

California Law Prohibits Restrictions on Language Use in the Workplace

After three previous unsuccessful attempts, the California Assembly passed, and Governor Gray Davis signed, amendments to California's Fair Employment & Housing Act prohibiting employers from adopting or enforcing policies that limit the use of any language in the workplace, except in very limited circumstances. The law will become effective January 1, 2002.

PROVISIONS OF THE ACT

Under the new law, AB 800 (codified at California Government Code Section 12951), it is unlawful for an employer with five or more employees to adopt or enforce a policy that limits or prohibits the use of any language in any workplace unless the language restriction is justified by a business necessity. Additionally, assuming that a legitimate business necessity exists, the employer must notify its employees of the circumstances and the time when the language restriction is in force and of the consequences of violating the restriction.

WHAT IS A BUSINESS NECESSITY?

For employers contemplating a single or limited language work environment, the "business necessity" requirement may be quite problematic, as the Legislature has narrowly defined what constitutes a business necessity. AB 800 defines business necessity as "an overriding legitimate business purpose such that the language restriction

is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact."

AB 800 does not further define what constitutes the "safe and efficient operation of the business." A similar business necessity requirement is required under a Federal Equal Employment Opportunity Commission rule regulating "English Only" policies in the workplace. Cases construing the EEOC rule, however, depend heavily on the facts of each case and few generalized guidelines can be drawn from these cases. Rather, courts will consider the nature of the employer's business; the nature of the employment; the manner of communication between employees and customers; the purpose of the policy; and whether the policy implicates safety issues and the nature of those issues.

Assuming an employer can identify a legitimate business purpose that is necessary for the safe and efficient operation of the business, the last prong of the business necessity requirement could create unforeseen liability for employers because it permits a hindsight analysis of whether there was a lesser alternative to restricting an employee's right to speak his or her preferred language.

LIMITING THE USE OF LANGUAGE IN THE WORKPLACE IS UNLAWFUL DISCRIMINATION

As noted in legislative hearings, language is intimately tied to national origin. In enacting AB 800, the Legislature has equated language limitations in the workplace with unlawful discrimination in the workplace. Section 1 of the Act expressly provides that “it is the intent of the Legislature to statutorily implement the constitutional protections . . . of the California Constitution, that no person may be disqualified from entering or pursuing a business, profession, vocation, or employment because of national or ethnic origin”

AB 800 is just another example of California’s abhorrence of any employment policies that may discriminate against or limit an individual’s ability to obtain gainful employment. Given the narrow exception to the prohibition against workplace language restrictions and the potential liability that can arise if such a restriction is instituted improperly, any employer contemplating a policy that may implicate AB 800 should contact counsel to ensure that a legitimate business necessity exists before initiating such a policy.

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