

Language Discrimination

YOUR LEGAL RIGHTS

1. What is language discrimination?

Language discrimination occurs when a person is treated differently because of that person's native language or other characteristics of that person's speech. For example, an employee may be being subjected to language discrimination if the workplace has a "speak-English-only" policy but the employee's primary language is something other than English. The employee may also be the victim of language discrimination if he or she is treated worse than other employees because he or she speaks English with an accent, or if the employee is told he or she does not qualify for a position because of a lack of English proficiency. Outside of employment, language discrimination may also occur if a person is denied access to businesses or government services because he or she does not speak English.

2. Is language discrimination illegal?

Many courts and governmental agencies consider language discrimination to be a form of discrimination on the basis of race or national origin, which are prohibited by well-established laws such as Titles VI and VII of the Civil Rights Act of 1964 (a federal law), and the California Fair Employment and Housing Act (a state law).

3. 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" 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 that person came from, or the place that person's family came from, being discriminated against for using that language, or because of characteristics having to do with that language, is essentially the same as that person being discriminated against because of his or her national origin.

4. When can an employer require an employee to speak only English at work?

California law generally prohibits employers from having "speak-English-only" policies in the workplace 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 (such as certain customer service positions), and 2) the employer notifies its employees about the policy, and when

employees are required to abide by the policy. Even if the employer shows a “business necessity” for the policy, 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 where different laws may apply), the U.S. Equal Employment Opportunity Commission (“EEOC”) presumes the mere existence of a “speak-English-only” workplace policy is evidence of discrimination under federal law. Courts in other parts of the United States, therefore, also may require employers to show a business necessity for such policies.

5. When can an employer treat an employee differently because of his or her accent?

Discrimination because of accent also violates an employee’s civil rights. In general, the standard applied in these cases is that the employee’s accent must “materially interfere with job performance” in order to justify any adverse action. In other words, an employee’s accent must have a significant negative effect upon the employee’s ability to do the job. Moreover, the employer must fairly and objectively assess the accent. Often there are subtle prejudices against some accents more than others.

6. 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 the job that person performs: 1) 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 that he or she does not qualify for a position because he or she is unable to speak or read English well enough, but the position is one that requires little or no communication, the person may have a claim of language discrimination.

7. 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 civil rights law. 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.

8. 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 5 employees), you may file a charge of national origin or language-based discrimination with the California Department of Fair Employment and Housing (“DFEH”) within one year of the discriminatory act. If your employer has more than 15 employees (regardless of whether the discrimination took place in California or elsewhere), you may instead file a charge of national origin discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”). In California, you must do this within 300 days of the discriminatory act, and in other states, you may have only 180 days to do so. 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. (If your employer has fewer than 5 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 by someone other than your employer, you should contact the Language Rights Project Information Line (800) 864-1664, a free service offered by the Legal Aid Society - Employment Law Center and the American Civil Liberties Union (ACLU) Foundation of Northern California.

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, the Legal Aid Society - Employment Law Center 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.

For further information about your employment rights, please call:

The Language Rights Project
(800) 864-1664 (Toll Free)

The Language Rights Project is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

