



# Tracking refugee status in the workforce: a guide for companies in the United States



## About

As more and more companies in the United States – including 100+ companies that have joined Tent’s Coalition for Refugees in the U.S. – take significant steps to hire refugees, a number have raised the question whether it is permissible to inquire about the refugee status of employment applicants and employees in the United States, to better track, monitor, and assess their progress. This note is intended to provide guidance on how companies may do so – with respect to refugees, as well as others who have been forcibly displaced, such as asylees, asylum seekers, humanitarian parolees, special immigrant visa holders and temporary protected status holders – while minimizing the risk of liability under U.S. anti-discrimination laws prohibiting discrimination based on an individual’s national origin.

## 01. Pre-Hiring



Companies may be interested in determining how many job applicants are refugees. This might help a company assess whether its efforts, or that of its partners, to encourage refugees to apply for certain roles have been successful; or – when compared to post-hiring data – it might help a company identify unexpectedly low hiring rates for refugee candidates, which in turn might surface a practice or approach that unintentionally has the effect of excluding refugees.

Companies wishing to determine refugee status at the pre-hire stage should do so on a strictly voluntary and anonymous basis by using “tear-off” sheets. A sample pre-employment inquiry is provided in [Annex I](#) ».

### ANALYSIS:

At the pre-hiring stage, the U.S. Equal Employment Opportunity Commission (EEOC) has stated that: *“In general, it is assumed that pre-employment requests for information will form the basis for hiring decisions.”*

Accordingly, in the context of racial discrimination, the EEOC has cautioned employers against requesting information that discloses or tends to disclose an applicant’s race unless an employer has a legitimate business need for such information. The EEOC has identified the need to track applicant flow as one such legitimate need.

One mechanism that the EEOC has endorsed for this purpose, allowing employers to obtain the necessary information while simultaneously guarding against claims of discriminatory selection, is an anonymous “tear-off” sheet on a job application form (or a digital equivalent).<sup>1</sup> The tear-off sheet allows the employer to separate the applicant tracking information from the information used to determine if a person is qualified for the job, so that it may demonstrate that the information was not used for purposes of selection. The EEOC has cautioned that this information, if sought, should be sought of all applicants.<sup>2</sup>

1. See EEOC Informal Discussion Letter No. 78 (Aug. 5, 2002), available at <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-78>; U.S. Equal Employment Opportunity Comm’n, Pre-Employment Inquiries and Race, available at <https://www.eeoc.gov/pre-employment-inquiries-and-race>; *Robinson v. Adams*, 847 F.2d 1315 (9th Cir. 1987) (Title VII is not violated where the screener is unaware of the plaintiff’s race, which was noted only on a separate sheet from the application), cert. denied, 490 U.S. 1105 (1989).

2. See EEOC Informal Discussion Letter No. 78.

## 02.

### Post-Hiring



Companies may be interested in assessing how many of their employees are refugees. This might allow the employer to have a snapshot of the refugee population among its workforce. In turn, this might help a company track its progress against internal diversity and inclusion metrics or public commitments to increase refugee employment.

Companies wishing to determine the refugee status of an employee after they have been hired into a role should do so on a strictly voluntary and anonymous basis, as is the case at the pre-hiring stage. A sample post-employment inquiry is provided at [Annex II »](#).

#### ANALYSIS:

Post-hiring, many employers will have established mechanisms for collecting certain demographic information about their workforce. Employers with over 100 employees in the United States are required to submit an EEO-1 form to the

EEOC each year, providing demographic information about race/ethnicity, gender, and job classification information. Covered employers must invite employees to self-identify and provide their gender and race/ethnicity for this report.

However, the laws mandating the EEO-1 Report do not permit or require employers to seek the same kinds of information regarding national origin or refugee status. Rather than the voluntary self-identification used for race and gender information (which permits employers to collect information on a non-anonymous basis), employers should collect refugee status information both anonymously and voluntarily, just as with pre-hiring inquiries. Employers may wish to administer this inquiry via an anonymous digital survey or through an anonymous drop box for review by human resources).

### STORAGE AND USE OF EMPLOYEE DATA

As with all sensitive and confidential personal data, employers must plan how data relating to applicant and employee refugee status will be securely stored and used. The results of the pre- and post-hiring inquiries, when aggregated, can provide a picture of the success of the employer's efforts to hire and retain employees from the refugee community. Results can be shared in an aggregated and anonymized manner that prevents the identification of individuals. This is especially important for some refugees, whose safety may be put at risk if their information were to be disclosed publicly. To protect the privacy of employees, it is recommended to restrict data access to a very limited number of staff, generally the human resources department.

#### NEXT STEPS

If you would like to know how your company can start hiring refugees, or how you can maximize the potential of refugee employees, reach out to Tent at [info@tent.org](mailto:info@tent.org)



## Annex I: Sample pre-hiring inquiry about refugee status

The language employers use when asking refugees to self-identify their status is very important. The following is an example of how employers can ask job applicants to self-identify as refugees, via a paper or digital “tear off” sheet attached to a job application.

*Company X* is committed to creating a diverse and inclusive workplace and does not discriminate on any basis, including on the basis of national origin or immigration status. As part of that ongoing commitment, *Company X* has established a goal of increasing the number of employees that identify as refugees in its workforce. To track our progress towards achieving that goal, we are requesting your anonymous, confidential response to the below question. Your answer will help us measure our progress in hiring practices and diversity goals, as well as inform future policy and programming decisions.

The following questions are completely voluntary. All individual responses will be kept strictly confidential and will not be shared with anyone at *Company X* involved with making the selection for the job for which you have applied.

One definition of refugee used in the United States (taken from the Immigration and Nationality Act) is “an alien who, generally, has experienced past persecution or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

For this purpose of this form, we’re using the term “refugee” to cover anyone who is resident in the United States as a result of forcible displacement from their homes, including individuals admitted through the U.S. Refugee Admissions Program, asylees, asylum seekers, humanitarian parolees, special immigrant visa holders, and temporary protected status holders.

**Based on either this definition or your own personal definition of what it means to be a “refugee,” do you currently consider yourself to be a refugee, or have you ever considered yourself to be a refugee in the past?**

- Yes
- No
- Prefer not to answer

## Annex II: Sample post-hiring inquiry about refugee status

The language employers use when asking refugees to self-identify their status is very important. The following is an example of how employers can ask existing employees to self-identify as refugees, either using a paper or digital form.

*Company X* is committed to creating a diverse and inclusive workplace and does not discriminate on any basis, including on the basis of national origin or immigration status. As part of that ongoing commitment, *Company X* has established a goal of increasing the number of employees that identify as refugees in its workforce. To track our progress towards achieving that goal, we are requesting your anonymous, confidential response to the below question. Your answers will help us measure our progress in hiring practices and diversity goals, as well as inform future policy and programming decisions.

The following questions are completely voluntary, and will not affect your opportunity for employment, or the terms or conditions of your employment in any way.

This form/survey will be used for informational and statistical purposes only.

[IF USING PAPER FORMS] Please return completed forms in the drop box [located outside the HR department.

[IF DIGITAL] Your answers to this survey will be anonymous and confidential and will not identify you in any way connected with your response.

One definition of refugee used in the United States (taken from the Immigration and Nationality Act) is "an alien who, generally, has experienced past persecution or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

For this purpose of this form, we're using the term "refugee" to cover anyone who is resident in the United States as a result of forcible displacement from their homes, including individuals admitted through the U.S. Refugee Admissions Program, asylees, asylum seekers, humanitarian parolees, special immigrant visa holders, and temporary protected status holders.

**Based on either this definition or your own personal definition of what it means to be a "refugee," do you currently consider yourself to be a refugee, or have you ever considered yourself to be a refugee in the past?**

- Yes
- No
- Prefer not to answer