

Using the Phrase “Illegal Alien” in New York City Can Result in \$250,000 Fines

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Last week, the New York City Commission on Human Rights (the “Commission”) issued new guidance regarding discrimination on the basis of perceived or actual immigration status and national origin under the New York City Human Rights Law (“NYCHRL”). According to the Commission, the new guidance is aimed at countering the federal government’s perceived policies against immigrants.

Though discrimination on the basis of immigration status and national origin has been unlawful under the NYCHRL for decades, the guidance reiterates these protections by providing specific examples of discrimination in housing, public accommodations, and employment. The following are the Commission’s examples of unlawful discrimination based on immigration status and national origin in the employment context:

- Using the terms “illegal alien” and “illegals,” with the intent to demean, humiliate, or offend a person or persons in the workplace;
- Threatening to call federal immigration authorities when motivated, in whole or in part, by animus related to the employee’s actual or perceived immigration status and/or national origin;
- Threatening to call the authorities or the police to force employees to work in unsafe, unequal, or otherwise unlawful conditions;
- Threatening to cease sponsorship of an employee for a visa when he/she complains;
- Prohibiting employees from speaking in their primary language because it “offends” customers;
- Taking an adverse action against an employee or treating an employee less well than another due to stereotypes or assumptions related to immigration status or national origin.

New York City employers are reminded that while they are required, under federal law, to verify job applicants’ work authorization upon hiring, they cannot exploit, harass, or otherwise discriminate against any applicant or employee based on their actual or perceived immigration status or national origin.

Violations of the NYCHRL can result in fines up to \$250,000 for each act of willful discrimination. Thus, it is imperative that employers in New York City review their hiring practices, including all interview protocols, and employment policies to ensure compliance with federal, state and local laws.

The attorneys at Kaufman Dolowich & Voluck are available to assist employers in properly classifying employees and to determine compliance with the New York Labor Law. For more information about the new legislation, or this alert, please contact Keith Gutstein or Erika Rosenblum, by email at KGutstein@kaufmandolowich.com, ERosenblum@kaufmandolowich.com or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck’s Labor & Employment Law Practice Group.