

RISK COMMUNIQUÉ

Workplace discrimination based on language and accents

The United States is becoming more ethnically diverse. Therefore, it is important for leaders to give proper attention to work-related discrimination. National origin discrimination involves treating employees or applicants unfavorably because of their actual or perceived ancestry from a particular country or part of the world. Such discrimination may involve adverse work-related treatment because of an individual's language or accent that is associated with a group of particular national origin.

This communiqué provides analysis of what constitutes unlawful national origin discrimination based on language or accents. Moreover, risk management guidelines are offered to help avoid national origin discrimination based on language or accents.

National origin discrimination

Equal opportunity in employment – It is unlawful to discriminate against an employee or applicant based on the individual's actual or perceived national origin. Regardless of their place of birth, ancestry, cultural background, language characteristics common to a specific ethnic group or accent, uphold equal opportunities for current or prospective employees. Because an individual's primary language or accent is closely linked to national origin, discrimination against persons based on their native language or accent may violate civil laws.¹

The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination and harassment based on race, color, sex/gender, religion, age (over 40), physical or mental disability and national origin. Employment may not be negatively impacted by national origin, which includes hiring, selection, promotions, demotions, discipline, working conditions, training, layoffs and terminations.

Title VII is applicable to organizations with 15 or more employees. Individual states have also enacted laws that prohibit national origin discrimination for organizations with less than 15 employees. Leaders may want to consult with locally retained labor and employment counsel to learn about federal and state discrimination laws applicable to their organization.

Associational discrimination – It is unlawful to deny equal work-related opportunities because of association or marriage with persons from a particular national origin group. Moreover, discrimination may occur when treating people disparately due to their membership or affiliation with certain schools, organizations or places of worship typically associated with a nationality.

Discrimination based on accent – Treating employees differently because of a foreign accent is only lawful if the accent materially interferes with being able to effectively perform job duties or functions. Generally, if an employee is able to communicate effectively in English and can be understood, he or she cannot be discriminated against.

¹ www.eeoc.gov

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English fluency – Proficiency or fluency is the degree to which a person speaks or writes a particular language with ease. Requiring an employee to speak fluent English may only be permissible if it is essential or crucial for effective job performance. The degree of fluency required may vary for different positions within an organization and should be tailored for each job.

Speak English-only rules – Requiring employees to speak only English while on-the-job is likely national origin discrimination unless the English-only rule is reasonably necessary for business operations. English-only rules in the workplace are typically limited to situations where safety or efficiency would be compromised without the rule.

It is legally difficult to justify a rule that, while on-the-job, workers must only speak English at all times, including breaks, lunch or personal phone calls.

Policies, procedures and practices

Non-discrimination and harassment policies and procedures –Employers may want to retain labor and employment counsel to develop policy language prohibiting discrimination based on national origin. Once finalized, distribute written policies to employees. Importantly, provide multiple avenues of internal reporting for known or suspected violations of the policy. Distribute a form for personnel to sign, acknowledging their understanding of the non-discrimination and harassment policy.

English-only rules or other language or accent policies –Formally notify workers of language-restricting policies and explain violation consequences. Consider consulting with appropriate professional resources.

Job descriptions – Maintain up-to-date job descriptions that accurately reflect policies or rules related to workers' language or accents.

Training – Consider hosting periodic training for employees on harassment, discrimination and retaliation to help prevent incidents and allegations of wrongdoing. Establish and maintain a work culture of inclusion and non-discrimination by educating personnel on current non-discrimination laws as well as policies and reporting processes. Provide detail as to the mechanisms that are in place to promptly and thoroughly investigate allegations of work-related harassment, discrimination and retaliation.

Conclusion

It's important for leaders to be cognizant of possible national origin discrimination and harassment in regards to language and accents.