CITY OF IOWA CITY

MEMORANDUM

Date: February 12, 2018

To: Iowa City Business Owners
From: Kristin Watson, Human Rights Investigator
Re: English-Only Rules in the Workplace

Many businesses currently have employees who speak more than one language. In 2015, more than 20% of people in the US did not use English as their primary language at home; 13% of the population spoke Spanish as a primary language.[1] Many more people whose primary language is English have the ability to speak multiple languages. This means the potential for employees speaking in languages other than English is high. Policies requiring the use of English at work or restricting the use of other languages are commonly known as "English-only" rules. Because language is intertwined with cultural identity, these rules must be carefully crafted to avoid complaints based upon national origin.

A rule requiring employees to speak English at all times in the workplace is presumed to be discriminatory.
Since 1980, Equal Employment Opportunity Commission (EEOC) guidelines have stated that a rule requiring employees to speak English at all times will be found to be discriminatory, for three reasons:

- Non-native English speakers will be prohibited from speaking in their most effective language;
- They may suffer adverse consequences for speaking their native language, while native English speakers are not subject to the same risk;
- Such a rule may create "an atmosphere of inferiority, isolation, and intimidation … which could result in a discriminatory working environment." [2]

Employees cannot be required to speak English while on a break, at lunch, making an allowable personal telephone call, on the premises but not yet on the clock, or any other similar circumstance that does not involve actively working.

Language-restrictive policies should be (1) job-related and (2) consistent with business necessity.
EEOC regulations state that it is not enough that there is a business *purpose* for the policy; it must be "*necessary* to the safe and efficient operation of the business."[3] Necessity is not easy to prove. Courts have stated a business must show a "compelling need" for the policy.[4] This need cannot simply be asserted. It must be shown by detailed, fact-specific evidence that the policy is necessary to safe and efficient job performance or safe and efficient business operations, and that the policy actually accomplishes the objective of serving the identified business necessity.

A language-restrictive policy must be as narrow as possible.
Such a policy should apply only to the specific employees, work areas, circumstances, times, and job duties for which it is truly needed to accomplish the identified business necessity. For example, a retail sales associate in an area where almost all customers speak English may be required to speak English while on the sales floor. However, the associate should not be prevented from speaking their native language if a customer happens to be speaking that language and the sales associate can provide individualized service in that language. In addition, the sales associate should not be prevented from speaking another language while not on the sales floor, unless it is necessary to speak English to communicate regarding work-related matters.

Language-restrictions should not be used to improve employee morale.
Some employers wish to implement English-only policies because employees fear those speaking other languages are gossiping or forming cliques that might create a negative working environment. Without more, this is not a sufficient justification for a restrictive-language policy. Any concerns of this nature should be addressed individually.

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[1] https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_S1601&prodType=table

[2] 29 CFR §1606.7(a)

[3] Robinson v. Lorillard Corp., 444 F.2d 791,798 (4th Cir. 1971).

[4] Leftwich v. Harris-Stowe State Coll., 702 F.2d 686, 696 (8th Cir. 1983).

Be aware that restrictive language policies may be created inadvertently.
Several courts have found that, even when the employer has no formal rule, such a rule may be imposed by supervisor's actions. For example, a manager who snaps, "speak English!" at staff conversing in another language may create a de facto rule and expose the employer to liability. Supervisory staff should be trained regarding English-only policies.

Where restrictive-language policies exist, they should not be enforced in an excessively harsh manner.
Non-native English speakers may slip into their native language or mix their native language with English without even realizing that they are doing so, especially in stressful situations. Employers should give employees who accidentally revert to their native language a no-consequences reminder, and limit disciplinary action to willful violations.

Tips for implementing a restrictive-language policy:

- Carefully consider whether such a policy is truly needed. If so, make the policy as narrow as possible to fit the business necessity for which it is imposed.
- Clearly specify when, where, at what time(s), and/or in what situation(s) the policy applies.
- Do not single out or exclude any particular language.
- Under EEOC regulations, notice to employees is essential. It is best to provide employees with a copy of the policy in their native language. At the least, make sure the policy is explained to employees and truly understood. Obtain a signed acknowledgment.

Related issue 1—Accents:
If an employee or job applicant has an accent, be careful to objectively evaluate the person's ability to do the job. Employment decisions may be based upon accents, but *only* when effective spoken communication is required to perform the job duties *and* the accent significantly interferes with the person's ability to communicate in English. If the person is an existing employee, significant interference must be shown by actual performance issues.

Related issue 2—Fluency in English:
In general, English fluency may only be required if it is necessary for the effective performance of the job. For example, in one case, an employee was sufficiently fluent to hold the job of Research Assistant, but was not able to hold the position of Senior Scientific Writer, which required more complex and specialized English ability.[5] The level of fluency required should be assessed in relation to the particular job in question.

Related issue 3—Fluency in languages other than English:
Requiring fluency in other languages is the same as requiring fluency in English—permissible only if, and to the extent, that it is necessary for the effective performance of the job. For example, a church with a primarily Spanish-speaking congregation could require that its pastor speak Spanish.
Businesses with diverse clients may assign bilingual employees to clients who speak the languages they speak, while assigning employees who speak only English to English-speaking clients. Businesses are not required to provide additional compensation when employees perform their usual duties in languages other than English.

The advice in this memorandum was primarily excerpted from the EEOC Enforcement Guidance on National Origin Discrimination, the full text of which can be found at https://www.eeoc.gov/laws/guidance/national-origin-guidance.cfm.

The City of Iowa City Office of Equity and Human Rights provides memos to businesses on areas of discrimination. Please send topics you would like to receive guidance on in the future, or inquiries regarding discrimination issues, to humanrights@iowa-city.org.

[5] Shieh v. Lyng, 897 F.2d 523 (3rd Cir. 1990).