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I. INTRODUCTION

This guide prepared by the American-Arab Anti-Discrimination Committee (ADC) discusses basic rights held by everyone who legally works or seeks employment in the United States. Whether you are authorized to work in the U.S. as a citizen, resident or alien, you have the right to an equal opportunity to work under U.S. law. In particular, you have the right to work in a workplace free of discrimination.

This guide is designed to help you recognize employment discrimination and take appropriate action when you believe it has occurred. It tells how you can file a claim of employment discrimination against an employer, and describes potential remedies.

Questions will arise that are not addressed here, at which time you may call the ADC office for assistance, at 202-244-2990. If you need the services of a lawyer, you will be able to find someone acquainted with the special needs of Arab-Americans and Arabs through ADC's Legal Referral Network, a nationwide list of lawyers experienced in these issues.

II. WHAT IS EMPLOYMENT DISCRIMINATION?

There are many different kinds of employment discrimination. Federal law prohibits, in hiring and on the job, discrimination based upon your:

- ◆ Race
- ◆ Color
- ◆ Sex
- ◆ National origin
- ◆ Religion
- ◆ Age
- ◆ Disability
- ◆ Citizenship status.

In addition, state and local ordinances may prohibit other kinds of discrimination, including discrimination based on marital status, occupation, sexual orientation, or political opinion. You should check with your state or local human rights commission to find out which additional kinds of employment discrimination are illegal in your area.

The following sections describe different kinds of employment discrimination that are particularly relevant for Arab-American and Arab workers. These sections are designed to help you recognize certain actions by your employer (or potential employer) that may constitute employment discrimination.

A. NATIONAL ORIGIN DISCRIMINATION

Employers are required by federal law to treat all workers equally, regardless of whether they look or sound foreign. They must evaluate employees and potential employees based on their qualifications, not their national origin.

National origin discrimination occurs when an employer fires or refuses to hire or promote you because you have the physical, cultural, or linguistic characteristics of a national group. An employer may not deny you equal employment opportunity because of your birthplace, ancestry, appearance, culture, or language. It is also unlawful for an employer to deny equal employment opportunity for any of the following reasons: your marriage to someone of a particular national origin (or your surname), your association with persons of a national origin group, or your membership in an organization that promotes the interests of a national group. Nor may you be denied equal employment opportunity based on of your attendance or participation in schools, churches, or mosques generally associated with a national origin group; or a surname associated with a national origin group.

FOREIGN ACCENT

National origin discrimination includes firing or refusing to hire or promote you because you speak with a foreign accent. An employer can legally deny employment opportunity if your accent would have a detrimental effect on job performance. However, if your job does not require speaking, or if you have an accent but speak clear and easily understood English, an employer may not legally deny employment opportunities because of your accent.

ENGLISH LANGUAGE ONLY

An employer may not require a test of your English language ability in a job where you do not need to speak English in order to work. Rules requiring you to speak only English at all times on the job are illegal, unless an employer can prove that it is necessary for conducting business.

HARASSMENT

Harassment based on national origin is illegal. An ethnic slur or other verbal or physical conduct because of your nationality constitutes harassment if it creates an intimidating, hostile or offensive working environment, unreasonably interferes with work performance, or negatively affects your employment opportunities.

Employers have a responsibility to maintain a workplace free of national origin harassment. Employers may be responsible for any on-the-job harassment by their agents and supervisory employees, regardless of whether the acts were unauthorized or specifically forbidden by the employer. Under certain circumstances, an employer may be responsible for the acts of non-employees who harass their employees at work.

B. CITIZENSHIP STATUS DISCRIMINATION

Employers are required by federal law to treat all workers equally, whether they are U.S. citizens or not. They must evaluate employees and potential employees based on their qualifications, not their citizenship status. Citizenship status discrimination occurs when an employer treats you worse than an employer treats someone else because of your citizenship or immigration status.

PROTECTED INDIVIDUALS

The law against citizenship status discrimination applies to you only if you are a protected individual. You are a protected individual if you meet all three of the following requirements:

1. You have legal work authorization.
2. You are: a) a U.S. citizen or national; b) a lawful permanent resident; c) a lawful temporary resident; d) a refugee; or e) an asylee.
3. You apply or have applied for U.S. citizenship within six months of the time you are first eligible to do so.

U.S. CITIZENS ONLY

In general, it is illegal for an employer to fire or refuse to hire or promote you, even though you have legal work authorization, because you are not a U.S. citizen. For most jobs, a hiring employer can not have a "U.S. citizens only" rule (although for some government contracts, an employer may be required to hire U.S. citizens.) Citizenship status discrimination occurs when an employer requires or prefers hiring U.S. citizens over temporary or permanent residents. It is also illegal for an employer to require a specific immigration status, such as permanent residence.

DOCUMENT ABUSE

One form of citizenship status discrimination that does not require you to be a protected individual is document abuse. Document abuse occurs when an employer refuses to accept your legal work authorization documents, and instead demands particular kinds of work papers. For example, an employer may not require you to present a "green card" as proof of work authorization if you are able to present a different acceptable document showing that you are authorized to work. Nor may an employer insist on seeing your birth certificate or passport provided you could present other acceptable documentation of your identity. It is also illegal for an employer to refuse to hire you because your work authorization document has a future expiration date. As long as your work authorization is valid at the time you present it, an employer may not reject your work authorization.

You must prove two things immediately after you are hired: your identity and the fact that you are authorized to work. You may present whichever valid work documents you choose provided they show your identity and work authorization. Below is a partial list of valid work papers from which you may choose.

PARTIAL LIST OF LEGAL WORK PAPERS

An employer must accept any one document from Group A because it shows identity and work authorization.

Group A: Identity and Work Authorization

- ◆ U.S. Passport
- ◆ Valid foreign passport with I-551 stamp or with I-94 form with words “Employment Authorized”
- ◆ Certificate of U.S. Citizenship (N-560 or N-561)
- ◆ Certificate of Naturalization (N-550 or N-570)
- ◆ Alien Registration Receipt Card or Resident Alien Card with photo (I-151 or I-551)
- ◆ Temporary Resident Card (I-688)
- ◆ INS Work Permit (I-688A or I-6883)
- ◆ Valid Refugee Travel Document (I-571)
- ◆ Valid Re-entry Permit (I-327)

On the other hand, an employer must accept two documents, one from Group B that shows identity, and one from Group C that shows work authorization.

Group B: Identity

- ◆ Driver’s license or state I.D. with photo or description
- ◆ School I.D. with photo
- ◆ U.S. military I.D. or draft card
- ◆ Federal, state or local government I.D. with photo or description
- ◆ Canadian driver’s License
- ◆ Voter’s registration card

Group C: Work Authorization

- ◆ Social Security Card (unless stamped “not valid for employment” or bearing an expired period of work authorization)
- ◆ U.S. birth certificate
- ◆ Certification of Birth Abroad of U.S. Citizen (FS-545 or DS-1350)
- ◆ Document from INS with words “Employment Authorized” (for example, I-94)
- ◆ U.S. citizen I.D. (I-197)
- ◆ Resident Citizen Card (I-179)

Some employers are confused about which work papers are adequate, and will not hire workers with papers they do not recognize. If those papers are on the above list, the employer has committed citizenship status discrimination.

C. GENDER DISCRIMINATION

Federal law requires employers to treat all employees equally, whether they are men or women. They must evaluate employees and potential employees based on their qualifications, not their gender.

EQUAL PAY

Federal law prohibits discrimination based on gender in the payment of wages and fringe benefits for jobs of equal skill, effort, and responsibility performed under similar working conditions. Gender discrimination includes paying women less than men for substantially the same kind of work. It is also illegal for employers to reduce the wages of either gender in order to comply with the law. In other words, if you are a woman performing the same work as a fellow male employee and he is receiving a higher wage, your employer must raise your wage. Another possible indication of gender discrimination is when your employer pays a different wage to a predecessor or successor employee of the opposite sex.

PREGNANCY DISCRIMINATION

An employer cannot discriminate based on pregnancy, childbirth, or related medical conditions. It is illegal for an employer to refuse to hire a woman because she is pregnant, as long as she is able to perform the major functions of her job. Pregnant women must be treated the same as any other temporarily disabled worker.

SEXUAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature may constitute sexual harassment. It is considered harassment when: submission to or rejection of this conduct explicitly or implicitly affects the terms of an individual's employment; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.

DISPARATE IMPACT

Federal law also requires that employers be able to justify employment practices that result in screening out women (or minorities) although they seem nondiscriminatory in purpose. For example, minimum height requirements, which would allow an employer to hire many more men than women, are illegal unless a certain height is necessary to perform the job. Employment practices must be job-related for the position in question, and consistent with business necessity.

D. RELIGIOUS DISCRIMINATION

Employers are required by federal law to treat all workers equally, regardless of their religion. Employers must reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer.

Flexible scheduling, voluntary substitutions or swaps, job re-assignment and lateral transfers are examples of alternatives that can be used to accommodate an employee's religious beliefs.

Employers cannot schedule examinations or other selection activities in conflict with an employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath, Eid, or other religious holiday, unless the employer can prove undue hardship.

E. RETALIATORY DISCRIMINATION

It is illegal for an employer to penalize an employee for exercising his or her right to oppose discrimination under federal discrimination laws. The fact that an employee has complained or filed a charge of discrimination, or is participating in a discrimination investigation or proceeding (whether as a complainant or a witness) cannot be held against the employee.

Any negative employment action taken against an employee in such circumstances may be an incident of unlawful discrimination.

III. HOW CAN I TELL WHETHER I AM THE VICTIM OF EMPLOYMENT DISCRIMINATION?

When trying to determine whether an employer's actions are discriminatory, you should ask the following general questions. Next, consider more specific questions to determine the type of discrimination you think you may have suffered.

A. GENERALLY

1. What reason did your employer give for his or her action? Often an employer will give a non-discriminatory reason for not hiring or promoting you, or for taking a negative employment action such as demoting, suspending or terminating you, or giving you a poor performance appraisal. Analyze as precisely as possible the reason offered. When you are denied a job or a promotion, the most common reason given is that the person selected is more qualified than you are. When a negative employment action is taken against you, almost any reason could be given (anything from poor work quality to tardiness). No matter what, make sure you get a reason from the employer. If necessary, ask him or her directly: "Why wasn't I hired (or promoted)?" or "Why was I fired (or demoted or suspended)?"

2. Is there any documentation of that reason available? Obtain a copy of any termination letter, warning notice, performance appraisal, or any other document specifying the reason for the employer's decision. Again, if necessary, ask the employer directly for such documentation.

3. Is there any evidence that the given reason is merely a "pretext", or an untrue excuse for discrimination? If you were not hired or promoted, are there witnesses or documents to contradict the reason given by the employer? If the given reason is that the person selected is more qualified, compare that person's education, experience, and performance to yours, than to the requirements of the job. Is there any documentation to show your relative qualifications in experience, time in service, education, and work quality? Are there witnesses who are well acquainted with your work and that of the person selected? If the reason was something else (such as reliability or timeliness) are there witnesses, or documents such as time sheets, that can contradict the employer?

If a negative employment action was taken against you, is there documentation that contradicts the employer's stated reason for the action? For instance, is there evidence of good performance (such as superior evaluations), or proof that specific items mentioned by the employer are untrue (such as writing samples to disprove a claim that you write poorly, or time-sheets to disprove a claim of tardiness or non-attendance). Are there witnesses with firsthand knowledge of the supposed events leading up to the action, who can contradict the stated reason? Finally, were you singled out or treated differently from other employees who engaged in the same activity as you but who are not of the same "class" (national origin, citizenship status, gender or religion) as you?

If a negative employment action was taken against you while you were involved in the protected activity of opposing unlawful discrimination, what was the timing of that negative action? Was the individual responsible for it aware of your protected activity? Were the individuals who made the decision the same as those about whom you were already complaining about unlawful discrimination? Do you have documents or witnesses to show that you maintained your work product and quality despite your involvement in the protected activity? (Often, in a "retaliatory discrimination" case, the employer will say that the employee's work deteriorated once his or her involvement in opposing unlawful discrimination began.)

4. Is there additional evidence from which intentional discrimination can be inferred? Simply disproving an employer's given reason for the employment action may not be enough to establish discrimination. Is there any direct evidence of discrimination, such as derogatory comments about people of your national origin (or citizenship status or gender or religion) by the person who was responsible for the unfavorable employment decision? Is there circumstantial evidence? Did the employer violate its own procedures in making the decision, for instance, by hiring someone beyond the deadlines or below the specified qualifications? Alternatively, does the employer have a pattern of taking negative actions against, or not hiring, members of your "class"? Whom else has the employer hired or promoted? What percentage of those people were members of your "class"? What percentage of applicants, or those eligible for selection, were members of your "class"? Is there any discriminatory pattern that can be determined?

B. SPECIAL QUESTIONS FOR HARASSMENT CASES

1. Was there discriminatory harassment? Have negative or unwelcome comments, or specific incidents, regarding your "class" membership occurred in the office over time? Alternatively, has at least one seriously offensive or degrading incident or comment occurred? What was the worst incident? What was the most overtly discriminatory incident? What was the very first incident? Were there any witnesses? (Witnesses are especially important, since there are no "legitimate reasons" for harassment.) Is there any direct evidence of discriminatory harassment -- degrading posters or pictures, offensive drawings or desktop items, public statements by company officials, or similar evidence? Are there other members of your "class" who are not harassed? (If the comments or incidents are clearly related to your "class" status, it can still be discrimination even if you are the only member of your "class" to whom it occurs.) Are others who are not in your class harassed in the same way? (If so, the harassment against you might not fall under federal discrimination laws, but you might have a different remedy under state law.) Are the individuals who commit the harassment members of your "class"?

2. What type of harassment is it? Remember that there are two types of discriminatory harassment. In the more common type, a "hostile work environment" may exist when offensive comments or actions related to your "class" membership are pervasive and unreasonably interfere with your work performance, or negatively affect your employment opportunities.

The second type, “quid pro quo,” is the specific case where unwelcome sexual advances or requests for sexual favors make you fear negative employment action.

3. Did your employer know, or should he or she have known, of the harassment? Were the individuals responsible for the harassment supervisors, managers, or other individuals entrusted by the employer with substantial authority? If so, or if they appeared to be so, knowledge of their actions may be imputed to the employer. If the offending individuals were colleagues, what steps did you take to inform your employer or a supervisor? Again, the employer is responsible for the harassment if you have complained about it to higher-level employees. Have you taken advantage of any complaint system for harassment at your place of employment?

4. What is the harm? How has the harassment interfered with your employment? Has it had a material effect on your working relationship with your employer? Has it affected your advancement opportunities? Has it caused emotional distress that has damaged the quality of your work, or interfered with your personal life?

C. IDENTIFYING TYPES OF DISCRIMINATION

1. National origin discrimination. Did an employer treat you differently because you are Arab? Or because you have an accent? Or because you were born in an Arab country? Or because your name sounds Arabic? (If you have an accent and are told over the telephone that all positions for an advertised job are filled, you might ask a friend with no accent to call and inquire about the job. If your friend is told that there are positions available, you may have been the victim of national origin discrimination.) Have you been denied promotions that have been granted to non-Arabs of equal or lesser qualifications? Did a prospective employer ask you questions about where you or your family were from, or what language you speak? Do your present employer, your supervisor, or your colleagues make negative comments about Arabs, or call you names like “terrorist” or “oil sheik”? How are members of other minority groups treated? How are workers of European ancestry treated in comparison?

2. Citizenship status discrimination or document abuse. Did an employer treat you differently because you are not a U.S. citizen? Or because you are not a permanent resident? Did an employer demand to see your green card, passport, or birth certificate before hiring you? Or refuse to hire you merely because your work authorization document has a future expiration date? Have you been denied promotions that have been granted to U.S. citizens of equal or lesser qualifications? Do people in your office know your citizenship status and make disparaging comments about immigrants or foreign workers?

3. Gender discrimination. Did an employer treat you differently because you are a woman? Do you receive a lower wage than a male employee who performs the same work? Have you been denied promotions that have been granted to men of equal or lesser qualifications? Were you fired because you were pregnant, although you were still able to do your job? Do your employer, your supervisor, or your colleagues make offensive comments about women or sex in your presence? Are there any offensive sexually explicit pictures, photographs, or desktop items in your office? Are unwelcome sexual jokes or comments directed at you? Have unwelcome sexual advances been made to you by your employer, supervisor, or colleagues?

4. Religious discrimination. Did an employer treat you differently because you are a practicing Christian or Muslim? Did an employer refuse to allow schedule changes that would accommodate your religious practices, although these changes would not hurt the employer? For example, did an employer refuse to grant you time off for Eid or Christmas, even though a competent co-worker was willing to work in your place? Does an employer not allow you to attend the Friday prayer, even though you are willing to make up the time by arriving earlier or leaving work later on that day? Did an employer ask you to shave a beard that you wore out of religious conviction? Did an employer ask you to remove your head cover (hijab), or change your work location or assignments once you started wearing it? Have you been denied promotions that have been granted to people of equal or lesser qualifications of a different religion? Does anyone in your office who knows your religion make offensive comments about it such as by referring to Muslims as “terrorists”?

5. Retaliatory discrimination. Did an employer take any negative employment actions against you after you filed a charge of discrimination? Or after you participated in the investigation process of a discrimination charge?

6. Disparate impact discrimination. Does an employer use employment practices -- such as height requirements, time availability requirements, educational requirements or written examinations -- that result in screening out women or

minorities, without a legitimate business justification?

IV. WHO ENFORCES THE LAWS AGAINST EMPLOYMENT DISCRIMINATION?

Various federal, state and local laws protect against different kinds of employment discrimination. Accordingly, various federal, state and local agencies have been created to enforce these laws. If you believe an employer has discriminated against you, you should contact one of these agencies in order to get more information and to file a claim of employment discrimination. The following sections describe these agencies, the laws they enforce, and how to determine which agency you should contact.

A. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

The U.S. Equal Employment opportunity Commission (EEOC) is a federal agency created by Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, sex, religion, national origin, disability, and age. The EEOC enforces these Title VII protections, as well as other federal laws prohibiting discrimination based on age and disability. The EEOC does not enforce the federal law against citizenship discrimination; that is done by the Office of Special Counsel (see below).

PROHIBITED DISCRIMINATION

Title VII prohibits discrimination by employers in hiring, firing, recruitment or referral for a fee, and in all other terms and conditions of employment, including promotion, salary increases, vacations, fringe benefits, training, and work assignments. Title VII also prohibits retaliatory actions against employees who file a charge of discrimination or participate in the investigation process.

EMPLOYER SIZE REOUIREMENT

Title VII applies only to employers with 15 or more employees. As a result, the EEOC handles only those discrimination complaints against employers with 15 or more employees. However, other laws do protect against discrimination by smaller employers. Complaints of national origin discrimination against employers with 4-14 employees may be filed with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). Other discrimination complaints against employers with fewer than 15 employees may be filed with your state or local human rights commission.

WORK AUTHORIZATION

You may file an employment discrimination claim with the EEOC even if you do not have legal work authorization. However, you may risk that your employer will retaliate by informing the INS of your situation. Or, your immigration status may become public knowledge through the course of the investigation. Your remedies may also be quite limited.

It may be possible to keep your identity confidential. You should contact ADC or a legal aid society in your area before filing an EEOC claim if you are an undocumented worker.

RELATIONSHIP TO HUMAN RIGHTS COMMISSIONS

The EEOC often cooperates with state or local human rights commissions when investigating claims. If there is a human rights commission that enforces anti-discrimination ordinances in your state or locality, you should contact that agency. Or, the EEOC will contact the agency for you, and will probably assign your case to that agency. If there is no human rights commission in your area, you should contact the nearest EEOC field office, and the EEOC will handle your claim.

AVAILABLE RELIEF

For a successful claim, the EEOC is authorized to award such relief as hiring, reinstatement, back pay, and attorney's fees. The EEOC can also order promotion or other steps to put you in the position you would have had if there had been no illegal discrimination against you for future pecuniary (monetary) losses, mental anguish and inconvenience. In some

cases, the EEOC may award punitive damages as well.

FILING DEADLINE

You should file a claim as soon as possible after the discriminatory act. You must file with the EEOC within 180 days of the act. In some cases this period may be extended; therefore, you should call the EEOC even if you think you have missed the filing deadline.

FOR MORE INFORMATION

For recorded information about EEOC laws, you may call 1-800-669-EEOC. To speak with an EEOC officer about your claim you may call the EEOC at 1-800-669-4000. Your best option may be to contact the nearest EEOC field office. Field offices are located in 50 cities throughout the United States and are listed in most local telephone directories under "U.S. Government." Or, to find the EEOC field office nearest to you, call the EEOC at 1-800-USA-EEOC.

B. OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES (OSC)

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) is a federal agency created by the Immigration Reform and Control Act of 1986 (IRCA). IRCA

- 1) penalizes employers for hiring undocumented workers
- 2) prohibits employment discrimination based on national origin and citizenship status. The OSC was created to enforce the anti-discrimination provisions of IRCA.

PROHIBITED DISCRIMINATION

IRCA prohibits national origin and citizenship discrimination by employers in hiring, firing, recruitment or referral for a fee. It also prohibits retaliatory actions against employees who file a charge of discrimination or participate in the investigation process.

IRCA does not apply to all terms and conditions of employment. For example, the OSC does not handle claims of discrimination regarding promotions, salary increases, or fringe benefits.

The OSC handles only national origin and citizenship discrimination complaints. The OSC does not investigate other kinds of discrimination, such as religious or gender discrimination.

EMPLOYER SIZE REQUIREMENT

For citizenship discrimination claims, IRCA applies to all employers with four or more employees. Thus, the OSC handles all citizenship discrimination complaints against employers with at least four employees.

For national origin discrimination claims, IRCA applies only to employers with 4-14 employees. Thus, the OSC handles only those national origin complaints against employers with 4-14 employees. National origin discrimination complaints against employers with 15 or more employees may be filed with the EEOC.

WORK AUTHORIZATION AND RELATED REQUIREMENTS

In order to file either a national origin discrimination charge or a citizenship status discrimination charge with the OSC, you must have legal work authorization.

In order to file a citizenship status discrimination charge (unless it is a document abuse charge), you must also meet the following requirements, in addition to having legal work authorization:

1. You must be: a) a U.S. citizen or national; b) a lawful permanent resident; c) a lawful temporary resident; d) a refugee; or e) an asylee.

2. You must apply/have applied for U.S. citizenship within six months of the time you are first eligible to do so.

AVAILABLE RELIEF

For a successful claim, the OSC is authorized to award such relief as hiring, reinstatement, back pay, and attorney's fees. The OSC may also order an employer to educate personnel, correct job files, or lift restrictions on work assignments. The OSC also orders discriminating employers to pay fines to the government.

FILING DEADLINE

You should file a claim as soon as possible after the discriminatory act. You must file with the OSC within 180 days of the act. In some cases this period may be extended; you should call the OSC even if you think you have missed the deadline

FOR MORE INFORMATION

For more information, or to receive the documents necessary to file a national origin or citizenship status discrimination claim, you may call the OSC at 1-800-255-7688.

C. STATE AND LOCAL HUMAN RIGHTS COMMISSIONS

State and local human rights commissions enforce state and local anti-discrimination ordinances. Human rights commissions often offer additional protections to those extended by the EEOC and the OSC. You should contact your state or local human rights commission in order to find out which kinds of discrimination are prohibited in your area.

If you plan to file an employment discrimination charge with the EEOC, you should also contact your state or local human rights commission. The commissions often work with the federal agencies in investigating claims. If there is no commission in your state or locality, you should directly contact the nearest EEOC field office.

Human rights commissions enforce anti-discrimination laws against smaller employers. Rules will vary from commission to commission, but they typically accept complaints against employers with four or more employees.

Available relief will also vary from commission to commission. For more information, contact your state or local human rights commission.

D. RACE DISCRIMINATION AND THE RIGHT TO "CONTRACT"

Race discrimination in the making of a "contract" is forbidden by the 1866 Civil Rights Act, 42 U.S.C.A. Section 1981. This statute was designed to grant such rights as the right to contract and the right to purchase, hold and sell property. Section 1981 provides in part that "all persons... shall have the same right...to make and enforce contracts...as is enjoyed by white citizens..." While this prohibition overlaps with Title VII, Section 1981 has broader coverage, allows more extensive monetary remedies, and is enforced through private judicial remedies without having to go to the EEOC as is the case with Title VII cases.

As stated above, Section 1981 states that "all persons" shall have the same right to make and enforce contracts "as is enjoyed by white citizens." This broad language reaches the employment contract, but only prohibits racial discrimination. Thus Section 1981 does not reach discrimination based on sex, religion, age, or citizenship. Because the application of Section 1981 is limited to Racial discrimination, "Race" has been broadly defined to mean identifiable classes of persons based on their ancestry or ethnic characteristics. For example, the concept of "race" prohibits discrimination against Iraqis and Jews because of their ethnic origins, as opposed to their nationality or religion. Also, white persons are protected against race discrimination under the same standards as are applied to racial minorities.

E. COURTS OF LAW

In most cases, if you are not satisfied with the decision of the agency or commission that hears your discrimination complaint, you can then file a discrimination suit against your employer in state or federal court.

If, however, you complain of discrimination on the basis of race, you can go directly to court, without having first to file your complaint with an agency or commission, under Section 1981 of Title 42 of the United States Code, which is part of the Civil Rights Act of 1866 (as amended by the Civil Rights Act of 1991). Section 1981 protects you from race discrimination in hiring, firing, promotions, and all other terms and conditions of employment, including harassment, disparate treatment, and retaliatory action. In a case in which ADC participated, the U.S. Supreme Court found that Arab-Americans are a “race” for purposes of Section 1981.

Under Section 1981, “race discrimination” includes discrimination based on your ancestry or ethnic characteristics. It does not include discrimination solely based on the nation or place of your birth; thus, it is not technically the same as national origin discrimination. To have a claim under Section 1981, you must be able to prove that you were subject to intentional discrimination because, for instance, you have an Arab name or Arab ancestors, or because you “look” Arab, or because you were born “an Arab” (regardless of where specifically you were born). If you can make out a claim for national origin discrimination, there is a good chance you can claim race discrimination under Section 1981.

Available relief under Section 1981 includes compensatory and punitive damages, with possible awards for emotional distress and humiliation. You should consult a lawyer for advice on whether you should file a charge with the EEOC first, or go straight to court under Section 1981.

V. WHAT HAPPENS WHEN I FILE A CLAIM OF DISCRIMINATION?

You are not required to have a lawyer in order to file an employment discrimination complaint (called a “charge”) with the EEOC, the OSC, or a human rights commission. However, some complainants would like the assistance of an attorney, and ADC may be able to refer you to one. You may obtain charge forms by calling the agency and requesting them. If you need help filling them out, you may call the agency or ADC’s legal department with questions.

When filling out the charge form, you should try to explain the way(s) in which you were discriminated against in as much detail as possible. The more information you provide, the better the agency will be able to investigate and resolve your claim. Be prepared to explain in the charge form your reason(s) for believing that your race, national origin, citizenship status, religion, or gender is the reason you were treated differently.

The following sections describe the procedures each agency uses to handle your claim once you have filled it out and submitted it.

A. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

1. After receiving your claim, the EEOC will interview you to obtain as much relevant information as possible about the act you believe is discriminatory. If the laws that the EEOC enforces apply both to you and your employer, the EEOC will draft a charge, ask you to sign it, and will explain the investigative procedure to you.

2. The EEOC will then notify the employer about the charge. The EEOC will request specific information from the employer addressing the issues affecting you as well as other potentially aggrieved employees. The EEOC will also interview any witnesses who have direct knowledge of the act you believe is discriminatory.

3. If this evidence shows there is no reasonable cause to believe discrimination occurred, the EEOC will so notify you and the employer, and the investigation will end. You may then request a review of this finding by EEOC Headquarters. You will also be issued a right-to-sue notice, permitting you to take the case to court if you wish.

Note that you may not bring a lawsuit in federal district court under Title VII unless you have first filed a discrimination charge with the EEOC. If the EEOC’s investigation of your case is not completed within six months, you may ask for a right-to-sue notice. Alternatively, you will receive a right-to-sue notice if and when the EEOC finds against you, or fails to settle the case to your satisfaction. You must then file the lawsuit within 90 days of the date you receive the right-to-sue notice. You should contact an attorney promptly after receiving a right-to-sue letter.

4. If the evidence shows there is reasonable cause to believe discrimination occurred, the EEOC will attempt to persuade the employer to voluntarily eliminate the discrimination and compensate you for it. Remedies and compensation may include reinstatement to the job you would have had if there had been no discrimination, back-pay, restoration of lost benefits and a notice posted by the employer in the workplace to advise employees that it has complied with orders to

remedy the discrimination.

5. If the EEOC cannot persuade the employer to voluntarily eliminate the discrimination, the EEOC will consider filing a lawsuit against the employer on your behalf. Most charges are conciliated or settled before a court trial begins. If the EEOC decides not to file a lawsuit, you may ask for a right-to-sue notice and bring the lawsuit yourself.

6. Special EEO procedures for federal employees in the executive branch: If you are a federal employee in the executive branch, your complaint does not go immediately to the EEOC but is first reviewed by a separate EEO office within your agency. The agency EEO office first counsels you and then, if necessary, investigates your claim and presents you with its findings. If you wish, you may then request a hearing before an EEOC Administrative Judge, who will make findings and recommend appropriate relief. After receiving the judge's decision, your agency will issue a final decision that accepts, rejects, or modifies the judge's decision. You may appeal this final decision to the EEOC, and afterwards proceed to federal court as described above.

(Insert Sample EEOC Charge Form)

B. OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES (OSC)

1. The OSC will contact the employer within 10 days after receiving your charge form, notify the employer that you have filed a discrimination charge, and will send the employer a list of questions regarding your situation. The employer will have a month to answer these questions.

2. The OSC may interview you, either over the telephone or in person. The OSC will also interview the employer and any witnesses to the discrimination.

3. If the evidence shows reasonable cause to believe discrimination occurred, the OSC will attempt to persuade the employer to voluntarily eliminate the discrimination and compensate you for it.

4. If the OSC cannot persuade the employer to voluntarily eliminate the discrimination or to compensate you for it, the OSC will consider ordering a hearing before an administrative law judge. The administrative law judge will hold a hearing that is much like a trial. The OSC will represent you at this hearing.

5. If the OSC does not find reasonable cause to believe discrimination occurred, or if the OSC decides not to order a hearing before an administrative law judge, the OSC will send you a letter informing you of its decision. You may then request a hearing before the administrative law judge yourself. You must make this request within 90 days of receiving the letter from the OSC. You should contact an attorney promptly after receiving this letter.

(Insert Sample OSC Charge Form)

C. STATE AND LOCAL HUMAN RIGHTS COMMISSIONS

1. Human rights commissions may vary from locality to locality, but a typical commission will furnish the employer with a copy of your complaint. The employer will then have an opportunity to respond to your complaint.

2. If the commission finds that your complaint is not justified, it will dismiss your complaint. You may appeal the dismissal to the commission, or you may be able to file a lawsuit against the employer.

3. If the commission finds that your complaint is justified, it will attempt to resolve the matter through conciliation and settlement.

4. If those efforts fail, the commission may hold a hearing at which the commission may order the employer to compensate you.

(Insert Sample Hum. Rts. Comm'n Charge Form)

VI. WHAT DOES ADC DO ABOUT EMPLOYMENT DISCRIMINATION?

The American-Arab Anti-Discrimination Committee works on both the national and grassroots level for the elimination of employment discrimination and for the creation and preservation of legal processes through which complainants can seek redress for acts of employment discrimination. ADC's work in this area is conducted in coalition with individuals and organizations that share these ideals.

In the case of specific claims of employment discrimination made by members of ADC, ADC often contacts the employer involved on behalf of the complainant Arab or Arab-American to make the employer aware that illegal discrimination in the workplace against Arabs and Arab-Americans will not be tolerated. Upon request of an ADC member who is a victim of apparent discrimination, ADC will refer the victim to an attorney on the ADC Legal Referral Network, or to another attorney, to ensure that the victim's rights are protected. ADC also counsels employers on steps that can be taken for the elimination of discrimination in the workplace. For more information, contact the ADC Legal Department at 4201 Connecticut Ave., NW, Suite 300, Washington, D.C., 20008, or call (202) 244-2990.