

Understanding Race and National Origin under the DC Human Rights Act

- OHR Enforcement Guidance 18-02 -



Date: September 28, 2018

SUBJECT

DC Human Rights Act (DCHRA or the Act) – National Origin and Race

PURPOSE

This enforcement guidance provides an explanation of the race and national origin protected traits in the DCHRA.

I. NATIONAL ORIGIN

A. What does the term “National Origin” mean, how does OHR interpret it, and in what context is this protected trait covered?

LEGAL DEFINITION

The Regulations implementing the DCHRA at 4 DCMR § 599.1 define “National origin” as:

The state, country, or nation in which a person or his or her ancestors were born.

OHR INTERPRETATION

First, based on the legal definition above, it should be noted that national origin means a specific “country” or “nation.” It does NOT, however, mean general region of a continent or a culture not associated with one or more national origins.

EXAMPLE: Camille is originally from Bangladesh and works at a restaurant where most of her co-workers and the supervisor are from India. Camille complains that she feels she has been treated differently by her supervisor because she is originally from Bangladesh. The General Manager dismisses the complaint, thinking Camille is from South Asia just like her supervisor and co-workers; therefore, how can she complain the supervisor is discriminating against her?

The manager should not have dismissed the complaint because although Camille is also from South Asia, South Asia is a region of a continent, not a “country or nation.” Hence, Camille could have a legal valid claim based on her national origin (Bangladesh) if her allegations are true.

Second, OHR also adopts the Equal Employment Opportunity Commission’s (“EEOC”) guidelines on national origin discrimination found at 29 CFR §1606. See 4 DCMR § 512.1. Under 29 CFR § 1606.1, national origin is defined as:

An individual’s, or his or her ancestor’s, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.

Third, under the Human Rights Act, “national origin” **does not** currently include citizenship status.

ADDITIONAL DISCUSSION

“Perceived Association”: An individual’s perceived association with a specific country or region, or marriage to (or association with) a person of a certain national origin is also protected under the DCHRA, even if it is not true.

“Same National Origin”: The Act also makes it unlawful for an individual to discriminate against a person of the same national origin.

EXAMPLE: It is unlawful for a property manager, whose ancestry or national origin is Russia, to refuse to lease an apartment because:

- (a) the prospective tenant is also originally from Russia;
- (b) the prospective tenant’s ancestry is from Russia; OR
- (c) the prospective tenant has the physical, cultural, or linguistic appearance of someone from Russia, *even if the tenant is actually NOT from Russia.*

ENFORCEMENT AREAS

National Origin is a protected trait under the DC Human Rights Act and is applicable to all four areas of OHR’s enforcement:

- (1) employment;
- (2) public accommodations;
- (3) housing; and
- (4) educational institutions.

B. How does DCHRA cover or protect a person’s “national origin”?

The DC Human Rights Act provides that a person may not be discriminated against because the person is **actually** or **perceived** to be from a specific state, or country, or association with a person of a certain national origin. In other words, employers, for example, may not refuse to hire someone because they speak Polish, or have a Nigerian accent.

EXAMPLE (EMPLOYMENT): Samantha is from Nigeria and has limited English proficiency. Recently, Wear My Clothes retail fashion store posted a stockroom clerk position online. The announcement describes the position as being responsible for opening merchandise upon delivery, scanning, and processing the merchandise, and hanging merchandise in the appropriate areas. The announcement further indicates the applicant should have two to four years of retail stockroom experience. Samantha possesses five years of experience as a stockroom clerk in similar size retail shops and applies for the job. Seeing her length of experience, Wear My Clothes requests an interview with Samantha. During the interview, Wear My Clothes states that is pleased with Samantha’s experience but asks whether she would have trouble communicating with the staff and store managers. Samantha replied no, citing to her previous successful experience at other retail stores, albeit not in perfect English. Samantha is not selected.

An employer may NOT refuse to hire a qualified individual such as Samantha because of her limited English proficiency. English proficiency can only be a job requirement if it is required to perform the

duties of the position¹.

II. RACE

A. What does the term “Race” mean, how does OHR interpret it and in what context is this protected trait covered?

LEGAL DEFINITION

The Regulations at 4 DCMR 599.1 defines “race” as:

- (1) A tribe, people, or nation, belonging or supposed to belong to the same stock or lineage.

OHR INTERPRETATION

Under 4 DCMR § 599.1, OHR will not only consider a person’s membership in a particular race, but also, “relationships with members of a different race, such as the race of a spouse or associate, where such relationship is the basis for discrimination.”

The U.S. Census Bureau observes the Office of Management and Budget’s (“OMB”) standards for race and ethnicity. The OMB recognizes the following races: white; black; American Indian or Alaska Native; Native Hawaiian or other Pacific Islander; and Asian. Although Hispanic is not classified an ethnic category, it is included in the U.S. Census.

Note – A Person’s “Color” May also be Cited if Applicable. If an individual feels they have been discriminated against based on their skin color complexion, shade, pigmentation, or tone (e.g. light or dark complexion), they may allege color discrimination, IN ADDITION TO RACE. See D.C. Code § 599.1 (defining “color” as, “skin pigmentation, including variations in skin pigmentation”)

Note – Same Race Discrimination is Prohibited. DCHRA makes it unlawful for an individual to discriminate against a person of the same race. For example, it is unlawful for an African-American taxi cab driver to not pick up an African-American customer based on the customer’s race.

ENFORCEMENT AREAS

Race is a protected trait under the D.C. Human Rights Act and is applicable to all four areas of OHR’s enforcement:

- (1) employment;
- (2) public accommodations;
- (3) housing; and
- (4) educational institutions.

B. How does DCHRA cover or protect a person’s “race”?

The Human Rights Act provides that a person may not be discriminated against because he or she is of a certain race or has personal characteristics tied to a certain race, such as facial features or hair texture.

EXAMPLE 1 (EMPLOYMENT): Nadine is an Asian-American and works as a bank teller at Big Money Bank. Nadine has been employed with Big Money Bank for seven years and has consistently received

¹ See *Estenos v. PAHO/WHO Federal Credit Union*, 952 A.2d 878 (D.C. 2008).

outstanding performance reviews. Big Money Bank recently posted a supervisory role on their website. The announcement required applicants to have 5-7 years of experience and a bachelor's degree in finance. Nadine possesses eight years of experience and has a bachelor's degree in finance. Thus, Nadine applies for the vacant position because she would receive a higher job level and increased salary. Big Money Bank cannot fail to promote or consider Nadine based on her being Asian. For instance, if Big Money Bank hires a non-Asian applicant with less experience, there could be an inference of discrimination. However, if Big Money Bank hires a non-Asian applicant with more experience, there may not be an inference of discrimination.

EXAMPLE 2 (HOUSING): A property owner of a multi-dwelling rental accommodation prints an advertisement stating, "seeking tenants that are African-American." This is not permissible.

C. Other Frequently Asked Question: "Hispanic" – a Race or National Origin?

Hispanic is described as a "person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture origin or culture regardless of race."² OHR considers Hispanic to be protected as a racial category under the Human Rights Act. This is because OHR understands that Hispanic individuals originate from varying nations but share a common language and geographical region. If a Hispanic person feels he or she has faced discrimination based solely on his or her ethnicity, and not because of ties to a specific country, then he or she may allege race-based discrimination at OHR.

EXAMPLE: Lisa is originally from Peru. She attends a Peruvian Heritage Festival and wraps the Peruvian flag around her shoulders. After the parade ends, Lisa goes to a restaurant for lunch with her flag. Although other customers are being serviced, the restaurant staff tells Lisa that she is not welcome at the restaurant.

National origin: If the restaurant has refused servicing Lisa because she is Peruvian, then Lisa may allege discrimination based on her national origin (Peru).

Race: In an alternative scenario, let's say Lisa did not have her Peruvian flag, yet the restaurant assumed Lisa to be of Spanish cultural descent because of her appearance. Under these circumstances, Lisa may allege race (Hispanic) discrimination.

²The U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010* (March 2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.