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RECENT DEVELOPMENTS IN FEDERAL COURT APPLICATION OF THE EEOC GUIDELINES TO ENGLISH-ONLY RULES

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ABSTRACT

This article, based on an analysis of federal cases since *Garcia v. Spun Steak,* looks at the weight accorded by the courts to the EEOC Guidelines dealing with English-only rules. It documents a possible shift in viewpoint by those courts from small or no notice of the Guidelines, to substantial deference. In particular, the courts have emphasized that inadvertent violations of English-only rules should not subject an employee to discipline/discharge. Yet, in the absence of the Supreme Court's review of English-only rules, parties may remain uncertain as to the legality of such rules. Suggestions are offered which may place speak English-only rules in compliance with both the EEOC and the courts.

English-only rules normally restrict employees to speak English while at work. In a culturally diverse U.S. society, English-only rules promulgated by employers have prompted a great deal of controversy [1]. The Equal Employment Opportunity Commission (EEOC) has maintained statistics regarding the number of speak-English-only complaints filed since 1996. Table 1 shows the increasing numbers of such complaints.

The EEOC statistics permit an inference that there is growing interest in English-only rules promulgated by employers since complaints filed regarding such rules have nearly doubled [2].

Table 1. English-Only Rule Complaints Filed with the EEOC

Year	No. of Complaints
1996*	32
1997	72
1998	97
1999	138
Total Complaints	339

***Source:** EEOC. The EEOC did not maintain statistics regarding English-only and accent complaints prior to 1996. The above statistics do not include accent case complaints.

In 1986, the EEOC developed guidelines for employer use of English-only rules [3]. These guidelines generally provided that an English-only rule constitutes national origin discrimination [4], if the rules are enforced at all times. However, they are permited if 1) they are enforced during working hours; 2) they are justified by business necessity; and 3) adequate notice is provided to employees. The EEOC guidelines, as amended in 1991, are:

> (a) *when applied at all times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore the Commission will presume that such a rule violates title [sic] VII and will closely scrutinize it.
>
> (b) *when applied only at certain times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.
>
> (c) *notice of the rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule, and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin [4, §1606.7].

Despite the existence of the guidelines, the federal courts have not always deferred to them. This article reviews cases in which the status and impact of the EEOC guidelines were discussed.

GARCIA V. SPUN STEAK COMPANY

Garcia v. Spun Steak Company, was the first English-only case in which the EEOC guidelines were critically analyzed [5, 6]. Spun Steak produced poultry and meat products. It employed thirty-three workers, twenty-four of whom were Spanish-speaking. Two spoke no English, and some spoke limited English, but many were fluent in both Spanish and English. Following complaints from a black employee and a Chinese employee that Priscilla Garcia and Marciela Buitrago were making derogatory, racist comments regarding them in Spanish, the company president decided that an English-only rule would help promote racial harmony. The rule applied only during working time and not during lunch, breaks, and other employee free time. After they had received written warnings for allegedly violating the rule, Garcia and Buitrago filed suit.

Among other things, the plaintiffs alleged that Spun Steak's English-only rule had a disparate impact on the Hispanic workers. The Ninth Circuit Court pointed out that in a disparate impact case, the plaintiff is obliged to identify a specific, seemingly neutral practice or policy, which has a significant adverse impact on persons in a protected case [5, at 1486]. It pointed out that the plaintiffs had relied on the EEOC guidelines to establish their contention of discriminatory impact. The guidelines presume that all English-only rules create "an atmosphere of inferiority, isolation and intimidation [4]. Garcia and Buitrago claimed that the rule in question would adversely impact their ability to promote and express their cultural heritage. However, the court responded: "Title VII does not protect the ability of workers to express their cultural heritage at the workplace" [5, at 1487]. Moreover, the court stated that employees must often sacrifice individual self-expression during work hours [5, at 1487].

The plaintiffs also alleged that the English-only rule deprived them of a privilege of employment enjoyed by monolingual employees, i.e., the ability to converse on the job in the language in which they feel most comfortable. Nevertheless, the Ninth Circuit pointed out that speaking privileges were given at the employer's discretion [5, at 1487]. More importantly, the court, following the reasoning in *Jurado* [6] and *Garcia v. Gloor* [7], reached the conclusion that there is no disparate impact when employees are bilingual and can readily comply with an English-only rule [5, at 1488].

After determining no evidence of hostility by the employer existed toward its Hispanic employees, the Ninth Circuit observed: " . . . we cannot conclude, as a matter of law, that the introduction of an English-only policy, in every workplace, will always have the same effect [5, at 1489; 8]. Thus, the court left open the possibility that not all English-only rules would pass judicial scrutiny, but clearly rejected the EEOC presumption that such rules automatically create an atmosphere of "inferiority, isolation and intimidation." However, even assuming that the plaintiffs had satisfied their burden by showing that there existed a disparate impact, the court noted with approval that the Employer had articulated

a business-related reason for the rule, namely, the promotion of racial harmony [5, at 1483; 9].

LONG V. FIRST UNION CORP. OF VIRGINIA

In 1995, a district court in Virginia had the opportunity to analyze English-only rules in *Long v. First Union Corp. of Virginia* [10]. The assistant vice president and branch manager, Butler, instructed plaintiffs Luz Long, Sylvia Velez, and Mayela Salvador not to speak Spanish at the bank unless necessary to assist a Spanish-speaking customer. This directive was formalized in a memorandum in November of 1992 to all branch employees and was characterized as "bank policy."

Thereafter, a customer-service manager told Long, Salvador, and another employee, Lilian Baeza, to speak English to each other while attending a Spanish-speaking customer. They were requested to sign the November 1992, memorandum or leave the bank. They refused to sign.

In 1993, a new branch manager replaced Butler, and employees were informed that the English-only policy was no longer in effect. None of the plaintiffs had been disciplined for violations of the policy, but they nevertheless filed suit, claiming that the English-only rule constituted national origin discrimination.

The court pointed out that the EEOC guidelines presume that an English-only rule is national origin discrimination if the rule is enforced at all times, but permits them if enforced only at certain times and if justified by business necessity with adequate notice of enforcement provided to employees [11]. However, the bank's "rule" applied only during work time and came into being because several bank employees had claimed the constant Spanish-speaking by the plaintiffs made them feel "uncomfortable" and they believed the employees were making fun of them in Spanish. Therefore, the policy was implemented to relieve this tension [10, at 942].

The plaintiffs also claimed that the English-only policy had a significant impact on them because they now furtively spoke Spanish, suffered stress and humiliation, and were denied the opportunity to speak their native language [10, at 939]. In brushing aside these arguments, the district court asserted that speaking one's native language at any time on the job is not a privilege of employment [10, at 941]. Moreover, like the Ninth Circuit Court it argued that the ability to express one's cultural heritage at the workplace by speaking in his/her native tongue is not an activity protected by Title VII [10, at 941]. The court concluded that because the plaintiffs were bilingual, and could speak to each other in English while at work, they were not adversely affected by the English-only policy [10, at 941; 12].

The *Long* plaintiffs also maintained that the English-only rule constituted a Section 1981 violation of the Civil Rights Act of 1866 as amended [13]. Section 1981 protects against discrimination on the basis of race. The court pointed out

that for the plaintiffs to prevail with this charge, they most first prove that Hispanic is a race. But even assuming *arguendo* that it is a race, the court maintained there was no evidence that the bank intended to discriminate on the basis of their race [10, at 945].

Finally, the plaintiffs claimed that the English-only rule caused intentional infliction of emotional distress. Under Virginia law, conduct must be so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and intolerable in a civilized community [10, at 945]. The district court stated that the bank's English-only policy did not meet the standard for outrageous conduct because it was instituted in response to a perceived need and the plaintiffs were able to continue speaking to one another in English [10, at 945].

PRADO V. L. LURIA & SON, INC.

Mercy Prado migrated from Cuba as a preteen and had four years of high school education when she learned to speak, read, and write English [14]. She was employed as a cashier for the employer and also learned to assist with bookkeeping duties. The employer promulgated an English-only rule to encourage store employees to speak English among themselves, to facilitate approaching customers first in English, and to assure that management understood what was being said so as to evaluate what was being said in all work-related communications, and to minimize customer complaints regarding Spanish being spoken at the stores [14, at 1354]. There was no evidence that the policy applied during breaks or while employees were away from the sales floor or offices [14, at 1354, fn. 4].

The district court concluded: "An English-only rule does not violate Title VII as applied to bilingual employees so long as there is a legitimate business purpose for the rule" [14, at 1354; 15].

The court also had these pertinent comments regarding the proper purpose of English-only rules:

> Generally, an employer may adopt or maintain any worksite policy governing employees which has as its principal purpose a furthering of the employer's legitimate business interests so long as the policy does not infringe on individual rights, is not detrimental to the health or safety of the employees and, on balance, does not create an unfair advantage or disadvantage to any discrete group. More particularly, an English-only workplace rule adopted for effective supervision and evaluation of employees furthers a legitimate business-interest without violating protected rights [14, at 1357; 16].
>
> An insistence that employees speak English in the workplace serves the added business purpose of minimizing the sense of alienation and resulting hostility felt by employees and customers who don't speak or understand the foreign language [14, at 1357].

KANIA V. ARCHDIOCESE OF PHILADELPHIA

In *Kania,* a Catholic priest announced to his staff that the official language of his church would be English and that all employees should speak English during business hours [17]. The reason for the rule was that the priest believed it is offensive and derisive to speak a language others do not understand. Jesse Kania, a Polish-American woman who worked as a housekeeper for the parish from 1990 to 1995, is fluent in both English and Polish. Kania told the church secretary that she believed the rule violated the law as well as the EEOC guidelines. A month after the rule went into effect, Kania was terminated because she had failed to clean the priest's room [17].

While the court acknowledged that deference is due the official guidelines and regulations of administrative agencies such as the EEOC, citing *Albemarle Paper Co. v. Moody* [18], those guidelines must not exceed the authority of the statute that they purport to interpret, citing *Santa Fe Industries, Inc. v. Green* [19], and *Espinoza v. Farah Mfg. Co., Inc.* [20]. According to the court, Title VII explicitly provides the burden of proof applicable to disparate impact cases [21], and the guidelines reverse that burden of proof because they assume an English-only rule to be national-origin discrimination [17, at 736]. The court pointed out that Title VII does not protect the ability of an employee to express his/her cultural heritage at the workplace and, as the plaintiff was bilingual, there was no adverse impact on her terms and conditions of employment [17, at 736]. Even assuming that the EEOC guidelines were applicable, the court noted, the rule had a valid business justification, namely, to improve interpersonal relations at the church and to prevent Polish-speaking employees from alienating other employees and church members [17, at 736; 22].

TRAN V. STANDARD MOTOR PRODUCTS, INC.

Dung Tran, a Vietnamese male, worked at the Kansas plant of a company that produced wire and cable for the automobile industry [23]. In 1992, the company introduced a new team system for production, called "cells." Steve Domann, Tran's supervisor, told team members they must speak English during cell meetings and while working. He never told them to speak English during lunch or breaks. Tran was able to speak English. He was subsequently terminated for inappropriate touching of female employees. The plaintiff claimed he had been discriminated against because of national origin.

The Kansas District Court discussed the company's English-only policy. It pointed out that there were three reasons for the policy.

> 1. To ensure that all employees and supervisors were able to understand one another during cell meetings;
> 2. To prevent injuries through effective communication on the production floor; and

> 3. To prevent non-Vietnamese employees from feeling that they were being talked about by the Vietnamese employees [23, at 1210; 24].

The court concluded that these were legitimate business reasons for the rule's existence. It also noted that the policy was not strictly enforced and no one had been disciplined for a policy violation. There was no adverse impact because Tran could speak English [23].

ROMAN V. CORNELL UNIVERSITY

Doris Roman was discharged for poor performance and insubordination [25]. Her supervisor instructed her not to speak Spanish, as other employees had complained she was speaking it for the purpose of excluding them. Roman was fluent in English and Spanish [25].

The district court noted:

> All decisions of which this Court is aware have held that English-only rules are not discriminatory as applied to bilingual employees where there is a legitimate business justification for implementing such a rule (citations omitted) [25, at 237].

The district court went on to discuss what reasons might constitute "legitimate business justifications." It opined:

> Defendants' purported goal of avoiding or lessening interpersonal conflicts preventing non-foreign language-speaking individuals from feeling left out of conversations, and preventing non-foreign language speaking individuals from feeling that they are being talked about in a language they do not understand, are legitimate business reasons justifying its English-only rule (citations omitted) [25, at 237].

Roman also argued that she had been the victim of a hostile environment. In support of that contention she cited the existence of the English-only rule. The court disagreed, remarking that the conduct was not sufficiently severe or pervasive to adversely alter Roman's work environment. It pointed out that there was no evidence that the employer had used racial epithets or made racially derogatory comments, and there was an absence of any other evidence suggesting actions based on race or national origin [25].

MARTINEZ V. LABELMASTER

The final four cases reported in this article have in common that they discuss the application of the EEOC guidelines to English-only rule situations, and all but one were decided by the district court for the northern district of Illinois. The first of these cases was *Martinez v. Labelmaster, American Labelmark Co.* [26]. Mabel Martinez was instructed by her supervisor to speak English while at her work

station. She was subsequently fired for another reason, but claimed her dismissal had been triggered by discrimination based on national origin [26].

The court found no evidence that Martinez had been terminated because of the English-only rule. It stated that the supervisor's rule [27] was not a presumptive violation of the EEOC guidelines because the rule was enforced only at work stations. Its purpose was to promote "esprit de corps," as co-workers would not understand what Spanish-speaking co-workers were saying. In addition, the supervisor had provided Martinez adequate notice, since she had been informed of the rule's existence when she was hired [26].

The court's decision in *Martinez* clearly taught that the district court of the northern district of Illinois will evaluate the propriety of English-only rules against the standard of the EEOC guidelines.

GOTFRYD V. BOOK COVERS, INC.

Renata Gotfryd and Adam Kruszewski filed national-origin discrimination suits after they were told not to speak Polish on the job or face termination [28]. No tangible employment action, however, was taken against either of them [28].

The plaintiffs attempted to use the EEOC guidelines to establish their contention that they were the victims of a severely hostile work environment. It was noted by the court that the guidelines address only issues of Title VII discrimination, "not issues of hostility [28, at 7]. Summary judgment was granted to the employer [28].

E.E.O.C. V. SYNCHRO-START PRODUCTS, INC.

Synchro-Start employed approximately 200 employees, many of whom were Polish or Hispanic [29]. Since at least September 15, 1997, the company had required employees to speak English during working hours. The rule was applied to employees with varying degrees of English proficiency, and employees were not informed of the penalties for violations of the rule [29].

The employees claimed the rule discriminated because it had a disparate impact, allegedly unjustified by defendant's legitimate business needs. It was correctly noted by the court that Section 2000e-2(k) of the 1964 Civil Rights Act provides that in disparate-impact cases it is an employer's obligation to demonstrate a business necessity after the plaintiff has established its burden of demonstrating a disparate impact [29].

However, instead of disposing of the case on the basis that disparate impact existed because the employer's rule applied to all employees—even those who were unable to speak English or speak it well—the court accepted the EEOC's position that English-only rules presumptively create an atmosphere of inferiority, isolation, and intimidation based on national origin [29, at 914; 30]. The court could have decided the case, as earlier cases had been, based on the reasoning

that the application of English-only rules to non-English-speaking employees constitutes disparate impact. Had the court then found that disparate impact existed for this reason, the employer would have been forced to articulate a business-related reason for promulgating the rule. In any event, the court concluded the employer had provided no business justification for its English-only rule. This inability by the employer to state a business-related reason for its rule seems curious, given the breadth of various justifications for English-only rules that have been determined by the courts to be acceptable. Accordingly, the court denied Synchro-Start's motion to dismiss [30; 31].

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. PREMIER OPERATOR SERVICES, INC. AND DIGITAL NETWORK SERVICES, INC.

A recent decision by a district court in Texas strongly endorses the conclusions reached by the *Synchro-Start Products'* court, and even goes beyond them [32]. The defendants in *Premier* were telecommunication companies [33]. The English-only rule adopted by the defendant firms prohibited all speaking of Spanish, including the time during free moments between calls, during lunch in the employee break room, when making personal telephone calls home, and before and after work if inside the Premier/Digital building. Defendants claimed the rule was necessary: 1) to improve customer service by improving the English-speaking ability of their operators; 2) to allow management, which did not speak Spanish fluently, to better oversee the work of its subordinates; 3) to create harmony in the workplace; and 4) to address complaints by non-Spanish-speaking employees who believed they were being ridiculed in Spanish by Hispanic employees.

The *Premier* court stated that because EEOC guidelines are "entitled to great deference," it opted to review the application of those guidelines to the case at bar [32, at 556]. It left for the factfinder to determine whether Premier/Digital's rule applied at all times in violation of the EEOC guidelines, or only during certain times, which would require a business necessity justification [34].

Most significantly, the defendants, relying on the conclusion reached in *Gloor* [7], argued that their rule did not have a disparate impact on their Hispanic employees because the employees were bilingual and could readily comply with the policy. They also contended that their Hispanic employees were not disadvantaged because speaking English did not prevent them from performing their duties or speaking to other Hispanic employees. In rejecting these arguments, the court stated that the rule:

> . . . disproportionately burdened the defendants' Hispanic employees because it precluded them from speaking the language in which they are best able to communicate while having no effect on non-minority employees [32, at 557].

The court also noted that the risk of termination for violating the English-only policy weighed disproportionately on the Hispanic employees, who may be more prone to lapse into Spanish conversation [32; 35]. This case appears to argue, contrary to most prior English-only cases, that disparate impact is almost certainly going to exist, even when employees are bilingual, but are more "comfortable" with a language other than English.

DISCUSSION

The Ninth Circuit Court ruled in *Garcia v. Spun Steak* in 1993 that the EEOC guidelines were in violation of Title VII because in disparate-impact cases, it is the plaintiff who bears the burden of proof to show that a facially neutral policy or practice causes a disproportionate impact in a protected class [5]. By contrast, the EEOC guidelines presume there is a national-origin discrimination when an English-only rule is promulgated which applies at all times [4].

Until recently, the courts have almost uniformly decided that disparate impact exists only when employees covered by the English-only rule are unable to speak English. If they are bilingual, there is no such impact. Moreover, employees have no Title VII right to express their cultural heritage at the workplace. Under these cases, when employees are bilingual, the plaintiffs must establish a *prima facie* case of disparate impact. Then, if a plaintiff is able to successfully demonstrate disparate impact, the employer must articulate a business-related reason for the English-only rule. However, earlier court decisions have been reluctant to conclude that English-only rules violate Title VII. The courts have extended broad latitude to employers in articulating business necessity for such rules.

However, since 1995, the federal courts have placed an increasing emphasis on the importance of the EEOC guidelines. The *Kania* court enunciated the notion that deference must be extended to them, but cautioned that the guidelines must not exceed the authority of the statute they purport to interpret [17]. However, in *Martinez,* the district court for the northern district of Illinois indicated that it would evaluate English-only rules against the guidelines parameters for their legality [26]. Moreover, in *Synchro-Start Products,* that same district court ruled that English-only rules presumptively create an atmosphere of inferiority, isolation, and intimidation based on national origin [29]. The court assumed disparate impact existed because of the overbroad application of such a rule to non-English speaking employees [29]. No business-related reason was offered by the employer for the rule [29]. Finally, the most recent federal case, *Premier Operator Services,* gave the strongest endorsement of the EEOC guidelines to date [32]. The federal court not only concluded that they were entitled to "great deference," but also suggested that disparate impact will exist even though employees are bilingual, but are more likely to be subjected to disciplinary action for inadvertent use of their native language [32]. If the decision in *Premier* is followed by other courts, all English-only rules automatically have a disparate impact.

The above discussion notwithstanding, for an employer wishing to take a conservative approach to establishing an English-only rule, the following guidelines may prove helpful:

1. An employer should develop a business-related reason for establishing such a rule. Business-related reasons respected by the courts have included:
   a) as a response to customer complaints;
   b) to promote racial harmony
   c) for safety-related reasons; and
   d) better management
2. English-only rules should be in effect only during actual employee working time and not during employee breaks and lunch, even if employees are paid for such time. Moreover, the rule should be applied on the employer's premises only.
3. The federal courts are apparently giving an increased deference to the EEOC guidelines. Thus, it might be well to apply English-only rules only to those employees who are bilingual. Moreover, such rules should make allowances or exceptions for an employee's inadvertent use of his/her native language at the workplace. For employees who are not bilingual, English training classes provided by the employer (or off-premises training paid for by the employer) would seem an appropriate measure. English-only rules should not be applied to employees who are not bilingual, unless of course, speaking English is a business necessity.
4. Finally, an employer promulgating an English-only rule should provide its employees with timely notice of the rule and the disciplinary penalties for its violation.

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ENDNOTES

1. Hispanics made up 9 percent of the U.S. population in 1990, and grew by 1998 to just over 11 percent, or 30.3 million people. By 2050, 24.5 percent of the total population is expected to be Hispanic, and 8.7 percent will be Asians and Pacific Islanders. *Statistical Abstract of the United States 1998,* Washington, D.C.: Bureau of the Census, pp. 11, 14.
2. In a twist to the usual themes of English-only rules, Hispanic employees claimed discrimination on the basis of national origin because their employer required them to use their language skills on the job without added compensation. See *Cola v. Tucson*

Police Dept., 783 F. Supp. 458 (D. Ariz. 1992). In dismissing the complaint, the court noted that the department only required employees to speak Spanish when necessary [less than one percent of the work time] and only at a level of proficiency that they possessed. There was no department-imposed standard of Spanish language skill. For a similar case and conclusion, see *Sanchez v. Southern Pacific Transp. Co.,* 29 F.E.P.C. (BNA) 746, 753 (S.D. Tex. 1980).

3. 29 C.F.R. § 1606.7 (1986).
4. The EEOC defines national origin discrimination broadly as "including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's place of origin; or because the individual has the physical, cultural or linguistic characteristics of a national origin group." 29 C.F.R. § 1606.1 (1991).
5. *Garcia v. Spun Steak Company,* 998 F.2d 1480 (9th Cir. 1993), *rehear. denied* 13 F.3d 296 (9th Cir. 1993), *cert. denied* 512 U.S. 1228 (1994).
6. In *Jurado v. Eleven-Fifty Corp.,* 813 F.2d 1406, 1491 (9th Cir. 1987), the court mentioned the EEOC guidelines just promulgated (in 1986), but failed to indicate its approval or disapproval.
7. *Garcia v. Gloor,* 618 F.2d 264 (5th Cir. 1980), *cert. denied,* 449 U.S. 1113 (1981).
8. In an earlier case than *Spun Steak, Gonzalez v. The Salvation Army,* 1991 U.S. Dist. Lexis 21692 (M.D. Fla), a Florida district court had occasion to review an English-only rule promulgated by the Employer's Correctional Services in Tampa, Florida. Spanish-speaking employees were directed to converse only in English in the conference area (also used for lunch breaks) after complaints had been received from non-Spanish speaking employees that conversations in Spanish had made them feel uncomfortable and there was a belief that the conversations concerned them. In addition, a complaint had also surfaced from a client. Ivette Gonzalez stated that she would not obey the policy and resigned. Gonzalez was bilingual. The judge, while not referring to the EEOC guidelines directly, stated that the rule served a legitimate business purpose by a) providing the English-speaking supervisor with the ability to manage the enterprise by knowing what was being said in a work area, and b) by providing non-Spanish-speaking employees and probationers with the ability to understand what was being said within hearing distance.
9. The U.S. Supreme Court declined to grant *certiorari* of the Ninth Circuit's decision; 512 U.S. 1228 (1994).
10. *Long v. First Union Corp. of Virginia,* 894 F. Supp 933 (E.D. Va. 1995), *affirm.* 86 F.3d 1151 (4th Cir. 1996).
11. The district court neither endorsed nor seemed to denigrate the EEOC guidelines.
12. The court did not consider the rescission of the English-only policy to be an admission of discrimination. Moreover, the fact that Spanish was spoken at the branch for years without adverse consequences also did not prove discrimination [10, at 942].
13. Civil Rights Act of 1866, amended, 42 U.S.C. § 1981.
14. *Prado v. L. Luria & Son, Inc.,* 975 F. Supp. 1349 (S.D. Fla. 1997).
15. The court also stated that there is no disparate impact when the choice of language that is spoken is a matter of personal preference [14, at 1354].
16. While the court did not acknowledge the EEOC guidelines, its discussion seems, for the most part, consistent with them.
17. *Kania v. Archdiocese of Philadelphia,* 14 F.Supp. 2d 730 (E.D.Pa. 1998).
18. *Albemarle Paper Co. v. Moody,* 422 U.S. 405, 431 (1975).

19. *Santa Fe Industries, Inc. v. Green,* 430 U.S. 462, 472 (1977).
20. *Espinoza v. Farah Mfg. Co., Inc.,* 414 U.S. 86, 94-95 (1973).
21. 42 U.S.C. § 2000e-2(k).
22. Kania was able to go forward on her retaliatory discharge claim because all she needed to prove was that at the time she opposed the English-only rule, she reasonably believed the practice was unlawful.
23. *Tran v. Standard Motor Products, Inc.,* 10 F.Supp.2d 1199 (D.Kan. 1998). In *Rivera v. Baccarat, Inc.,* 10 F. Supp. 2d 318 (S.D.N.Y. 1998), a Hispanic woman born in Puerto Rico claimed she was terminated because of national origin. She claimed she had been ordered not to speak Spanish on the job, but other employees denied such a rule existed. Similarly, in *Magana v. Tarrant/Dallas Printing, Inc.* 1998 WL 548686 (N.D. Tex.), there was no evidence that the company had implemented an English-only policy. Nevertheless, the district court noted: "English-only policies are not of themselves indicative of national origin discrimination in violation of Title VII", citing *Garcia v. Gloor* [7] and *Garcia v. Spun Steak Co.* [5].
24. The court did not specifically mention the EEOC guidelines, however.
25. *Roman v. Cornell University,* 53 F. Supp. 2d 223 (N.D.N.Y. 1999). This court did not mention the EEOC guidelines in connection with its opinion.
26. *Martinez v. Labelmaster, American Labelmark Co.,* 1998 WL 786391 (N.D. Ill.).
27. The rule was an informally imposed one.
28. *Gotfryd v. Book Covers, Inc.,* 1999 WL 20929 and 20925 (N.D. Ill.).
29. *E.E.O.C. v. Synchro-Start Products, Inc.,* 29 F. Supp. 2d 911 (N.D. Ill. 1999).
30. Indeed, the court pointedly denied that the limited bilingual ability of employees to speak English mattered [29, at 913].
31. See also *E.E.O.C. v. Vencor Inc.,* No. C-99-1977-VRW (N.D. Cal.), settlement June 3, 1999, when a nursing-home chain agreed to pay $52,500 to settle a bias claim concerning an English-only rule. The employer disciplined workers for violating its English-only policy by speaking to one another in their native languages (Spanish, Tagalog, and Haitian-Creole) on breaks and to nursing-home residents who spoke the same language. Vencor also agreed to rescind its policy.
32. *Equal Employment Opportunity Commission v. Premier Operator Services, Inc. and Digital Network Services, Inc.,* 75 F. Supp. 2d 550 (N.D. Tex. 1999).
33. The district court had found sufficient evidence that the two firms were integrated to deny Digital's motion for summary judgment [32].
34. The court stated that there was a genuine issue of material fact as to whether a business necessity for the rule actually existed [32].
35. The *Gloor* court did not address the situation presented in a case when an employee inadvertently slips into a more familiar tongue [7, at 270].

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