Statement of EEOC Legal Counsel Reed Russell on English-Only Policies to U.S. Civil Rights Commission December 12, 2008

Good morning, Commissioners, thank you for this opportunity to explain the Equal Employment Opportunity Commission's views on English-only policies. The EEOC has a longstanding position that employers' adoption of English-only policies can implicate the prohibition against national origin discrimination under Title VII of the Civil Rights Act of 1964. The EEOC's position dates back to at least the early 1970s[1] and was promulgated in guidelines published in the Federal Register in 1980.[2]

English-only policies can arise in a wide range of workplace situations. These policies typically limit the circumstances under which employees can speak foreign languages in the workplace. For bilingual workers whose primary language is not English, English-only policies can limit their opportunity to speak in the language with which they are most comfortable and expose them to discipline for inadvertently slipping into their native language. For workers with limited or no English skills, English-only rules can operate as a bar to employment, preventing otherwise qualified workers from being hired or resulting in their discipline and termination.

As with any other employment practice, an English-only policy violates Title VII if it was adopted for the purpose of discriminating against employees based on national origin or another protected category. For example, in a Tenth Circuit case, plaintiffs who worked for the City of Altus, Oklahoma, presented evidence that the city had adopted an English-only policy in order to discriminate based on national origin.[3] The evidence presented by the plaintiffs showed that management was aware that the policy would result in the taunting of Hispanic city employees, that there were no substantial work-related reasons for the policy, and that the Mayor referred to the Spanish language as "garbage" while he was giving a news interview.

In other cases, an employer will adopt an English-only policy for nondiscriminatory reasons, without intending to limit the employment opportunities of workers based on national origin. As explained by the Supreme Court, however, Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."[4]

Because of the obviously close relationship between an individual's national origin and primary language, English-only policies may result in a disparate impact on employees of certain national origins. For example, in a workplace where some employees are native English speakers and others are native Spanish speakers, Hispanic workers with limited English proficiency may be disproportionately excluded from certain employment opportunities as the result of an English-only policy.

If an employment practice challenged under Title VII has been shown to cause a disparate impact on the basis of national origin or another protected status, the practice is unlawful unless

[1] EEOC Dec. 71-446, ¶ 6173 (CCH) (1970); EEOC Dec. 72-0281, ¶ 6293 (CCH) (1971).
[2] 29 C.F.R. § 1606.7.
[3] *Maldonado v. City of Altus*, 433 F.3d 1294 (10th Cir. 2006).
[4] *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

the employer can demonstrate that the practice is job related for the position in question and consistent with business necessity.[5]

EEOC takes the position that an English-only policy is job related and consistent with business necessity if it is needed for the safe or efficient operation of the employer's business.[6] Thus, employers with legitimate business needs for requiring English-only policies are free to adopt them in a variety of circumstances. Similarly, if English fluency is required for effective job performance, then an employer is free to reject job applicants who are not fluent in English, even if workers of some national origin groups are adversely impacted.

English-only policies are obviously permissible for work-related communications with customers, coworkers, or supervisors who only speak English. Thus, a cashier in a retail store or a server in a restaurant could be required to speak English when serving English-speaking customers or when speaking with his fellow English-speaking employees about work issues or with his English-speaking supervisor.

English-only policies also can be imposed for cooperative work assignments where English is needed to promote efficiency. Thus, for example, a taxi cab company might require English when communicating with the dispatcher's office.

English-only policies also might be required to enable a supervisor to monitor work-related communications between coworkers or between an employee and a customer. For example, at a coffee shop or restaurant an English-only policy may be needed to allow a supervisor to monitor the relaying of orders from the cashier to the baristas or cook.

And as mentioned, employers may impose an English-only policy where it is needed for safety. In fact, one of EEOC's own Commission decisions from the early 1980s upheld a policy at an oil refinery which required employees to speak only English during emergencies or while performing work duties in the laboratory or processing areas where there was a risk of fires or explosions.[7]

These are only *examples*, however, and there will be other circumstances where English-only policies will be consistent with business necessity and therefore lawful under Title VII, even if the policies result in a disparate impact on a specific national origin group in a particular workplace.

As can be seen by these examples, English-only polices should be limited in scope and apply only to employees when they are working in circumstances where English is actually necessary for the business to operate safely or efficiently. As a result, an employer that adopts a blanket policy that requires English at all times in the workplace, even during lunch and breaks and in

---

[5] 42 U.S.C. § 2000e-2(k)(1)(A)(i).

[6] Section 13: *National Origin Discrimination*, EEOC Compliance Manual, Volume II (BNA) (2002), http://eeoc.gov/policy/docs/national-origin.html#VC1.

[7] EEOC Dec. 83-7, ¶ 6836 (CCH) (1983).

purely personal conversations, will have more difficulty establishing business necessity than an employer that has adopted a narrower policy.[8]

English-only policies should not be imposed merely because of coworker or customer preference. For example, English-only policies should not be imposed merely because some non-Spanish-speaking employees dislike eating lunch in the same room with coworkers who engage in private conversations in Spanish.

However, employers may have a duty to take appropriate corrective measures to address workplace misconduct that involves a foreign language, such as race- or sex-based comments in Spanish. Such misconduct often can be addressed under the employer's standard disciplinary procedures and therefore will not justify broad English only policies. For example, if employees are making derogatory remarks about coworkers in Spanish, they can be individually disciplined, and if they are repeat offenders, can be required to speak only in English so that non-Spanish-speaking supervisors can monitor their behavior.

Similarly, if there are isolated instances of employees using foreign languages to insult or intimidate English-speaking workers, the employer probably could adequately address the misconduct under an existing discipline policy. However, as pointed out in the EEOC's Compliance Manual Section on National Origin Discrimination, some courts have concluded that if such misconduct is more widespread, then an employer is justified in adopting an English-only policy.[9]

To be effective in promoting the employer's business needs, an English-only policy must be clearly communicated to affected employees. Employers are free to use any reasonable means of providing notice, such as a meeting, e-mail, or posting. In some cases, it may be necessary for an employer to provide notice in English and in the other native languages spoken by its workers.

If an employer does not provide adequate notice of an English-only policy, it may face difficulty in justifying discipline taken for violations of the policy. Pursuant to EEOC's English-only guidelines, the EEOC will consider the application of the policy in such circumstances as evidence of national origin discrimination.[10] Failure to provide adequate notice also may belie an employer's assertion that an English-only policy is necessary for safe or efficient business operations. Nevertheless, EEOC's Guidelines on English-only policies do not require that employers create bilingual policies or operate a bilingual workplace, nor do they promote bilingualism in the workplace. Rather, EEOC's "concern is to prevent employers from imposing speak-English-only rules, as arbitrary and oppressive terms and conditions of employment, on people who come from non-English-speaking backgrounds in order to deprive them of an equal employment opportunity for jobs they are otherwise fully qualified to perform."[11]

---

[8] 29 C.F.R. § 1606.7(a).

[9] Section 13: *National Origin Discrimination*, EEOC Compliance Manual, Volume II (BNA), Example 21 & n.51 (2002), http://www.eeoc.gov/policy/docs/national-origin.html#VC2.

[10] 29 C.F.R. § 1606.7(c).

[11] Preamble to Final Guidelines on Discrimination Because of National Origin, 45 Fed. Reg. 85,362, 85,634 (1980).

The EEOC enforces Title VII's limits on English-only policies primarily through the administrative processing of charges. During the past 10 years, the EEOC received an average of about 180 charges per year challenging English-only policies. This constitutes only about two-tenths of one percent of the total charges filed with the EEOC during the same time period. The EEOC also filed about two to three lawsuits per year challenging English-only policies.

As with other employment practices, the EEOC takes proactive measures to educate employers about their obligations and employees about their rights. The EEOC has applied the same legal analysis to English-only policies for nearly four decades, and I think it is fair to presume that most larger employers are aware of their legal obligations under Title VII. Nonetheless, the issue arises relatively infrequently, and some smaller employers may still be unaware of their potential liability in adopting English-only policies. Under Title VII, however, employers cannot be liable for compensatory or punitive damages for disparate impact violations.[12]

In summary, the EEOC's position on English-only policies reasonably balances the interests of employers and employees by permitting those policies that are consistent with business necessity while preserving Title VII's mandate of ensuring equal opportunities for non-native English-speaking individuals who are able to effectively perform their job functions.

[12] 42 U.S.C. § 1981a(a).