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English-only workplaces spark lawsuits

By Stephanie Armour, USA TODAY

Some companies are adopting policies that require employees to speak only English on the job, spurring a backlash of lawsuits alleging that such rules can discriminate against immigrants.

The English-only policies are coming as the number of immigrants in the USA soars: Nearly 11 million residents are not fluent in English, according to U.S. Census data, up from 6.6 million in 1990. Nearly 34 million residents are foreign-born, according to 2003 U.S. Census data. That's up from 24.6 million in 1996.

"This is becoming a much bigger issue," says Amy McAndrew, an employment lawyer at Philadelphia-based Pepper Hamilton. "Employers want to have policies because of safety and customer service, but they have to be careful not to be discriminatory."

Employers may legally adopt an English-only speaking rule if they can show it is a business necessity, such as the need for communication with co-workers and customers or safety-sensitive situations where use of a common language could prevent an emergency, she says.

But Ronna Timpa, owner of Workplace ESL Solutions in Henderson, Nev., says employers go too far in adopting strict policies that prevent co-workers from talking in their native language even during lunch.

"Imagine how you would feel if you couldn't speak your own language in the bathroom," she says.

The issue typically comes up in lower-

wage and service-sector jobs.

The number of charges filed with the federal Equal Employment Opportunity Commission (EEOC) alleging discrimination based on such English-only policies is small but six times as large as 10 years ago, from 32 charges in 1996 to about 200 in 2006.

"If the rules enter work breaks, they will be difficult to defend or justify," says Dianna Johnston, assistant legal counsel with the EEOC, adding that some employers also have policies requiring employees to be fluent in English.

Employers have faced lawsuits for enforcing English-only policies. In April, Flushing Manor Geriatric Center agreed to pay \$900,000 to settle an EEOC lawsuit based in part on the company's English-only policy. The New York-based geriatric center barred Haitian employees from speaking in Creole while allowing other foreign languages to be spoken, according to the EEOC.

That prohibition also included that no Creole be spoken during breaks, and largely affected employees who worked in nursing, food service and housekeeping, the EEOC says.

"There was no justifiable reason when there's not a specific business necessity," says Stella Yamada, an EEOC lawyer.

Marc Wenger, a New York-based lawyer representing the geriatric center, says the EEOC characterization is inaccurate and it believes its language policies are consistent with EEOC guidelines. He says there was no

ENGLISH FLUENCY

These states have the highest percentage of residents ages 5 and older that speak English less than "very well."

California	20.2%
Texas	14.8%
New York	12.7%
Nevada	12.1%
Arizona	11.8%

Source: Census Bureau

restriction on using other languages during breaks, adding the consent degree was not an admission of wrongdoing.

Some employers have extended the policy to customers, too. Geno's Steaks, a Philadelphia landmark, generated a storm of media and blogger attention in 2006 when its owner posted a sign requesting that customers order only in English.

At New York-based Hakia, which provides an Internet-based search engine, employees who are hired must speak English, and English is the language used for all business communications, says President Melek Pulatkonak. Many employees are immigrants who speak Turkish, German, Russian, Indian, Romanian or Spanish. Employees are free to speak their native language in private conversations.

"We have a very international team," Pulatkonak says. "Sometimes we have slips, and we just e-mail them back in English."