

Competing Employer Obligations: Complying with Export Control Laws While Avoiding National Origin Discrimination

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The U.S. Department of Justice recently settled two cases with companies that engaged in unlawful discrimination in the course of seeking to comply with U.S. export control laws, specifically restrictions relating to the "release" of certain technology to non-U.S. persons. Both companies paid penalties and are subject to ongoing DOJ monitoring and reporting requirements. These settlements demonstrate the dilemma that employers face in seeking to secure controlled technology without violating anti-discrimination laws.

Under U.S. export control laws, exporting certain goods, software, or technology (i.e., technical data, export-controlled material) to other countries requires prior approval from the U.S. government under certain circumstances. For employers, allowing employees who are "foreign persons" to access export-controlled material can be considered an export to that foreign person's country of citizenships or permanent residencies, and thus potentially require an export license. Employers seeking to comply with such rules should be mindful of anti-discrimination laws when crafting compliance processes.

Listen as our expert panel describes these seemingly conflicting legal obligations for employers, discusses lessons learned from the recent DOJ settlements, and provides best practices for compliance and mitigation of risk.

Outline:

1. Introduction
2. Overview of export control laws and export control compliance assessment
 - ITAR
 - EAR
 - Part 810
3. Recent DOJ settlements
4. Risks of combining compliance assessment with other H.R. functions
 1. Recruiting job applicants
 2. I-9 process for new hires
 3. Other considerations
5. Best practices for employers to mitigate discrimination claims and limit liability

Benefits:

The panel will address these and other key issues:

- What obligations do employers have under U.S. export control laws?
- When and under what circumstances should employers conduct export control compliance assessments?
- When do employer export control obligations conflict with anti-discrimination laws?
- What are best practices for employers to comply with their obligations while mitigating the risk of a discrimination claim?

Speakers:

- Lisa Mays, Sheppard Mullin
- Anthony Rapa, Blank Rome
- Eunkyung Kim Shin, Baker & McKenzie

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Practice Areas

Governmental