C. English-Only Rules

Some employers have instituted workplace policies restricting communication in languages other than English, often called "English-only rules." In fiscal year 2002, the Commission received 228 charges challenging English-only policies. The application of Title VII to such rules is discussed below.

1. Application of Title VII to English-Only Rules

Title VII permits employers to adopt English-only rules under certain circumstances. As with any other workplace policy, an English-only rule must be adopted for nondiscriminatory reasons. An English-only rule would be unlawful if it were adopted with the intent to discriminate on the basis of national origin. Likewise, a policy that prohibits some but not all of the foreign languages spoken in a workplace, such as a no-Navajo rule, would be unlawful.

EXAMPLE 19
ENGLISH-ONLY RULE: INTENTIONAL DISCRIMINATION

XYZ Textile Corp. adopts a policy requiring employees to speak only English while in the workplace, including when speaking to coworkers during breaks or when making personal telephone calls. XYZ places Hispanic workers under close scrutiny to ensure compliance and replaces workers who violate the rule with non-Hispanics. Jose, a native Spanish speaker, files a charge with the EEOC alleging that the policy discriminates against him based on his national origin. XYZ states that the rule was adopted to promote better employee relations and to help improve English skills. However, the investigation reveals no evidence of poor employee relations due to communication in languages other than English. Nor are proficient English skills required for any of the positions held by non-native English speakers. Because XYZ's explanation is contradicted by the evidence, the English-only rule is unlawful.(47)

Even where an English-only rule has been adopted for nondiscriminatory reasons, the employer's use of the rule should relate to specific circumstances in its workplace.(48) An English-only rule is justified by "business necessity" if it is needed for an employer to operate safely or efficiently. The following are some situations in which business necessity would justify an English-only rule:

- For communications with customers, coworkers, or supervisors who only speak English
- In emergencies or other situations in which workers must speak a common language to promote safety
- For cooperative work assignments in which the English-only rule is needed to promote efficiency
- To enable a supervisor who only speaks English to monitor the performance of an employee whose job duties require communication with coworkers or customers

47. The facts in this example are similar to those presented in *EEOC v. Premier Operator Services, Inc.*, 113 F. Supp. 2d 1066 (N.D. Tex. 2000). In that case, the court noted that Hispanic employees were "forced to be constantly on guard to avoid uttering their native language, even in their most private moments in the lunch room or on a break." One employee was reprimanded for speaking Spanish to her husband while at lunch in the break room. *Id.* at 1075.

48. The EEOC guidelines on English-only rules, 29 C.F.R. § 1606.7, state that English-only rules must be justified by "business necessity." Courts are divided on the application of Title VII to English-only rules and the validity of the EEOC guidelines. *Compare EEOC v. Premier Operator Servs., Inc.*, 113 F. Supp. 2d 1066, 1073 (N.D. Tex. 2000) (English-only rules "disproportionately burden national origin minorities because they preclude many members of these groups from speaking the language in which they are best able to communicate."), *and EEOC v. Synchro-Start Prods. Inc*, 29 F. Supp. 2d 911, 914-15 (N.D. Ill. 1999) (English-only rules may create discriminatory work environment based on national origin), *with Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1487-89 (9th Cir. 1993) (finding that the EEOC's guidelines on English-only rules could not be applied to truly bilingual employees because such individuals do not suffer any adverse impact from these rules and holding that the guidelines impermissibly presume that English-only policies have a disparate impact without requiring proof of such), *cert. denied*, 512 U.S. 1228 (1994), *and Long v. First Union Corp*, 894 F. Supp. 933, 940 (E.D. Va. 1995), *aff'd per curiam*, 86 F.3d 1151 (4th Cir. 1996) (table) (district court rejected the EEOC guidelines, and the Fourth Circuit affirmed without addressing the guidelines). Two other U.S. Courts of Appeals have upheld English-only policies without addressing the EEOC guidelines. *See Garcia v. Gloor*, 618 F.2d 264, 268 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981); *Gonzalez v. Salvation Army*, No. 89-1679-CIV-T-17, U.S. Dist. LEXIS 21692 (M.D. Fla. May 28, 1991), *aff'd*, 985 F.2d 578 (11th Cir. 1992) (table), *cert. denied*, 508 U.S. 910 (1993).