



Virginia Workplace Law

Only English in the workplace?

By: Faith Alejandro. Thursday, January 26th, 2012

Can an **employer** require its employees to speak only English in the workplace? Can you deem someone not qualified if he brings a translator to the interview? These are questions that are increasingly coming up in the average Virginia workplace as we become more multi-cultural.

“English-only” refers to policies that restrict employee communication to English in the workplace. The Equal Employment Commission (“**EEOC**”) **frowns upon the use of these policies** given the great potential for discrimination against bilingual and non-English speaking employees. Policies requiring employees to speak only English in the workplace at all times, including breaks and lunch, will rarely be justified. The EEOC even presumes that such policies violate **Title VII** and should be closely scrutinized. Such policies tend to create an “atmosphere of inferiority, isolation, and intimidation based on national origin which could result in a discriminatory working environment.”

But what about the employer considering an English-only policy in limited circumstances? Despite the EEOC’s express disfavor with these rules, such policies may be important to the workplace and can be adopted as long as

1. the policy is justified by a business necessity,
2. the employer gives proper notice to employees of the policy, and
3. the policy is equally applied.

Notice must include an explanation of the workday circumstances requiring English-only and the consequences of violating the policy. Most employers accomplish this putting the policy in writing (often in employee handbooks) and by asking employees to acknowledge their receipt of the policy in writing.

The employer contemplating this policy must have a valid “business necessity” that can withstand close scrutiny. A business necessity promotes the safe or efficient operation of the employer’s business. This almost always includes emergency situations that require a common language to

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promote safety. This could also include situations involving communications with customers, coworkers, or supervisors who speak only English to promote efficiency. The federal judicial appellate court governing Virginia (the **Fourth Circuit**), has even permitted an English-only policy where it was necessary to promote employee morale after English speaking employees complained of the rudeness of coworkers who refused to speak English in their presence. **Long v. First Union Corp., No. 95-1986 1996 U.S. App. LEXIS 12431 (4th Cir. 1996)**.

However, other federal appellate courts have held that English-only policies violate one's right to speak in the language of one's choice as a **First Amendment** right to freedom of expression. This split among the federal appellate courts will only be resolved if **Supreme Court of the United States** takes a case where this point of law is at issue.

Thus, unless thoughtfully considered, English-only policies can expose employers to a discrimination law suit.

If you should have questions about developing an English-only policy, the **Virginia employment lawyers** at **Sands Anderson PC** are glad to talk with you.

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