Blog Post

English-Only Workplace Rules: Risky in a Diversifying Workplace

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A manufacturer has "subjected its employees to an ugly mix of sexism, racism, and xenophobia and violated federal law prohibiting harassment and retaliation" the Equal Employment Opportunity Commission alleged in a lawsuit recently filed in New York. What led to such an inflammatory charge from the EEOC? Among other things, the employer's implementation of an English-only rule in the workplace.

As the modern workforce in the United States becomes more diverse, an increasing number of employees speak languages other than, or in addition to, English. In response, some employers, like the one facing suit by the EEOC in New York, have enacted English-only workplace policies, mandating that their employees speak English, rather than any other language, while at work. Even if well-intentioned, these policies may serve as the basis for discrimination claims against employers.

In general, rules requiring employees to speak English in the workplace do not violate Title VII or other anti-discrimination laws if the employer has a legitimate, non-discriminatory reason for the rule and employees can practically comply with its restrictions. Non-discriminatory reasons for English-only rules may include maintaining employee morale or preventing alienation of employees, assisting management in supervising

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employees, and maintaining safety in hazardous environments. Proficiency in the English language may also be a permissible job requirement so long as it is a key component of the job position.

However, the EEOC, in its regulations and published guidance on national origin discrimination, has stated that any rule requiring employees to speak English at all times is presumed to violate anti-discrimination laws. Blanket rules, requiring employees to speak only English at all times without qualifications, will rarely be justified. EEOC guidance permits English-only rules in the workplace only if: (1) the rule is applied only in limited situations; (2) the rule is justified by business necessity; and (3) the employer has clearly notified employees of the rule and the penalties for breaking it. The EEOC explains that a business necessity for imposing English-only rules may arise when English is needed for the employer to operate safely/efficiently, in dealing with customers or coworkers who speak only English, or during emergencies. The U.S. Department of Labor ("DOL") echoes these limited exceptions here, allowing for English-only rules, but adds that employers can mandate such policies to enable supervisors who speak only English to monitor the performance of employees whose job duties require communication in English.

Despite guidance from the EEOC, DOL, and other government agencies, there is no bright-line rule for employers regarding English-only policies. State and federal courts are grappling with the issue on a case-by-case basis. In New York, for example, courts have held that English-only rules are not *per se* discriminatory if there is a legitimate business justification for such rules. New York courts have further explained that so long as employers do not restrict employees' language during their personal breaks and do not prohibit some non-English languages in the workplace while permitting others, then English-only rules may be permissible in order to ensure workplace efficiency and cooperation. A

New Jersey appellate court similarly held that while these rules are not *per se* unlawful, plaintiffs may be able to recover under the New Jersey Law Against Discrimination if they can prove that an English-only rule was used as a surrogate for discrimination on the basis of national origin, ancestry, or other protected characteristic. This same court, however, stated that a discharge for speaking another language in the face of an English-only or mainly-English rule is not by itself a violation of New Jersey or federal anti-discrimination laws.

Some states, however, have stricter rules regarding English-only policies and when employers may be justified in implementing them. For example, the California Fair Employment and Housing Council has enacted rules, effective in July of 2018, that permit English-only rules only when employers can show an "overriding and legitimate business purpose that makes language restriction necessary for the safe and efficient operation of the business." The policy must also fulfill the purpose of its implementation and there can be no alternative method to accomplish the employer's goals with a lesser discriminatory impact. California's new law expressly prohibits English-only requirements from being imposed during off-duty hours or employee break times and requires that employees be informed about the details of the policy before being subjected to any discipline for violation. A recent lawsuit, brought by the EEOC in San Diego federal court against Albertsons, will challenge an unwritten English-only policy, where store management allegedly prohibited Spanish on the premises even while employees were on break, and test the state's new laws regarding language requirements in the workplace.

Employers should proceed very carefully before implementing English-only workplace policies and should adopt such policies only narrowly with solid business justification. Even unwritten or informal policies, like a supervisor encouraging employees to speak English, may be construed as an English-only

rule that improperly discriminates against certain employees and lead to scrutiny by the EEOC and other government agencies. Any practice that effectively discriminates against non-English speaking employees can leave employers susceptible to discrimination claims, so these policies should be carefully evaluated for any possible discriminatory effects and effective alternatives. Employers should seek advice from counsel before implementing any new procedure or policy that may treat certain groups of employees different from others based on their language abilities.