



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Vol. 22, No. 10
October 2017

Language, inclusion, and diversity in the workplace

by Lauren E.M. Russell

Employees' use of a language other than English in the workplace 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 the Delaware Discrimination in Employment Act (DDEA). On the other hand, customers and other employees may feel unwelcome when they are excluded from conversations. And even worse, they may overhear unprofessional comments when your employees wrongly assume that customers don't understand the language being spoken.

Balancing these considerations can be difficult, but when discussions in a language other than English are legitimately disruptive to the workplace, they should be addressed.

It's a small world, after all

America has a diverse workforce, and research routinely shows that a diversity of backgrounds and experiences provides real value to employers. However, diversity brings its own set of workplace challenges. It's not unusual for nationals of one region or country to establish a sizeable community and apply for jobs at welcoming employers. As a

result, employers may find that, without any intention or effort, they have retained a large group of employees who all share a language other than English that they prefer to use in the workplace.

This, alone, is generally not a problem. When the language doesn't impede positive relationships among your employees, and everyone is able to communicate effectively in English to receive instructions and constructive feedback from management, occasional discussions in a language other than English — especially during break time — shouldn't be a problem and don't need to be addressed.

Although many individuals have strong opinions about mandating English as a national language and the need for English fluency for all immigrants, the workplace isn't the appropriate forum to take up these causes. Targeting otherwise productive employees and prohibiting them from communicating with their friends in their preferred manner is likely to be seen as discriminatory and won't be well received by the Delaware Department of Labor (DDOL) or the U.S. Equal Employment Opportunity Commission (EEOC).

Can you repeat that?

However, that isn't always the case. Occasionally, employees with very limited English fluency will be hired and will rely on other employees from their native country to translate directions, rules, and the like. This is highly problematic because managers must be able to effectively communicate *directly* with their subordinates, without any intermediary. If you employ managers who are fluent in the languages preferred by your staff, this may not be an issue, but it's also acceptable to require that employees be able to communicate fluently in English, if that is necessary for your managers to supervise them effectively.

Language can also be used as a tool to exclude coworkers. If your workforce is predominantly non-English-speaking, your English-speaking employees may feel ostracized. Keep in mind that discrimination based on national origin applies equally to both people born in the United States and

people born in other countries. So, if you receive complaints of hostility or harassment from your English-speaking employees, they should be taken seriously. Not everyone has to be friends, but you do need to provide a workplace free of harassment.

Finally, customer service should be a key consideration in your approach to English in the workplace. All employees who interact with customers and business partners should be able to communicate freely and effectively with them. If they cannot do so, that's a fair and reasonable consideration in your hiring and promotional decisions. And, of course, we have all heard horror stories of individuals making snide remarks in a language other than English, not realizing that the person they are speaking about is also fluent in the language. While this makes for an entertaining story, it could be catastrophic if it were to involve a customer or business partner. So be attentive to the tone of discussions your employees have when they believe that no one is listening.

Bottom line

The interrelationship between race, ethnicity, national origin, and language is complicated. Although comments about an employee's spoken or written English abilities may indicate discriminatory animus, they may also be legitimate business considerations. Be conscientious that you aren't imposing unnecessary burdens or limits on your employees' use of their native language, but conversely, feel free to provide job-related feedback or take adverse employment actions when an employee's English-language skills interfere with his ability to adequately perform the job.

The author can be reached at lrussell@ycst.com.

Copyright 2017 M. Lee Smith Publishers LLC

DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.

[Back to Results](#)

[Back to Search](#)

[Exit Search](#)