



## **Language Discrimination**

### **What is language discrimination?**

Language discrimination occurs when a person is treated differently because of her native language or other characteristics of her language skills. For example, an employee may be experiencing language discrimination if the workplace has a “speak-English-only” policy but her primary language is one other than English. She may also be the victim of language discrimination if she is treated worse than other employees because she speaks English with an accent, or if she is told she does not qualify for a position because her English is not good enough. Language discrimination may also occur if a person is denied access to businesses or government services because he or she does not speak, understand, read or write English well.

### **Is language discrimination illegal?**

Many courts and governmental agencies consider language discrimination to be a kind of discrimination on the basis of national origin, which is prohibited by federal and California law.

### **Why is language discrimination illegal?**

The laws mentioned above make it illegal for employers to discriminate against an employee because of his or her national origin. (“National origin” generally refers to the country that a person, or that person’s ancestors, came from.) But because the primary language a person speaks is closely related to the place she came from, or the place her ancestors came from, being discriminated against for using that language, or because of characteristics having to do with that language, has much the same effect as if that person were being discriminated against because of her national origin.

### **When can an employer require an employee to speak only English at work?**

California law generally prohibits employers from having “speak-English-only” policies unless:

- 1) the employer can show some “business necessity” for the policy – that is, that there is an overriding and clearly job-related need for the policy, and
- 2) the employer notifies its employees about the policy, and when and where it applies.

Even if the employer does so, it must also show that there is no alternative practice to the policy that would achieve the business goals just as effectively. Similarly, in some states outside California, the U.S. Equal Employment Opportunity Commission (“EEOC”) presumes the mere existence of a “speak-English-only” workplace policy is itself evidence of discrimination under federal law, and thus that the employer must also show a business necessity for the policy. However, in California and other western states, it may be more difficult to prove that such a policy is unlawful if it is only applied to employees who are proficient in English as well as their own languages. Under either federal or state law, if a “speak-English-only” policy is imposed upon employees who speak no English or can do so only with great difficulty, that policy may well be unlawful, especially where those workers have proven that they can perform their jobs without English.

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In some cases, the employer may implement and enforce a “speak-English-only” policy in such an extreme and unreasonable manner that it creates a “hostile work environment” for employees of different national origins. For instance, they may be disciplined for speaking only a few words of their primary language or doing so on their personal time, or may be subjected to constant monitoring by their supervisors.

In other cases, the policy may lead to speakers of particular languages being harassed by those who speak English. In such instances, the policy may well be illegal.

“Speak-English-only” rules may also violate civil rights laws if they are imposed only on one group of employees but not others. For example, if a business requires only its Spanish-speaking employees to comply with the rule, but does not enforce it with Chinese-speaking employees, the employer is probably illegally discriminating. Also, if an employer adopts a “speak-English-only” policy with the purpose of discriminating, the policy is likely unlawful for that reason alone.

## **When can an employer treat an employee differently because of his or her accent?**

Discrimination because of accent may also violate an employee’s civil rights. In general, if an employer takes an adverse action against an employee because of her accent, it must be able to show that the accent “materially interferes with job performance.” In other words, an employee’s accent must have a significant negative effect upon the employee’s ability to do the job, and the employer cannot simply assume that the accent creates a work-related problem. Moreover, the employer must fairly and objectively assess the accent. Often there are subtle prejudices against some accents more than others.

## **When can an employer treat an employee differently because of lack of English proficiency?**

An employer may not deny a person an employment opportunity because that person is not proficient or fluent in English, unless:

- 1) the job that person performs actually requires some English language skills (such as certain customer services positions), and
- 2) the person does not possess the particular type and level of English language skill required.

For example, if a person is told she does not qualify for a position because she is unable to speak or read English well enough, but the position is one that requires little or no communication, she may have a claim of language discrimination.

## What are other types of language discrimination that are prohibited by law?

Language discrimination exists outside the workplace as well. For instance, if a person is denied services by a business because he or she lacks English skills, this may be a violation of different civil rights laws. Such laws may also be violated if a person is unable to communicate with a government agency because the agency does not offer materials in that person's language or have personnel who speak that person's language.

## What should you do if you think you may have been subjected to language discrimination?

If you think you may have been discriminated against by your employer because of your language, and the discrimination took place in California, and your employer has at least 15 employees, you may file a charge of national origin or language-based discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"). In California, you must do this within 300 days of the discriminatory act; in other states, you may have only 180 days to do so. If your employer has more than 5 employees, you can also file a charge of national origin discrimination with the California Civil Rights Department ("CRD") within three years of the discriminatory act. Filing a charge of national origin discrimination is the only way you can protect your right to sue your employer in court under California and federal law.

Note: If you have a possible claim of **harassment or a hostile work environment** based on discriminatory language policies, CRD requires no minimum number of employees. If your employer has between 4–14 employees, you can also file a charge of national origin discrimination with the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), which will investigate the charge as the EEOC would. If your employer has fewer than 4 employees, or if you are employed by the federal government, you should consult an attorney. If you need further legal advice or assistance, or think you may have suffered language-based discrimination, please call the Language Rights Information Line (800) 864-1664, a free service of Legal Aid at Work.

## Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid at Work cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

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