

LEGAL UPDATES

PUBLISHED: JULY 6, 2010

## Service

Labor &amp; Employment

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# Tennessee English-Only Law Provides Little Protection for Employers

On June 23, 2010, Governor Phil Bredesen signed into law H.B. 2685, which authorizes Tennessee employers to impose an “English-only” rule in the workplace if it is justified by a legitimate business necessity. The statute provides that such a rule is “not a discriminatory practice” within the meaning of Tennessee Law. However, employers should be careful not to view the law as creating a safe harbor for the broad imposition of English-only rules.

Given the current political climate and increasing concerns about illegal immigration, English-only rules have become more frequently considered or adopted by employers. Although the Tennessee law incorporates some of the requirements needed to justify English-only rules (legitimate business necessity and notice to employees of the rule and the consequences of violating the rule), employers should not implement such rules without further analysis.

The Equal Employment Opportunity Commission’s interpretative regulations and compliance manual operate with the presumption that any English-only rule is unlawful discrimination under federal law. In order for such a rule to withstand legal challenge, the employer has the burden of demonstrating that the rule was not imposed for discriminatory reasons, and that any discriminatory effect that it might have upon workers is necessitated by a legitimate business purpose, such as where needed to enable supervisors to properly monitor job performance, to promote safety in emergency situations, to promote efficiency when speakers of different languages collaborate on work projects, and as necessary to promote communication with customers, coworkers or supervisors who only speak English. Moreover, federal regulations and case law make it clear that any such rule should not be a total ban on use of language other than English, but must be specifically tailored to meet the legitimate business needs of the employer.

## **What This Means To You**

If you are considering implementing an English-only rule in the workplace, we recommend the following steps be taken before the rule is implemented:

Define the legitimate business necessity for the rule. It is not sufficient to recite undefined safety reasons, or discomfort of English-only employees speaking in a different language, as a basis for the rule. Business necessity is defined by case law as that which is necessary for the safe and efficient operation of the employer's business.

Do not impose a complete ban on the use of non-English languages in the workplace. The rule should not be overbroad; it must be tailored to meet the specific needs of the employer. At the very least, employees should be permitted to converse in their native language during breaks.

Be sure the company's policies make it clear that any form of discrimination on the basis of national origin is prohibited.

Have the rule, and the company's justification for the rule, reviewed by legal counsel.

Before the rule is implemented, give employees a clear explanation of when the rule applies and the consequences for violating the rule.

## **Contact Information**

If you have any questions about this or other employment matters, please contact your Husch Blackwell Sanders attorney or Hillary Klein at 423.757.5950.

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