

English-Only Rules: US Court Distinguishes Legitimate vs. Discriminatory Policies.

Several Spanish-speaking employees sued a hospital for national-origin discrimination under Title VII of the US Civil Rights Act.

The US Court of Appeals for the Tenth Circuit ruled that the hospital's English-only rule met currently accepted guidelines and was not discriminatory.

The court explained that English-only rules can, in some circumstances, create a hostile environment for Hispanics in their workplaces and, as a subtle form of national-origin discrimination, foster a sense of inferiority, isolation and intimidation.

However, the US courts and the US Equal Employment Opportunity Commission (EEOC) distinguish between two types of English-only rules.

Across-the-Board Policy Discriminatory

An across-the-board English-only policy blithely and mechanically enforced by the employer at all times, in all places and in every circumstance in the work environment is considered discriminatory.

Tailored Policy

Founded in Business Necessity Not Discriminatory

Contrast that with an English-only policy which is tailored only to certain times and places to ensure clear communication between employees and with patients and members of the public, a legitimate consideration for a healthcare facility. That is not considered discriminatory.

Spanish-speaking housekeeping staff in the surgical department were required to communicate with the nurses and with each other in English only in the surgical department and only about their job tasks.

English Proficiency at Time of Hiring

The court also said, assuming the English-only policy at the facility is not discriminatory, employees who will be subject to the policy can be screened for English proficiency at the time of hiring. **Montes v. Vail Clinic, Inc.**, ___ F. 3d ___, 2007 WL 2309766 (10th Cir., August 14, 2007).

Clear and precise communication is essential between the operating-room nursing staff, most of whom at this hospital do not speak Spanish, and the members of the housekeeping staff assigned to the operating room who speak Spanish as their first language.

Maintaining sanitary conditions in the operating room is of paramount importance to the hospital's operations and to the health and safety of patients. Quick and efficient turnaround is a legitimate business consideration for a surgical facility.

The hospital's English-only rule in the surgical department required communication in English with English-speaking staff and among Spanish-speaking staff only in the surgical department and only for job-related discussions.

Spanish-speaking employees were allowed to speak Spanish with each other during breaks and while conversing on the job about non-job-related topics.

A blanket rule against Spanish at all times and places is discriminatory.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
August 14, 2007