



Caution! “English-only” in the workplace can be a discriminatory practice

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Establishing brand value in the hotel industry is critical. Active management of a hotel’s basic elements, to include its physical attributes and service delivery, has long been the keys to unlocking this success. In theory, therefore, a hotel should be able to manage all aspects of guest interaction, including requiring that employees speak only English in the workplace. Such rules, however, may be in conflict with federal civil rights law and guidelines issued by the Equal Employment Opportunity Commission (the “EEOC”).

This potential conflict is nowhere better reflected than in the March 20, 2006 settlement between the EEOC and The Melrose Hotel Co. of New York. In that case, the parties settled 13 employees’ complaints of a hostile work environment – which included allegations that Hispanic employees were subjected to an “English only” rule – for \$800,000.

The EEOC receives hundreds of similar complaints. Accordingly, it is important for hotel owners, operators and managers to consider how to best balance the interests in creating and delivering a unique brand experience with the rights and interests of an increasingly diverse workforce.

A diverse workforce

The increasingly diverse workforce in America makes the debate over “English-only” far from an academic exercise. For example, the number of persons of Hispanic or Latino ethnicity employed in the U.S. grew from 17.9 million and 18.6 million in 2004 and 2005, respectively, to over 19.5 million as of May, 2006. According to the American Hotel & Lodging Association’s Educational Foundation, 25.8% of the hourly recruits in the lodging industry in 2004 were Hispanic.

The federal *Bureau of Labor Statistics* provides an even further detailed breakdown of the percentages of persons of Hispanic or Latino ethnicity employed in 2005, including:

- 14% of all persons employed as hotel, motel and resort desk clerks;
- 23.7% of all persons employed in the traveler accommodation industry;
- 30.6% of all building and grounds cleaning and maintenance occupations; and
- 35.2% of all maids and housekeeping cleaners.

With an increasingly diverse workforce comes an inevitably greater potential for a language barrier in the workplace. In fact, as of 2000, 10.3 million Americans spoke little or no English at home – representing a 53% increase from the number reported in 1990. This language barrier has created a need in many hotels to implement programs addressing communication between management, associates and guests. For example, Marriott International, Inc. just announced on July 12, 2006 that it launched a 23-hotel pilot language program to teach workplace and life-skills English to its associates who speak English as a second language.



The program's goals are to allow associates to enhance their English language skills to more comfortably and confidently interact with guests and management. The contrast between the Melrose Hotel case and the new Marriott program demonstrate that, for the hospitality industry in particular, decisions on whether to adopt policies regarding "English-only" and language skills in the workplace must be well thought out.

Discrimination based on national origin

Title VII of the Civil Rights Act of 1964 prohibits discrimination in the workplace against any person based on, among others, one's national origin. The EEOC has issued guidelines identifying four general forms of national origin discrimination:

- Rules requiring employees to speak English at all times in the workplace;
- An employer's refusal to hire an applicant based on the applicant's manner of speaking or accent;
- Harassment in the form of ethnic slurs or physical conduct because of an employee's national origin creating a hostile work environment; and
- Singling out applicants of a particular national origin and requiring only them to provide employment verification.

Although the EEOC guidelines further state that any policy requiring "English-only" in the workplace is presumed to violate Title VII (thereby shifting the burden of proving the necessity of the policy to the employer), the guidelines allow for an exception. An employer may require employees to speak only English at certain times where the employer can show a business justification for the requirement.

Best practices for managers

There are several practices that hotel operators and owners should follow to ensure compliance with Title VII. The following practical tips will aid in developing a fair policy while allowing a hotel to better manage employee communications with guests.

First, do not have or enforce a blanket "English-only" policy. Such a broad policy will almost certainly violate Title VII. As with any other workplace policy, the adoption of this type of policy must be done for nondiscriminatory reasons. A policy that restricts the speaking of another language, for example, during lunch, in the employee break room, when making personal telephone calls, or before and after work if inside the building, will likely be seen as discrimination on the basis of national origin.

Second, any "English-only" policy should be limited to those situations which can be categorized as a business necessity. These reasons may include:

- Communications with customers, co-workers, or supervisors who only speak English;
- Coordination of tasks in emergencies as better facilitated through a common language;
- Where an English-only rule is needed to promote efficiency for cooperative work assignments; and
- Enabling a supervisor who only speaks English to monitor the performance of an employee whose job duties require communication with coworkers or customers.

Therefore, in the context of hotel operations, if it is necessary for guest services personnel to use English when communicating with guests, a policy requiring English in those situations may be justified. Or, English may be required for communications with supervisors who only speak English. In establishing such a policy, however, a hotel should weigh and consider these business justifications against any possible discriminatory effects.

Third, any "English-only" policy should expressly contain exceptions for appropriate circumstances. This will ensure that the policy is flexible and adaptive to the business justifications of the hotel as they may change. This may include permitting or even encouraging employees to interact in their native tongue with international guests who prefer to communicate with staff fluent in their respective language.

Fourth, the workforce must be put on notice of any "English-only" policy. It is important that the employees understand the reasons for such a policy, as well as the consequences that may occur if it is violated. According to its guidelines, the EEOC will consider any employer's application of an "English-only" policy, without effective notification, as discrimination on the basis of national origin.

Perhaps the best advice that can be offered, though, is if you adopt a policy, do not call it "English-only"; it is a misleading title that raises unnecessary red flags. Some other title, such as "Guest Communications" or "Effective Employee Communication", more properly describes the desired goal of the policy. After all, effective communication within the hotel is what each hotel manager should be striving to achieve. ✧

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