

FOREIGN LANGUAGE USE IN THE WORKPLACE:

COMMONLY KNOWN AS:

ENGLISH ONLY

Disclaimer - this is not a formal paper nor is it to suggest that this is a problem that is running wild. I know that different MCCs have different concerns. I also understand that this issues/concern comes and goes. I am simply attempting to provide some information:

DISCRIMINATION BECAUSE OF NATIONAL ORIGIN (Speak-English-Only Rules)

1. Purpose: This is to clarify and insure the understanding of the Speak-English Only Rule.

2. References: (There was no Marine Corps references in this area, or I could not find one)

a. Title VII of the Civil Rights Act of 1964 protects individuals against discrimination on the basis of national origin as well as race, color, religion and gender.

b. Code of Federal Regulations Title 29, Volume 4 Parts 900 to 1899, revised as of July 1, 2000. (29 CFR 1606.7)

It is unlawful to discriminate against any Marine because of the individual's national origin. No one can be denied equal opportunity because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group.

3. Speak-English-Only Rule:

A rule requiring Marines/Sailors to speak only English at all times on the job may violate Title VII, unless the Command shows it is necessary for conducting business. If the Command believes the English-only rule is critical for business purposes, Marines have to be told when they must speak English and the consequences for violating the rule. Any negative decision based on breaking the English only rule should be considered evidence of discrimination if the Commands did not tell Marines of the rule.

a. When applied at all times. A rule requiring Marines to speak only English at all times in the workplace is a burdensome term and condition. The primary language of an individual is often an essential national origin characteristic. Prohibiting Marines at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's Marines 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 Commands should presume such a rule violates title VII and closely scrutinize it.

b. When applied only at certain times. The Commander may have a rule requiring that Marines speak only in English at certain times where the command 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 the Command believes it has a business necessity for a speak-English-only rule at certain times, the Command should inform its Marines of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If a Command fails to effectively notify its Marines of the rule and makes an adverse decision against an individual based on a violation of the rule, the Commander should consider this as evidence of discrimination on the basis of national origin, which supports his or her equal opportunity policy.

4. Accent:

A Command must show a legitimate nondiscriminatory reason for the denial of opportunities because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring Marines to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

5. Harassment:

Harassment on the basis of national origin is a violation of Title VII. An ethnic slur or other verbal or physical conduct because of an individual's nationality constitute harassment if they create an intimidating, hostile or offensive working environment, unreasonably interfere with work performance or negatively affect an individual's opportunities. Commanders have a responsibility to maintain a workplace free of national origin harassment. Leaders may be responsible for any on-the-job harassment within their commands, regardless of whether the acts were authorized or specifically forbidden by the Commander. Under certain circumstances, a Commander's policy may not address national origin. These circumstances should be addressed at the level where the issues/concern arise. The equal opportunity advisor at that level should revisit the Commander's policy for a possible rewrite to include national origin.

a. Disparate Treatment - when the rule does not apply equally to all national origin groups because it requires one group to speak English at work but allows other languages to be spoken by other national origin groups. Disparate treatment would be appropriate also where a policy is not applied equally to all national origin groups, but in practice the rule is applied differently or is only enforced against Marines who are members of a particular national origin group. Typically, a complaint that uneven enforcement of the rule has been used to harass or intimidate him or her.

b. Adverse Impact - if policies or practices that are applied evenhandedly to all Marines but have a disproportionate effect on a particular race, color, gender, religion, or national origin within the commands those policies or practices should be revisited and analyzed under the adverse impact theory.

6. Communication:

1. Good Communication is particularly important when it comes to safety, supervisory of personnel, and job performance. Work situations requiring close coordination among Marines where failure to maintain good communication could result in injury to persons or property damage is described as being a necessity where the Speak-English- only rule applies.

- a. For safety and efficiency reasons communications among Marines should be conducted in a language understandable to all those persons directly involved in the conversation. This means that bilingual Marines communicating with other Marines who speak English should conduct the conversation in English.
- b. For emergencies situations to maintain supervisory control over personnel involved effective communication is key. It is expected that the speak-English only rule be applied.
- c. Constructive discussion of assignments, work performance, and work rules, Supervisors should expect that any direct communication with Marines or from Marines be conducted in English.

2. When communicating in languages other than English often there is fear expressed that they are the ones being talked about. Many times these beliefs are unfounded and the product of individual insecurities. While recognizing that occasionally, this may be a legitimate problem in the workplace; it is this kind of conflict that can be resolved with the informal resolution system. If the matter cannot be resolved in this way counseling and/or other discipline actions should be considered for the offending party.

English Languages skills:

The Marine Corps is a diverse workplace with Marines from all walks of life. If you as a Leader of Marines identify a deficiency in a Marine that affects job performance as well as mission accomplishment take corrective action. Marines with English as a second language may need some skills improvement.

- a. Base education offer a variety of test to evaluate a Marines skill level and have different programs base on the Marines skill level to improve. These programs are often offered during lunchtime and after hours.
- b. The technology now exists where Marines can take part in these programs as independent study programs.

(Note - As a reminder this is just an effort to provide information on the topic, I have yet to find an order or directive in the Marine Corps that addresses this particularly issue/concern. I do know that most CG policy statements address discrimination in terms of national origin. Based off of that I thought that some of this information might be useful to you out in the field. I have not completed all of the research on the subject, as of yet, this is what I have so far. If anyone as anything that they feel would or could be helpful please forward it to me if you would like to. Still outstanding is some information that I have asked the EEO personnel here to look at and provide me with some information on the subject.)