

“English-Only” Rule: Hispanic Caregivers Awarded Settlement In Class-Action Lawsuit.

US Equal Employment Opportunity Commission Regulations “Speak-English-Only Rules”

(a) *When applied at all times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.

(b) *When applied only at certain times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

Selection Procedures

The Commission will carefully investigate employment selection procedures involving fluency in English requirements, such as denying employment opportunities because of a foreign accent or inability to communicate well in English.

The US Equal Employment Commission (EEOC) filed a national-origin discrimination lawsuit in the US District Court for the Central District of California on behalf of fifty-three Hispanic employees of seventeen nursing facilities.

The lawsuit resulted in monetary compensation totaling \$450,000.

The facilities also entered into an agreement with the EEOC to protect their Hispanic employees from future discrimination, to provide them with opportunities for English-language proficiency training and to institute in-service training for supervisors and managers as to their obligations under US Civil Rights laws.

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National Origin Discrimination

In a nutshell, it is unlawful national-origin discrimination to prohibit employees from conversing with one another in a native language other than English. This includes on-the-job communication as well as communications while off duty, going and coming, on break, etc.

Business Necessity

Business necessity is an acceptable justification for an employer to require employees to have proficiency in English and to speak only in English, according to the EEOC guidelines.

Business necessity includes verbal communication which is necessary for the job with other employees who do not speak the employee's native language.

For example, the courts have ruled a hospital is permitted to have a rule expecting housekeepers who do not have English as their first language to be able to speak to and to receive instructions from nurses who do not speak their language. The rationale is that effective communication is essential to the hospital's patients' safety and wellbeing.

Business necessity also includes the ability to communicate with members of the public not fluent in the employee's native language, but only if dealing with the public is a necessary part of the employee's job. EEOC v. Royal Wood Care Ctr. et al., 2009 WL 2569472 (C.D. Cal., April 9, 2009).