

## **English-Only?**

By Joëlle Khouzam

In 2006, the U.S. Equal Employment Opportunity Commission (EEOC) received 8,327 complaints of national origin discrimination, costing employers over \$21 million, not including monetary awards obtained through litigation. Most recently, the EEOC sued The Salvation Army for discriminating against two Hispanic employees by requiring them to comply with an English-only policy and imposing an English fluency requirement. Under the EEOC's guidelines, requiring an individual to speak only English in the workplace creates an atmosphere of intimidation, inferiority, and isolation in violation of their civil rights.

English-only policies can create challenges for employers. An employer may be found in violation of federal anti-discrimination laws for adopting and enforcing an English-only policy for reasons that are not job-related. Federal and state laws prohibit intentional discrimination and practices that have the effect of discriminating against individuals because of race, color, national origin, religion, or sex. National origin is broadly interpreted to include an individual's birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Prohibiting employees from speaking their primary language disadvantages that person's employment opportunities on the basis of national origin; thus, the EEOC presumes that such a rule violates the law.

Although the EEOC guidelines suggest that English-only rules are illegal unless the employer can provide a legitimate business justification for prohibiting employees from speaking their primary language, courts generally uphold such requirements where the requirement is shown to be job-related. The employer must show that the practice is reasonably necessary for the normal operation of that particular business or enterprise.

Courts and the EEOC view English-only policies through a very narrow lens. While there is no precise test for whether a policy will be deemed permissible, employers should consider whether there are any alternatives to an English-only rule that would be equally effective in promoting safety or efficiency.

In addition, employers should ensure that affected employees are notified about an English-only rule and the consequences for violation. It may be appropriate for an employer to provide multi-language notices, and to provide an advance notice period before the effective date of the rule.

Violations of law can result in costly awards of back pay, reinstatement (and possible promotions if such were denied), and other damages. Some anti-discrimination laws also envision awards of punitive damages and attorneys' fees in cases where juries find the employer acted with malice or reckless indifference.

Employers should approach English-only policies cautiously and limit enforcement when possible.

For more information about employment laws and their effect on your business, please contact Joëlle Khouzam or your CPM attorney.