

Employers Can't Have Discriminating Taste

By Reg P. Wydeven
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One of my favorite episodes of Seinfeld was the one where Elaine got her nails done at a Korean salon. The women who worked there all spoke Korean, and she was paranoid that they were making derogatory comments about her. Because she didn't understand Korean, she brought along George Costanza's dad, Frank, who learned to speak Korean while selling religious statues in Asia.

Sure enough, when Elaine and Frank sat down for a manicure, the women started insulting them in Korean, calling Elaine a spoiled princess and wondering where Frank's tail was. Because of Frank's famously short fuse, he started yelling at the women, ending the charade that he didn't understand Korean. The women were so mad, they banned Elaine and Frank from the salon forever.

While this was definitely a humorous episode, the situation could conceivably happen in real life. Out of fear of this scenario, some American employers have implemented English-only policies at their businesses.

Most employers claim these types of policies are intended to promote unity and teamwork in their culturally diverse workforce. Currently, there is no federal law that specifically forbids English-only policies in businesses. However, many employees, with the help of the Equal Employment Opportunity Commission, have successfully sued businesses that have implemented English-only policies claiming they are being discriminated against.

Most of these lawsuits cite Title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace based on national origin. If a business implements an English-only policy, the EEOC requires the business to have 'compelling business reasons' for implementing such a policy. Motivations such as increasing efficiency, promoting workplace harmony, or improving the company's image are too abstract and do not satisfy the compelling business reason threshold.

If speaking English fluently is an essential function of the job, such as having contact with the business's customers that only speak English, then a business could conceivably establish an English-only policy. The same would hold true if permitting other languages made it impossible to ensure that safety rules are understood and applied. Finally, another compelling business reason to implement an English-only policy would be because foreign languages created a hostile environment, as in the Korean nail salon on Seinfeld.

Even if an employer has a compelling business reason for an English-only policy, the employer must still be careful. The policy should never be mandatory during lunch or other designated break or off-duty periods. Also, the policy should not place an undue burden on employees whose first language is not English.

The EEOC has recently brought a completely different type of discrimination suit against S. Rose of Lima Catholic Church in New York. With the help of the New York Civil Liberties Union, Michelle McCusker filed the EEOC complaint against the church after she was fired from her preschool teaching job for becoming pregnant although she wasn't married.

The church fired her because its school personnel handbook requires that teachers "convey the teachings of the Catholic faith by his or her words and actions." The NYCLU claims this policy is discriminatory because it disproportionately affects women, since there is no easy way to gauge if men engage in premarital sex, like the sure-tell sign of pregnancy in women.

These cases remind us to dust off our employee handbooks to be sure they are not discriminatory and that they contain clear, concise language. And that they're not necessarily just in English.

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