

Applying "English-Only" Rules in the Workplace

9.10.09

By Sheila M. Cesarano, Partner & Co-Chair, Labor & Employment Group and Rene Gonzalez-Llorens, Partner, Labor & Employment Group

Many employers seek to impose "English-only" rules on bilingual employees. However, unless properly drafted, "English-only" rules may violate Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq. ("Title VII").

Employers must ensure that any "English-only" rule conforms to the regulations issued by the Equal Employment Opportunity Commission (the "EEOC"). According to the EEOC, an "English-only" rule that broadly applies at all times and places will violate Title VII. However, under certain circumstances, an employer may enforce an "English-only" rule as to its bilingual employees if the rule is justified by a legitimate business reason and the employees are sufficiently notified.

A. "English-Only" Rule Applied At All Times.

The EEOC presumes that an "English-only" rule ***applied at all times*** is discriminatory and violates Title VII. 29 C.F.R. § 1606.7 (Speak English only rules). The EEOC Guidelines state:

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. Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.

29 C.F.R. § 1606.7(a).

In E.E.O.C. v. Premier Operator Services, Inc., 113 F. Supp. 2d 1066 (N.D. Tex. 2000), the employer enacted a "Speak English Only" policy prohibiting employees from speaking Spanish on company premises at all times (e.g., during lunch, between calls, in the employee breakroom, and when making personal calls). Representing a class of Hispanic employees, the EEOC sued the employer alleging national origin discrimination. The employer argued, in part, that the English-only rule was established to ensure "harmony" among employees. The Premier court entered judgment for the EEOC and found that the employer did not present credible evidence establishing that the English-

Applying "English-Only" Rules in the Workplace

only rule was based on a business necessity or job-related.

B. "English-Only" Rule Applied Only In Certain Instances.

An employer's "English-only" rule will not violate Title VII as applied to bilingual employees, so long as there is a legitimate business purpose for the rule. Prado v. L. Luria & Son, Inc., 975 F. Supp. 1349, 1354 (S.D. Fla. 1997). The EEOC Guidelines permit an "English-only" rule **only in certain instances**:

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.

29 C.F.R. § 1606.7(b).

The "English-only" rule must be justified by a business necessity. For example, job-related conversation and speech are business necessities. See Gonzalez v. The Salvation Army, Case No. 89-1679 CIV T 17 (M.D. Fla. 1991), aff'd, 985 F.2d 578 (11th Cir. 1993) (upholding English only policy on grounds that it served legitimate business purposes of (i) providing English speaking supervisors the ability to manage the enterprise by knowing what was said in a work area and (ii) providing non Spanish speaking employees the ability to understand what was being said); Prado, 975 F. Supp. at 1354 (finding that English-only rule was based on legitimate business reasons of (i) encouraging store employees to speak English among themselves so as to facilitate the practice of approaching customers first in English and (ii) ensuring that management understood what was being said in order to evaluate employees in all work related communications).

A legitimate business purpose also includes any policy required for the performance of the employees' job duties and functions. Premier, 113 F. Supp. 2d at 1070. Some courts have found that an "English-only" policy designed to reduce intra-office tension involves a legitimate business reason. See Kania v. Archdiocese of Philadelphia, 14 F. Supp. 2d 730 (E.D. Pa. 1998) (finding that an "English-only" rule which prevented employees from speaking Polish during business hours so as to (i) improve interpersonal relations at the Church and (ii) to prevent Polish-speaking employees from alienating other employees was not discriminatory); Roman v. Cornell University, 53 F. Supp. 2d 223, 237 (N.D.N.Y. 1999).

C. Notice Requirement.

An employer **must** provide sufficient notice of the "English-only" rule to its employees. The EEOC Guidelines state:

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

Applying "English-Only" Rules in the Workplace

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.

29 C.F.R. § 1606.7(c). Failure to timely notify employee is presumed to be evidence of discrimination. Id.

D. Conclusion.

In sum, an "English-only" rule which requires an employer's bilingual employees to speak only English at all times in the workplace would be found to violate Title VII. However, an "English-only" rule that is founded on a legitimate business purpose will not violate Title VII if the employees are given sufficient notice of the rule.

Should an employer decide to enforce an "English-only" rule as to its bilingual employees, it should carefully consider the business justification for the rule. As the above cases show, courts have found legitimate business justification in areas involving job-related conversation. Moreover, an "English-only" rule should be applicable only during the time that the employee is performing his/her job duties.

If you have any questions about this topic or other employment issues, please contact Sheila M. Cesarano or Rene Gonzalez-Llorens at (305) 358-6300.

Professionals

Rene J. Gonzalez-Llorens

Practice Areas

Labor and Employment

Litigation