment or causes economic harm to the individual.

(b) *Exceptions*. (1) Paragraph (a)(1) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual’s national origin by a person or other entity if such discrimination is covered by 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship status which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) The Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire an individual, or to recruit or refer for a fee an individual, who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.