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Earlier this week, the EEOC issued guidance on national origin discrimination under Title VII of the Civil Rights Act. This new guidance, along with a new web page and Q & A fact sheet, does not introduce a change in policy for the agency, but does explain in more detail than ever before the EEOC's "best practices" for fostering a workplace free of national origin discrimination.

Most notable for employers is the EEOC's recognition that "employers sometimes have business reasons for basing employment decisions on linguistic characteristics." In some instances, a language proficiency requirement or an English-only rule may be allowed without running afoul of Title VII.

Foreign Accents. Under the new guidelines, "an employer may consider an employee's foreign accent if the individual's accent materially interferes with the ability to perform job duties." In other words, if the position requires effective oral communication skills and the individual's accent impedes effective communication, an employer may refuse to place the individual in the given position. Such positions, according to the EEOC, may include "teaching, customer service, and telemarketing."

English Proficiency/ Fluency. As with a foreign accent, an individual's ability to speak English fluently may interfere with effective performance of certain jobs. A fluency requirement may be imposed if it is directly linked to an essential function of the given job. Nonetheless, employers should avoid imposing a fluency requirement to a broad class of dissimilar jobs, as the proficiency required will likely vary by position. As the EEOC notes, "an individual who is sufficiently proficient in spoken English to qualify as a cashier at a fast food restaurant may lack the written language skills to perform a managerial position at the same restaurant requiring the completion of copious paperwork in English."

English-Only Rules. In certain narrow circumstances, an employer may adopt an English-only rule. An English-only rule may only be adopted for non-discriminatory reasons and must relate to a "business necessity." The EEOC would find a business necessity for an English-only rule in the following circumstances: (1) communications with co-workers, customers, and supervisors who only speak English; (2) emergency situations in which employees must speak a common language to promote safety; and (3) cooperative work assignments in which a common language is needed to promote efficiency.



In addition to the language issues discussed herein, the EEOC's guidance clarifies and expands on such issues as dress codes, citizenship requirements, employment of foreign nationals, and investigation of claims of national origin discrimination.

The new guidance, the Q & A fact sheet, and the national origin discrimination web page can be accessed at the EEOC's web site: <http://www.eeoc.gov>.

BALCH & BINGHAM LLP
LABOR AND EMPLOYMENT CONTACTS

BIRMINGHAM, AL

Edward S. Allen	eallen@balch.com	205.226.3413
Leslie M. Allen	lallen@balch.com	205.226.3484
Aaron L. Dettling	adettling@balch.com	205.226.8723
Monica G. Graveline	mgraveline@balch.com	205.226.8722
Douglas B. Kauffman	dkauffman@balch.com	205.226.8758
Veronica L. Merritt	vmerritt@balch.com	205.226.8727
N. DeWayne Pope	dpope@balch.com	205.226.3421
Jerry D. Redmond	jredmond@balch.com	205.226.8751
Lisa J. Sharp	lsharp@balch.com	205.226.8714
T. Dwight Sloan	dsloan@balch.com	205.226.3447
Christopher T. Terrell	cterrell@balch.com	205.226.8734

HUNTSVILLE, AL

David B. Block	dblock@balch.com	256.512.0105
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JACKSON, MS

R. Pepper Crutcher, Jr.	pcrutcher@balch.com	601.965.8158
Armin J. Moeller, Jr.	amoeller@balch.com	601.965.8156
David M. Thomas, II	dthomas@balch.com	601.965.8157

MONTGOMERY, AL

David R. Boyd	dboyd@balch.com	334.269.3132
William P. Cobb, II	pcobb@balch.com	334.269.3128
Charles B. Paterson	cpaterson@balch.com	334.269.3143
Dorman Walker	dwalker@balch.com	334.269.3138

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