

DOJ's crackdown on bias against US workers may catch in-house teams by surprise

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US DOJ enforcement against citizenship discrimination is not new, but the agency has joined other regulators in increasingly targeting employers that favour temporary visa holders under US President Donald Trump.



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The US Department of Justice (DOJ) has long pursued employers for citizenship status and national origin discrimination. But since Trump returned to office in January 2025, those cases have become part of a much more prominent campaign against companies accused of favouring temporary visa holders over US workers.

The DOJ's efforts are part of a larger movement under Trump to curb US reliance on foreign workers. Its enforcement actions have targeted small and large employers, with OpenAI entering a [US\\$3.2 million settlement](#) with the agency last

month to resolve allegations that it discriminated against US workers.

Klasko Immigration Law partner Timothy D'Arduini told Lexology PRO that companies "were told specifically that scrutiny of their programmes, and citizenship and national origin discrimination . . . was going to be effectively the number one priority" of the DOJ's Civil Rights Division (CRD). D'Arduini continued:

"Under the first Trump administration, there was certainly a focus on the structure of a programme and how it may have impacted the wages, working conditions and job opportunities of US workers. But it was not the singularly prescribed priority of that office . . . The tonal shift [of the current Trump administration] was very apparent to many of us who represent both large and small employers."

Existing immigration, employment and recruitment practices may all pose legal risks for businesses. A hiring process that satisfies visa programme rules may still draw DOJ scrutiny if US applicants face a seemingly different or more difficult route to compete for jobs.

DOJ's INA power

Under the [Immigration and National Act 1965](#) (INA), the DOJ [has the power to enforce against](#) citizenship status discrimination, which includes unlawfully preferring or excluding US citizens from employment opportunities. The agency may also enforce against national origin discrimination – or treatment based on a person's country or ethnic background – by employers with four to 14 employees.

Trump's return to office was marked by the relaunch of the DOJ's [Protecting US Workers Initiative](#), which "targets, investigates, and brings enforcement actions against employers that intentionally discriminate against U.S. workers due to a preference for temporary visa workers."

The Initiative was established in 2017 during Trump's first term. The DOJ largely stopped bringing enforcement actions under the programme during US President Joe Biden's administration, though it was never formally terminated.

Duane Morris partner M. Alejandra Vargas told Lexology PRO that, while the relaunch of the Protecting US Workers Initiative "does not create a new legal standard," it is "more than rebranding."

“The practical risk has increased because [the] DOJ is prioritizing these cases, seeking significant penalties, and scrutinizing recruitment practices previously viewed as routine,” Vargas said. “Employers should therefore treat the relaunch as a meaningful increase in enforcement probability and potential exposure.”

Federal government's focus on US workers

The DOJ has aligned itself with the larger federal government in making discrimination against US workers an enforcement priority.

The US Equal Employment Opportunity Commission (EEOC), which enforces against national origin discrimination by employers with more than 14 employees, has drastically increased activity targeting companies that allegedly favour foreign job applicants and workers.

The agency released a [technical assistance document](#) in November 2025 asserting that [national origin discrimination against US workers is unlawful](#). The EEOC identified potentially discriminatory activity and updated its [national origin discrimination landing page](#) to reflect this interpretation.

The EEOC has brought several related enforcement actions under Trump. The agency's [first publicised settlement of 2025](#) involved a resort on the US territory of Guam, which agreed to pay US\$1.45 million for allegedly paying US employees less than their Japanese counterparts.

Federal efforts to [curb US reliance on foreign workers](#) don't stop with the DOJ and EEOC. The US Department of Homeland Security (DHS) has [introduced H-1B visa application fees](#) and implemented [new H-1B lottery rules](#), and the US Department of Labor (DOL) proposed to [increase the prevailing wage levels](#) for H-1B workers, actions that have [sent shockwaves among employers who use the programme](#).

What's different about INA enforcement under Trump 2.0?

Prior enforcement activity

The DOJ's history of enforcement against citizenship status and national origin discrimination [spans presidential administrations and political parties](#).

In June 2008, the CRD reached a [US\\$45,000 settlement](#) with iGate Mastertech and the Programmers Guild that, among other things, prohibited iGate from placing employment advertisements that suggested a preference for non-immigrant foreign workers. Similarly, the CRD announced a [settlement](#) with Valley Crest Landscape Companies in May 2010 due to a claimed preference for hiring non-immigrant foreign workers under the H-2B visa programme rather than US workers.

Following the creation of the Protecting US Workers Initiative in 2017, the [DOJ touted](#) its “commitment to fight[ing] discrimination against US workers.” The agency said in April 2020 that it had reached numerous settlements under the programme and collected more than US\$1.2 million in back pay to affected US workers.

Under Biden, the DOJ and DOL reached a [US\\$14.25 million settlement with Facebook](#) after alleging the company refused to recruit, consider or hire US citizens. The agreement represents the largest fine and monetary award that the CRD has ever recorded in its history of INA enforcement.

Current enforcement activity

“The DOJ has long enforced the INA's prohibition on citizenship status discrimination,” Vargas said.

“What is different [under the second Trump administration] is the intensity, visibility and broader policy context of the enforcement message.”

Indeed, the DOJ's efforts have become faster and more targeted: the agency has already reached 13 settlement agreements with companies accused of discriminating against US workers.

The DOJ's most recent investigation into OpenAI and its subsidiary found that, among other things, OpenAI did not advertise positions it sought to fill through the Permanent Labor Certification Program (PERM) on its external job website, even though its standard practice was to do so with other jobs.

“The concessions that the DOJ got from OpenAI are having reverberating effects with other companies and how they audit, analyse and recalibrate their PERM programmes,” D'Arduini said. “There are novel facts that the DOJ is utilising to argue that the impact is discriminatory.”

Additionally, the DOJ has filed one lawsuit under the INA this year against technology company Cloudera, alleging it used a parallel recruitment process to deter US workers from applying to high-paying positions earmarked for PERM workers.

The DOJ is also putting a spotlight on AI-assisted recruitment practices. In February 2026, it announced a settlement with Elegant Enterprise-Wide Solutions to resolve allegations that the IT professional service provider posted job advertisements generated by an AI tool that included citizenship status restrictions.

“It is unconscionable for companies to illegally exclude U.S. workers when recruiting and hiring,” Assistant Attorney General Harmeet K. Dhillon of the CRD said at the time. “This Department of Justice will not tolerate discriminating against U.S. workers, no matter who — or what — drafts a job advertisement, or whether it is an employee, a recruiter, or an AI tool.”

Legal teams may have been caught off guard by the DOJ’s recent actions, despite its history of INA enforcement. Duane Morris partner Alex Karasik told Lexology PRO that most companies “primarily focus on crafting lawful employment policies that would keep them out of the crosshairs of the EEOC, DOL and NLRB.”

“Their regulatory authority is more narrowly applicable to workplace practices. The DOJ has much broader power to enforce federal laws and crimes. Most in-house legal teams do not anticipate their organizations will be committing federal crimes, so any DOJ-related investigations would likely cause significant internal concern,” Karasik said.

How to prepare for and prevent potential DOJ scrutiny

High-risk recruitment practices

The DOJ’s recent enforcement activity may provide a roadmap for companies moving forward.

The “highest-risk practices” are those that make it easier for foreign workers to access an opportunity than US workers, Vargas and Duane Morris Special Counsel Olivia Scofield told Lexology PRO. Examples include:

- maintaining a separate or less visible recruitment process for PERM positions;
- omitting those positions from a company’s public careers website;
- requiring paper applications when electronic applications are otherwise standard;
- using nonfunctioning or poorly monitored inboxes for applications;
- rejecting candidates based on assumptions about sponsorship; or
- using language such as “H-1B only,” “OPT preferred” or “no US citizens.”

Importantly, Vargas and Scofield noted that “not every difference establishes discrimination.”

“The concern arises when a deviation in a company’s recruitment process lacks a credible business or regulatory explanation and predictably makes it harder for U.S. workers to learn about, apply for, or receive consideration for a position,” they said.

Increased focus on AI in recruitment

The DOJ’s February 2026 settlement with Elegant Enterprise-Wide Solutions makes clear that “an employer cannot avoid responsibility simply by pointing to the person or technology that drafted the language,” Vargas said. Companies should therefore oversee internal recruiters and vendors, test automated outputs and retain audit records, she added.

“The DOJ expressly warned that exclusions remain unlawful whether they originate with an employee, recruiter, or AI tool,” Vargas said. “The allocation of legal liability will depend on the relationship and underlying facts, and staffing firms may face their own exposure, but outsourcing recruitment or using generative AI does not outsource the employer’s compliance risk.”

D’Arduini noted the increased AI-related exposure for startup companies.

“There is real risk for fast-growing companies using innovative technologies that may not be well trained or controlled relating to language that could be perceived as discriminatory or questions that could be determined to be discriminatory,” D’Arduini said. “Those enterprises build things fast, break and rebuild, and there is concern about whether the tools they utilise or create are properly trained in this regard.”

Longevity of DOJ enforcement

The reality, D’Arduini said, is that “there are more resources available” at the EEOC, for example, to conduct investigations into alleged discrimination against US workers.

He concluded that the ability of the DOJ to maintain its momentum remains to be seen.

