



# DELAWARE

## EMPLOYMENT LAW LETTER

*Part of your Delaware Employment Law Service*

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### **DISCRIMINATION**

## **Don't use that language with me!**

by Lauren E. Moak

*An employee's use of a foreign language presents many considerations in the employment law context. An individual's language is tightly tied with race and national origin, which are protected categories under Title VII of the Civil Rights Act of 1964 and similar laws. However, when an employee speaks English as a second language and has difficulty communicating in the workplace as a result, you should feel free to address resulting performance problems.*

### ***Can you repeat that?***

Le T. Le worked as an information analyst for the city of Wilmington in the city's network division. In that position, he provided support and technical assistance to users of the city's computer network. Thus, he routinely interacted with supervisors about technical matters and coworkers about resolution of their computer problems.

Le alleged he suffered race and national origin discrimination when he and other employees were laid off after the city outsourced their jobs to an independent contractor. In support of his claim, he claimed that his supervisors (1) made derogatory remarks about minorities and (2) commented that they couldn't understand him when he spoke.

Following an extensive exchange of evidence before trial, the city asked the court to conclude that Le failed to allege facts sufficient to support a claim of discrimination and dismiss the case without a trial. The trial court dismissed the case, and Le appealed to the Third Circuit, whose rulings apply to Delaware employers.

### ***Third Circuit's decision***

On appeal, the Third Circuit upheld the district court's dismissal, concluding that with regard to the alleged derogatory remarks, the evidence was insufficient to support a finding of discrimination. That's because the comments (1) weren't made directly to Le and (2) demonstrated bias against people of a different racial background than Le. With regard to the manager who stated that he couldn't understand Le, the court noted that an employee's accent or difficulty with English may be a legitimate basis for an adverse employment action when the employee's communication skills are related to job performance. In Le's case, his job duties required him to regularly interact with supervisors and coworkers to provide information and support services to them. *Le v. City of Wilmington*.

### ***Bottom line***

The relationship between race, ethnicity, national origin, and language is complicated when dealing with Title VII. While comments about an employee's spoken or written English skills may indicate discriminatory animus, they may also be legitimate business considerations. You should be conscientious not to impose unnecessary burdens or limits on employees' use of their native language. However, you should also feel free to provide job-related feedback or take adverse employment actions when an employee's English skills interfere with his ability to adequately perform his job.

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