

NEW LITIGATION DANGER AS EMPLOYEES CLAIM GREEN CARD FAVORITISM: WHY “PERM” NON-COMPLIANCE COULD NOW MEAN LEGAL PERIL

Insights
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Discrimination claims are rising against employers accused of favoring foreign national workers over US workers, and several federal agencies are also joining in this new enforcement trend that should cause you to review your employment-based permanent residence process with immigration counsel. We’ve not only seen an increase in the number of civil discrimination claims filed by disgruntled applicants and workers who believe they are being unfairly passed over in favor of foreign national workers, but both the Department of Justice (DOJ) Immigrant and Employee Rights Section and the Equal Employment Opportunity Commission (EEOC) have said they will aggressively pursue “anti-American” hiring bias under federal law. What do employers need to know, and what should you do to minimize your risks?

How PERM Works – and Why a Culture of Compliance is Necessary

To sponsor a foreign worker for permanent residency (known as a green card), employers must complete the PERM labor certification process – a legal test to show that no qualified, available US workers apply for the job. Key requirements include:

- **Public recruitment and visibility:** Print ads must run in designated outlets, and postings must be clearly accessible to the general public.
- **Neutral job criteria:** Descriptions must reflect actual minimum requirements, not be tailored to the foreign

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- **Good faith recruitment:** US applicants must be seriously considered – no sham searches are allowed. Employers should interview US workers who appear to meet the minimum requirements for the position and employers should have legitimate, non-discriminatory reasons for rejecting US workers.

Failure to follow these steps, or even the appearance of bias, can trigger investigations, supervised recruitment, debarment, discrimination charges, or lawsuits.

Rise in Private Litigation and Civil Charges

We've started to see an uptick in workers filing PERM-related civil discrimination charges with the DOJ, not to mention litigation in federal courts. And we just saw a major development in a recent trial. In October 2024, a California jury found Cognizant Technology Solutions discriminated against non-Indian workers by favoring Indian H-1B visa holders, a verdict that now serves as a roadmap for future action. The jury found that punitive damages were appropriate, and the court is now awaiting a second phase to determine how much to award over 2,300 employees included in the class action.

Enforcement Agencies Are Also Watching

But it's not just private workers initiating challenges to alleged PERM process missteps. Recent developments show increasing federal coordination and scrutiny from the DOJ and the EEOC alike, including the use of AI to scour employer job postings for potential violations.

DOJ Attention

The DOJ announced at a public meeting earlier this month that it was a priority for the current administration to protect US workers from discrimination in the employment eligibility verification process. And it has already taken action on behalf of workers who allege they were unfairly treated due to illegal PERM process activity. Among the more recent and high-profile targets:

- An international tech company paid \$14.25 million in 2021 to resolve claims it reserved PERM jobs for foreign workers and made it difficult for US applicants to apply.



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- Apple paid \$25 million in 2023 over similar allegations, including posting jobs in hard-to-find locations and requiring paper resumes for PERM roles.
- But it's not just mega-tech companies caught in the crosshairs. In August 2024, an IT company in Texas [paid close to \\$18K to resolve a DOJ allegation](#) that the company discriminated against a US worker during a PERM recruitment drive.

EEOC Steps In

In February 2025, [EEOC Acting Chair Andrea Lucas announced a major new initiative targeting employers that favor foreign workers over Americans](#). She said the agency will now interpret national origin protections under Title VII to pursue what she calls "anti-American bias." This is a shift. While Title VII does not explicitly ban citizenship discrimination, the EEOC argues that favoring visa holders of certain nationalities over US workers could violate national origin protections.

Industries in the Crosshairs

Employers most at risk include:

- **Tech and Engineering:** Especially those reliant on H-1B and STEM OPT visa holders.
- **Life Sciences:** Research labs and biotech firms using green card pipelines for international PhDs.
- **Higher Ed and Research:** Postdoc and faculty positions often involve green card sponsorship.
- **Healthcare:** Institutions sponsoring physical therapists, occupational therapists, clinical researchers and international medical graduates.
- **Construction:** Project engineers, estimators, and construction project managers often pursue employment-based green card sponsorship.

What Employers Should Do Now

Here's how to minimize risk while still engaging in lawful green card sponsorship:

- **Conduct a real, open recruitment process** – and document every step.
- **Avoid job tailoring** that aligns too neatly with a current employee's resume.
- **Post all PERM jobs in the same way you'd post other jobs** – not hidden.
- **Accept electronic applications**, not paper-only, from US workers just like other roles.
- **Train HR and hiring managers** on how PERM intersects with anti-discrimination law.
- **Review your recent PERM filings** with immigration counsel for any process red flags.

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Immigration Practice Group](#). Our [Employers' Rapid Response Team](#) (877-483-7781 or DHSRaid@fisherphillips.com) is on call to provide immediate legal counsel when a raid occurs, assist with documentation and compliance review, and provide post-raid support and strategy assistance.

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