

Ethnicity discrimination in the workplace



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The Legal Environment of Business G. McCracken Ethnicity Discrimination in the Workplace This essay discusses ethnicity discrimination in the workplace, more specifically language discrimination on the basis of national origin.

National origin discrimination in the workplace occurs when a company makes employment decisions based on a person's origins, birthplace, culture, surname, language or accent. The Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on religion, national origin, race, color, or sex.

The law's prohibitions include harassment or any other employment action based on any of the following: affiliation, physical or cultural traits and clothing, perception and association. Besides employment decisions, other common violations covered under Title VII include harassment and language discrimination. The types of language discrimination are accent discrimination, English fluency and English-only rules. Federal laws prohibit discrimination based on a person's national origin, race, color, religion, disability, gender, and marital status.

Title VII of the Civil Rights Act of 1964 prohibiting national origin discrimination make it illegal to discriminate because of a person's birthplace, ancestry, culture or language. Therefore, people cannot be denied equal employment opportunity because they are from another country, because they have a name or accent associated with a national origin group, because their cultural traits are associated with a national origin group, or because they are married to or associate with people of a certain national origin.

Discrimination can be defined as treating someone less favorable than other because it is believed that the person has a particular ethnic background. Potentially unlawful national origin discrimination includes affiliation, physical or cultural traits and clothing, perception and association. Discrimination by affiliation occurs when an individual is harassed or discriminated because he/she is affiliated with a particular religious or ethnic group, for instance a Mexican individual is paid less than other non-Mexican workers.

Physical or cultural traits and clothing discrimination occurs when people is harassed or discriminated because of their physical appearance, cultural customs, accent, or the way they dress. For instance, a Muslim practitioner is harassed by coworkers for wearing a head-scarf. Perception discrimination occurs when a person is harassed or discriminated because of the perception or belief that the person belongs to an ethnic or religious group, even if he/she is not. For example, a Chinese person is harassed by a coworker who believes he/she is Vietnamese.

Association discrimination occurs when people is harassed or discriminated because their association with a person or organization of a particular ethnic or religious group. For instance, a person is negated promotion because he/she attends a mosque. An employer violates the law when it makes employment decisions such as hiring, firing, promoting, layoffs, compensation, or job training, based on national origin. It is also committing discrimination when it promotes or allows offensive conduct that creates a hostile work environment based on national origin.

The Equal Employment Opportunity Commission (EEOC) shows some examples of national origin discrimination. On *EEOC v. General Cable Corp.*, two workers from Ghana were terminated after they complained their Hispanic supervisor “ subjected them to overly intrusive supervision, threatened and charged them with undeserved discipline, and tried to deny authorized overtime. ” The affected workers received financial compensation, and the company agreed to provide antidiscrimination training to managers and to institute and post a policy for reporting complaints of discrimination.

Language Issues As the U. S. labor force has grown more ethnically diverse, the number of workers who are not native English speakers has increased dramatically. In the year 2000, approximately 45 million Americans (17% of the population) spoke a language other than English at home. Of those, more than 10 million individuals (4% percent of the total population) have little or no fluency in English. Employers sometimes have legitimate business reasons for basing employment decisions on linguistic characteristics.

However, linguistic characteristics are closely associated with national origin. Therefore, employers should ensure that the business reason for reliance on a linguistic characteristic justifies any burdens placed on individuals because of their national origin. The following sections of the paper discuss the application of Title VII of the Civil Rights Act of 1964 on national origin discrimination to various types of employment decisions that are based on foreign accent or fluency, and guidance on policies requiring employees to speak only English while in the workplace.

Accent Rules Because a person's accent is often associated with his or her national origin, employers must be careful when making employment decisions based on accent. Generally, an employer may decide not to hire or promote an employee to a position that requires clear oral communication in English only if the individual's foreign accent substantially interferes with his or her ability to communicate orally in English. However, if the employee's accent does not impair his or her ability to be understood, the employer may not make job decisions on that basis.

For instance, the company cannot adopt a general rule that prohibits employees to work in customer service positions if they speak accented English. In order to not violate Title VII, the employer decision based on foreign accent must indicate that an individual's accent materially interferes with the ability to perform the job duties. Employers must be aware of the difference between a merely discernible foreign accent and one that interferes with communication skills necessary to perform job duties. Effective oral communication in English may be required for positions such as teaching, customer service centers, and telemarketing.

Moreover, even for these positions, the employer still needs to determine whether the particular employee's accent impairs his/her ability to communicate properly. The U. S. Department of Justice gives the following example of an employment decision where accent is not a material factor: "A woman who immigrated from Russia applies for a job as an accountant. The employer turns her down because she speaks with an accent even though she is able to perform the job requirements." The case *Fragante v. City and County of Honolulu* describes a situation of employment decision

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where accent is a material factor. In this case the plaintiff, Manuel Fragante, an American citizen of Philippine origin, alleged the defendant, the city and county of Honolulu, denied employment based on national origin, accent and race discrimination. Fragante responded to an employment opportunity advertisement posted in a newspaper by the city of Honolulu for a clerk position. Fragante ranked number 1 on the written examinations, but after the interviews he was ranked 3 because of his strong Philippine accent and therefore, he was denied the position.

The defendant alleged the clerk position requires constant contact with public, and consequently strong and clear oral communication skills are demanded. The court decided the defendant's decision to not hire Mr. Fragante was valid. The job duties requirements for the clerk position constituted a valid business necessity. English Fluency Generally, an employment requirement of English fluency is only allowed if is essential for the effective performance or a business necessity for the position in question. Employers must show legitimate, nondiscriminatory reasons for denying employment opportunity in consequence of English proficiency.

However, an employer may impose English-rules only policies, if justified by business necessity. The policies must be clear regarding the circumstances under which the employees are required to speak English. Moreover, the employees have to be told about the rules and must be warned about the consequences of violation. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

The EEOC gives the following example of lawful English fluency requirement:

“ Jorge, a Dominican national, applies for a sales position with XYZ

Appliances, a small retailer of home appliances in a non-bilingual, English-speaking community. Jorge has very limited skill with spoken English. XYZ notifies him that he is not qualified for a sales position because his ability to effectively assist customers is limited. However, XYZ offers to consider him for a position in the stock room. Under these circumstances, XYZ’s decision to exclude Jorge from the sales position does not violate Title VII. ” English-Only Rules

An English-only rule is when an employer prohibits the employees to speak other language than English in the workplace. This rule can be imposed if the company can show that it is necessary for business reasons. The English-only rule must be clear regarding when the employees have to speak English (for instance, whenever there are customers on the sales floor) and the consequences of breaking the rule. Title VII prohibits English-only rules if it were imposed with the intention to discriminate on basis of national origin. As with any other workplace policy, an English-only rule must be adopted for nondiscriminatory reasons.

Moreover, a policy that prohibits some but not all of the foreign languages spoken in a workplace, such as a no-Spanish rule, would be unlawful. The EEOC cites the following case as an example of English-only rule with the intention of discrimination based on national origin. EEOC v. University of Incarnate World, “ the commission alleged that the employer discriminated against Hispanic housekeepers by imposing an unlawful English-only rule [...] the director of housekeeping prohibited the housekeepers from speaking

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Spanish at all times in the workplace, including lunch and breaks. The employees who violated the rule “ were subjected to verbal and physical abuse, including ethnic slurs. ” The parties settle the matter and the employees were granted financial compensation and the company had to implement “ a comprehensive anti-harassment policy and complaint procedure, and regular training of managers and supervisors on unlawful discriminatory practices. ” As cited before, an English-only rule can be imposed for nondiscriminatory reasons, as long as the employer has a business necessity.

However, the employer should use the rule to specific circumstances in its workplace, such as to promote safety or efficiency. Some of the situations where a business necessity would justify an English-only rule include:

- To promote efficient communication with customers, coworkers, or supervisors who only speak English
- To improve safety in emergencies or other dangerous situations
- To improve efficiency on group work assignments

In addition, the employer should evaluate if the business necessities are strong enough to justify the imposition of an English-only rule.

The employer needs to consider factors such as the effectiveness of the rule in carrying out objectives, the English proficiency of the employees affected by the rule, and whether if there are any alternatives that would be equally effective in promoting safety or efficiency. The EOCC cites the following example of a properly English-only rule promoting safety in the workplace. “ XYZ Petroleum Corp. operates an oil refinery and has a rule requiring all employees to speak only English during an emergency.

The rule also requires that employees speak in English while performing job duties in laboratories and processing areas where there is the danger of fire or explosion. The rule does not apply to casual conversations between employees in the laboratory or processing areas when they are not performing a job duty. The English-only rule does not violate Title VII because it is narrowly tailored to safety requirements. " The EEOC gives the following example of alternative for a English-only rule: " At a management meeting of XYZ Electronics Co. a supervisor proposes that the company adopt an English-only rule to decrease tensions among its ethnically diverse workforce. He reports that two of the employees he supervises, Ann and Vinh, made derogatory comments in Vietnamese about their coworkers.

Because such examples of misconduct are isolated and thus can be addressed effectively under the company's discipline policy, XYZ decides that the circumstances do not justify adoption of a facility-wide English-only rule. To reduce the likelihood of future incidents, XYZ supervisors are instructed to counsel line employees about appropriate workplace conduct. Prima Facie The " McDonnell-Douglas Test," named after the case McDonnell Douglas Corp. v. Green (1973), is a set of four questions that may raise the presumption of discrimination. This is also called the " prima facie case" of discrimination.

The Supreme Court held that the plaintiff in a Title VII case has the initial burden of establishing a prima facie case of discrimination. A plaintiff satisfies that burden by showing that: 1) He or she belongs to the protected class;) He or she applied and was qualified for the position; 3) Despite such qualifications, he or she was rejected; and 4) After his or her rejection, the

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position remained open and the employer continued to seek similarly qualified applicants. The test indicates that if a person was qualified for the job, but was denied employment, and the job was given to someone not under the same protected class then there is a presumption of discrimination. Establishing Prima Facie case, however, does not configure actual discrimination.

It only indicates that the actions taken by the employer, in the absence of any other explanation, are more likely than not to configure discrimination. The employer now has to prove that he has a legitimate nondiscriminatory reason for the employment decision. If the employer answers with a nondiscriminatory justification, then the employee has to prove that the reasons were just a pretext or cover-up for discrimination. The law requires the plaintiff to prove not only that the employer's reason was not true, but that discrimination was the real reason behind the employer's actions.

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