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EEOC SUES IT STAFFING AGENCY OVER "ONLY H1B" JOB POSTING: 5 STEPS STAFFING FIRMS SHOULD TAKE NOW

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EEOC Sues IT Staffing Agency Over "Only H1B" Job Posting: 5 Steps Staffing Firms Should Take Now

The EEOC recently sued an IT staffing and recruiting agency for allegedly favoring H-1B visa holders, sending a clear signal that the EEOC will deem "visa-only" hiring preferences as a proxy for national origin discrimination. Here's a look at what happened, why it matters for the staffing industry, and five practical steps staffing firms can take right now to reduce their exposure.

Want to dig deeper? Register for Fisher Phillips' upcoming PeopleLaw Conference from Feb 22-24, 2027, which will include a presentation on engaging foreign talent and provide multiple opportunities for Staffing industry leaders to gain practical guidance on the latest developments.

What Happened?

The EEOC filed suit on September 29 against SibiTalent, a Texas-based IT employment agency with a recruiting team located mainly in India. In July 2025, a SibiTalent recruiter emailed an American database developer about a Business Data Analyst role with an unnamed client in Mountain View, California. Near the top, the email said "**ONLY H1B.**"

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The applicant, a US citizen with more than 10 years of database experience, asked whether the "ONLY H1B" requirement was legal. The recruiter allegedly replied "yeah," then stopped responding. Believing it futile, the applicant did not submit his resume. SibiTalent then allegedly referred two other candidates for the role, one of Indian national origin and one of Nepalese national origin.

The EEOC's central theory is that a visa requirement can serve as a "proxy" for national origin discrimination under Title VII. US citizens do not need, and are not eligible for, H-1B visas, so an "ONLY H1B" requirement effectively excludes Americans because of their national origin.

The complaint also alleges broader practices: recruiters screen candidates by US work experience and work authorization, use training materials focus on screening H-1B candidates, and the agency's business model "relies heavily" on foreign talent referrals.

What Does This Mean for Staffing Firms?

"The EEOC's mission is to ensure equal opportunity for all, which includes Americans," EEOC Chair Andrea Lucas said in the agency's press release. "Employers and employment agencies cannot shut qualified Americans out of job opportunities by using unjustified visa requirements as a proxy for national origin discrimination."

This case did not appear out of thin air. Protecting American workers from anti-American national origin discrimination has been one of EEOC's Chair Lucas's stated priorities since early 2025, and the agency has been publicly encouraging American workers to come forward with these claims.

The EEOC's press release also notes that the agency is partnering with the Department of Labor in Project Firewall – an interagency H-1B enforcement initiative that puts job postings and hiring patterns under the microscope. As Fisher Phillips has previously reported, discrimination claims alleging favoritism toward foreign national workers are already on the rise.

Why Now?

Staffing firms are a natural target for increased agency scrutiny given commonplace hiring and selection processes.

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- Staffing firms face **strong industry pressure** to promptly and efficiently provide foreign talent to their client employers, leading them to become one of the largest users of H-1B visas. The US labor market for specialized roles remains tight, and visa sponsorship remains slower and less predictable, making the H-1B an attractive path.

- Staffing firms often search for **remote foreign talent** to fulfill their needs. And while remote foreign talent may offer faster access to scarce skills, that speed only works if the structure, classification, and control model are legally sound.

- Meanwhile, the **sponsorship path** has also grown more expensive and less certain. A $100,000 fee now applies to certain new H-1B petitions for workers outside the US, though USCIS guidance narrowed its reach and the fee has been the subject of litigation. DHS also replaced the random H-1B lottery with a wage-weighted selection system, effective February 27, 2026, that gives registrations at higher wage levels more entries in the selection pool. For staffing firms, that combination is a double squeeze: higher upfront costs plus greater uncertainty about whether immigration petitions will be granted.

What Should Staffing Firms Expect?

There can be incentives for staffing firms to source internationally, especially if the client employer offers to pay the immigration related costs for foreign talent. But geography-based or country-of-origin searches (either through the visa process or remote engagement) can raise litigation risks for client employers just as it can for staffing firms, given the reality of the joint employment and/or co-employment relationship.

While client employers are not immune from the type of allegations made in the recent EEOC complaint, staffing firms can expect to receive more complaints given their prominent role in the hiring process and because they manage the visa practice far more often than many of their client employers.

5 Steps Staffing Agencies Should Take Now

To mitigate against the risk created by the EEOC's ongoing focus, we recommend the following five-step plan:

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1. Audit your job postings, recruiting correspondence, and screening criteria. Look for language like "H-1B only," "visa holders preferred," "OPT/CPT only," or similar phrasing in job postings, recruiter scripts, and templates sent to candidates regarding a role. Avoid any language or practices that express a preference for or against candidates based on citizenship, immigration status, national origin, or perceived sponsorship needs. Ensure that you apply any work authorization or sponsorship-related screening questions consistently.

2. Train your relevant workforce. Everyone involved in recruiting **and** client intake should understand that stating a preference for foreign workers over US workers (and vice versa) can violate the law. Make sure they know how to escalate concerns internally.

3. Refuse to use unlawful criteria in your candidate searches and communicate your refusal to the client employer in writing. Make sure client employers understand that your company cannot lawfully provide candidates for consideration limited by visa status or national origin.

4. Review your immigration-related hiring practices with your FP counsel. Legitimate nonimmigrant sponsorship programs, including the H-1B category, come with their own requirements and recordkeeping. Importantly, wage level, occupational code, job description, and minimum job requirements must align for each sponsored candidate and across job categories. Moreover, federal enforcement initiatives such as Project Firewall might result in authorities closely scrutinizing an employer's compliance at a moment's notice. Coordinate with your FP counsel to ensure your employment and immigration sponsorship practices do not create discrimination exposure under Title VII or other similar laws.

5. Document legitimate, job-related hiring decisions. Select candidates for their qualifications, experience and past relevant performance and document why the selected candidate(s) were the best fit.

For more details on engaging foreign talent, join us at Fisher Phillips' PeopleLaw conference Feb 22-24, 2027, which will feature a session on navigating the complex legal landscape facing staffing firms considering recent

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immigration reforms – not to mention plenty of sessions offering practical guidance to staffing leaders.

Conclusion

If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Staffing Industry and Immigration teams. Make sure you are subscribed to Fisher Phillips' Insight System to get the latest information directly to your inbox.

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