English-Only Rules in the Workplace and the Courts' Response

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1 Introduction

I am not an attorney, though I have lived with one for a number of years. Among the things he has taught me is that anytime I express an opinion about a legal matter, I should begin with a disclaimer acknowledging that I am not an attorney and that nothing I say should be construed as constituting legal advice. Hence, I repeat in direct discourse, "I am not an attorney, and nothing I say should be construed as constituting legal advice." This speech act, necessary to protect myself from being accused of practicing law without a license, reminds us that, as Bourdieu (1991) observed, the right to speak and the right to be heard are not the same—or from a slightly different perspective, being authorized to speak is not the same as being authorized to be heard and to have one's word valued. Questions of authority include not only matters of when and whether one is authorized to speak but also which language or languages one may or may not use when speaking.

In this essay, I examine English-Only in the workplace rules and rulings, not as an attorney, but as a sociolinguist currently serving as an expert witness in a case involving these issues, as a teacher, and as a citizen. Because the case in which I am involved is still pending and because I know very few facts of the case—which is as it should be since I was asked to comment initially on questions relating to the nature of bilingualism and codeswitching, rather than matters of fact—I have nothing else to say about the case itself. Rather, I am concerned with more general issues relating to language and sociolingusitics raised by English-Only rules in the workplace and rulings about these rules. Following this introduction, in section 2, I provide some background about English-Only rules in the workplace. In section 3, I seek to make several observations about recurring assumptions in discussions of these rules, questioning in particular whether current metaphors and models from our discipline may, in some ways, misrepresent the opinions we as sociolinguists and linguists actually hold about the topics in

[1] Special thanks to Tricia Cukor-Avila for providing me with two documents discussed here and to Michal Brody, Susan Berk-Seligson, and Jonathan Tamez for other assistance. Thanks also to the audience at NWAV for the rich discussion following my delivery of the oral version of this paper.

question. In section 4, I analyze the language of some of the Equal Employment Opportunity Commission's guidelines relating to English-Only rules and national origin discrimination more generally. Section 5 examines these guidelines and the issues raised by English-Only in the workplace cases in light of recent research on what are termed linguistic human rights. I conclude in section 6 by suggesting three ways those who are so inclined might seek to engage with the issues raised by this paper. Let me reiterate that I do not speak as an attorney, judge, or legislator. Hence, I am not authorized to make or interpret law, nor is that my goal here. My desire is rather to think about English-Only rules and rulings from the perspective of sociolinguistics in order to see what can be learned about language in society and in particular about ideologies of language—especially bilingualism—at work among scholars and the public.

I begin with the confession that I had not given any real serious thought to matters of English-Only rules in the workplace until asked to serve as a witness. Like most sociolinguists, I felt I knew a considerable amount about public debates on whether English should be enshrined as the national language. Like many readers, perhaps, I had taught Bob King's (1997) article from the *Atlantic Monthly* on the issue and read books and articles on the topic. And like many of my students and colleagues, I was surprised to find that English-Only rules are ever justifiable in the workplace.

But more careful reflection on workplace situations in a Hymesian sort of way reminds us that employers or their representatives who speak only English (or who do not speak all the languages spoken in the workplace) will likely need to supervise employees who may or may not speak English, that employers and their representatives will likewise need to work toward ensuring a workplace where no worker—monolingual or multilingual—feels intimidated or perhaps even excluded, and that employees may need to interact with a public having, on the one hand, a range of linguistic abilities and, on the other, a range of attitudes about hearing languages they do not understand spoken in their presence. I had never considered specifically whether some or all of these situations might justify a requirement to speak English in the workplace or a prohibition not to speak any language other than English there. The challenge of doing so—of thinking through specific situations from the perspective of research in sociolinguistics—is a useful one, I contend, for those of us seeking to understand language in its social contexts.

In preparation to write the opinion I offered as expert witness and to draft this essay, I found that there is little existing research on English-Only in the workplace rules and rulings. Several articles in a section on "the question of minority language rights" in Crawford's (1992) source book on

the Official English controversy address relevant issues, especially Chen (1992), which considers issues of language rights in the private sector; excerpts from several potentially relevant court cases, in particular Gutiérrez v. Municipal Court, which was later vacated by the U.S. Supreme Court and hence cannot stand as precedent; and an excerpt from a 1987 *Harvard Law Review* article on the Equal Protection Clause of the Fourteenth Amendment as it might relate to language minorities. From a very different perspective, Kirtner (1995), in the *Texas Law Review*, provided what he termed "an extended critique of the [existing] English-Only cases" (p. 874) and contended that the Courts should take a "minority-centric" perspective in these cases, rather than the "majority-centric" perspective that has been taken. I acknowledge two other relevant law review articles here, those of Perea (1990) and Behm (1998), but space does not permit me to consider them.

2 Background on English-Only Rules in the Workplace

English-Only rules and rulings are increasingly in the daily news, and they will likely remain there. In September 2000, nine assembly-line workers who had been sanctioned for violating Watlow Batavia Inc.'s English-Only in the workplace policy won a large out-of-court settlement with assistance of the U.S. Equal Employment Opportunity Commission (EEOC) (Girion 2000a, Watlow 2000); one of these had lost her job for greeting a co-worker with "Buenos dias." A few weeks later, a group of thirteen English/Spanish bilingual telephone operators were awarded a record judgment against their former Dallas employer (*EEOC v. Premier Operator Services, Inc.*). In the latter case, the company's English-Only policy mandated English at all times—"during free moments...between calls, during lunch, in the employee break room, when making personal calls, and before and after work if in the building" (p. 4)—unless an operator was assisting a Spanish-speaking customer. The Hispanic plaintiffs, who had either refused to sign a memo agreeing to the policy, signed under protest, or voiced protest, lost their jobs, and they were replaced with non-Hispanic employees. According to Holmes (2000), citing EEOC data, charges filed by the agency on behalf of employees in response to complaints about English-Only in the workplace rules rose from 77 in 1996, the first year such complaints were tracked, to 253 in 1999. One may also read these figures as evidence of an increase in workplace policies mandating English only. Such an increase can be interpreted as a direct consequence of efforts to legislate English as the official language of the country, laws that would govern the public sector, as Chen (1992) did, or as an indirect consequence of larger social forces that might include anti-immigrant sentiment, xenophobia, or racism.

Although many sociolinguists might immediately consider English-Only rules in the workplace from the perspective of the employee, who may or may not speak English, I find it useful to begin with the perspective of the employers because theirs is the position of power and they represent institutions. Two recent treatments of English-Only in the workplace rules written for employers and managers are Cary and Seagull's white paper for the Society for Human Resource Management, "Beware the Native Tongue: National Origin and English-Only Rules" (2000) and Roffer and Sanservino's "Holding Employee's Native Tongues: English-Only Rules in the Workplace can be Legal when Executed Correctly" (2000). One needn't be a Foucauldian to expect the concerns of both documents to be systems of control, discipline, and punishment within the confines of the law.

Roffer and Sanservino (2000), the more objective of the two, discussed the issue of English-Only in the workplace rules from the perspective of human resources personnel. They gave four sorts of situations in which employers might "benefit" from having English-Only rules (177):

(1) Reducing ethnic tension, especially where separate languages have segregated an employer's workforce.
(2) Improving employees' English proficiency, especially in companies with a primarily English-speaking customer base.
(3) Enhancing the effectiveness of employee supervision.
(4) Promoting safety and efficiency in the workplace.

The language is theirs; I have merely numbered their bulleted list for easier reference. Numbers 1 and 2, in particular, make especially interesting assumptions about language and its nature. As Kirtner (1995) pointed out while discussing assumptions like those represented by number one, the idea of reducing tension among various groups in the workplace by enforcing the use of English represents a decidedly majority-centric perspective on the matter, rather than the perspective of the members of the minority group, who can, thanks to such rules, speak only English, regardless of any challenges they might face in doing so, and who may not perceive the enforced use of English as reducing tension among ethnic groups. Reason 2, improving English proficiency, though laudatory, presumes that speaking a language one does not speak natively will result in improved proficiency, automatically or necessarily perhaps. Such an assumption would be problematic to many who write about second or foreign language learning in most circumstances, especially those where the affective filter is high—as we might expect it to be for many bilinguals limited to one language in the workplace or employees just learning English there. Reason 2 also presumes,

of course, that the employee does not already speak English, a false assumption in the case of many native-born bilinguals, who have received most if not all of whatever formal education they have in English.

All those who write about English-Only rules in the workplace agree that Title VII of the Civil Rights Act of 1964 as amended permits employees to challenge such rules under its guidelines on national origin discrimination. (Appendix A contains the most relevant sections of the Title VII Guidelines.)

As Roffer and Sanservino pointed out, the EEOC guidelines are "interpretive," "non-binding" guidelines (177), and certain federal courts have explicitly rejected aspects of them, especially those relating to questions of where the burden of proof is to be placed in cases about English-Only rules, while other courts have accepted the perspective of the guidelines. It is precisely because of the "unsettled" state of the law in this area that English-Only rules in the workplace are of interest to the legal profession, employers, and, one would hope, those of us who study language in society. In other words, because there are few agreed-upon delimiting cases and the various circuit courts do not agree on where to draw the relevant lines about what is or is not permissible and why, we have an ideal situation for thinking about competing ideologies, including ideologies about language.

3 Ideologies of Language

In preparing to write my expert opinion, I read a number of earlier court rulings about English-Only rules in the workplace. My motivation for doing so was not to make, practice, or interpret law as a policy maker, attorney, or judge might, but to familiarize myself with the universe of discourse I was entering. After all, in what was likely the first discussion in the Western tradition of what Bell (1984) later termed "audience design" and the first practical treatise about the nature of language in society, Aristotle (1991) taught that if one would persuade an audience of any argument, one is best served by understanding something about that audience. In this particular situation, I was interested in the sorts of arguments that had been made, the sorts of evidence that had been adduced, and, most importantly, the assumptions about language never stated but manifest throughout the arguments. Again, because the case for which I am a witness is pending and in the interest of space, I will not comment on specific cases, an analysis of which, from the perspective of critical linguistics, would be most revealing with regard to assumptions and reasoning about language. Instead, I will make a few general comments.

I discovered, as noted, that the Courts have not spoken with one voice about English-Only in the workplace rules but I also observed that when they

have written about matters of bilingualism in these cases, they have generally and unproblematically assumed a balanced bilingual, one with equal abilities in both her or his languages, as the defining case. Yet those of us who live or conduct sociolinguistic research in bilingual communities are very aware of how rare balanced bilinguals are; indeed, we don't even expect to find them among people born and reared in the United States unless they have made unusual efforts to gain and maintain competence in the language they know in addition to English.

In discussing bilingual behavior, Court decisions often discuss the idea of bilinguals' linguistic preference, and equally often, language choice is reduced to a matter of no more than individual preference. A metaphor to characterize the Court's position might be that of standing in front of an ice-cream counter and choosing between chocolate and strawberry ice cream when one likes both and is allergic to neither. Yet even in the case of the mythical balanced bilingual, sociolinguists would contend that his or her patterns of language choice represent something far more complex than choosing a flavor of ice cream. The choices are constrained by the situation, the interlocutor(s), the history of their interactions, the topic or purpose of the interaction, the place where the interaction occurs, and their relative knowledge about the language abilities of the parties involved.

Such an acknowledgment, more complex than the treatment of bilingualism found in many Court cases, does not consider the linguistic constraints that might influence the nature of codeswitching bilinguals engage in. Interestingly, when writing about codeswitching, the Courts and newspaper accounts of rulings most often treat the phenomenon as a failure, an inability to (be able to) maintain one language, namely English, when speaking. In her article for the *Los Angeles Times*, for example, Girion (2000b) defined "code switching" for the paper's readers as "an unconscious tendency to lapse into a native language," a most infelicitous characterization.[2] Girion may well be following the lead of the attorneys in *EEOC v. Premier Operator Services* (2000). According to the expert witness for this case, Susan Berk-Seligson (p.c.), the source of this metaphor was most likely one of the attorneys for the EEOC rather than the expert witness herself. Indeed, the *Plaintiff EEOC's Brief in Opposition to Defendant's Motion for Summary Judgment* characterized codeswitching using the metaphor of

[2]Such a characterization certainly fails to meet the criterion of linguistic descriptions that DeBose (2001) has recently termed *ideological adequacy*, or linguistic descriptions that represent the speakers of a variety in a fair, accurate, and dignified manner, to be added to the criteria of descriptive and explanatory adequacy, first offered by Chomsky (1965).

speakers' "lapsing into their language of origin" (p. 2). Neither Girion nor the *Plaintiff EEOC's Brief* cited a source for this characterization of codeswitching.

Many, if not all, scholars writing about bilingualism, language choice, or codeswitching remind readers that choices of linguistic code are not "free" in any sense. As Myers Scotton (e.g., 1993) has often described the situation, speakers are free to choose among the codes in their repertoire but the possible social meanings of those choices are constrained by what she terms the markedness metric of the community. Yet, if you regularly teach about codeswitching in your classes, graduate or undergraduate, and your experiences are like mine, you often get questions from students—multilinguals and monolinguals—about the nature of such choices. Even *after* reading the texts, students always want to raise issues of intentionality with respect to particular cases, and they delight in offering psychological accounts of why a speaker switched where she or he did. In fact, students generally read discussions of the functions of codeswitching in a particular community as descriptions of the intentions of language users.

Although I seek to explain that no thinker I have run across has a good story to tell about the matter of intentionality, at least not as far as language choice is concerned, my students generally remain less than happy. Encouraging them to focus on the effect on the interaction of a specific switch—rather than is possible 'cause'— goes some way toward helping them think analytically about switching, but they are never quite satisfied. Similarly, students want to focus on whether or not speakers are consciously aware of matters of language choice, and, of course, all the bilinguals and multilinguals I know argue that sometimes they are but often they aren't. Because these questions arise regardless of the text we read, I am left to consider why they recur and if and how we should address them.

Following my own advice and focusing on the effects of what we linguists and sociolinguists do, rather than our intent, I would note that by using folk metaphors relating to 'choice' and 'preference' when discussing matters of language choice and codeswitching and by then treating them as terms of art imbued with connotations not present in ordinary language, we achieve several things, some of which we may not intend. We certainly register a welcomed voice for speaker agency, locating our discussions with regard to the long-standing debates among social theorists about the tension between structure and agency. But we may also be encouraging certain continued misunderstandings of bilingualism and codeswitching based on folk notions—i.e., a particular set of language ideologies common throughout our society. In other words, in speaking up for speaker agency, we, through our choice of metaphors, likely simultaneously downplay the nature of con-

straints of many sorts that influence the behavior of multilinguals as well as the diverse range of language abilities found in most, if not all bilingual communities, at least in the United States. Whatever we are doing right, we seem not to be heading off these misunderstandings among our students—or among those who might rely on our opinion or explanations.

4 Examining the Language of the Title VII Guidelines

Having considered how our own ideologies as analysts may create misunderstandings of the phenomena we seek to explicate, I turn now to the language of the Title VII Guidelines, examining some of the questions it raises in terms of thinking about matters of language and discrimination. Contemporary American legal argumentation owes much to stasis theory of Classical Rhetoric, where one offered a judgment after considering questions of fact, definition, and evaluation. What American judges seek to do (or ask a jury to do) is to apply the law (a set of definitions in some sense) to a set of facts and evaluate the outcome; once the evaluation is made by the judge (or a jury), a judgment is issued. Hence, the analysis of the language and assumptions of documents such as these guidelines is important because their language constrains what can and cannot be argued in significant ways.

As noted in §1606.3, the scope of Title VII guidelines includes employment discrimination involving "race, color, religion, sex, or national origin." Religion aside, these characteristics are considered in the cases I examined to be "immutable." Further, §1606.1 explains that national origin discrimination deals with the "physical, cultural, or linguistic characteristics of a national origin group." Such a linking of language and immutable characteristics will immediately and rightly put some readers on guard. Those familiar with the history of American anthropology during the last century are well aware of how hard anthropologists worked to uncouple links between race, culture, and language. Those who have read much Boas and especially those familiar with the controversies surrounding his own personal beliefs and practices know how contentious present and past understandings of his work are, a topic I discussed in relation to the work of one of his students, Zora Neale Hurston (1999). The debates about Boas in some sense mirror contemporary arguments between essentialists, on the one hand, and social constructivists or postmodernists, on the other, about the nature of identity. (Interestingly, however, it is the latter group who are most likely to essentialize Boas and his work in any number of ways.) What these arguments remind us is that matters of race, ethnicity, culture, language, and the body remain profoundly uncomfortable issues for Americans and that finding ways of analyzing them that make sense in the language of a par-

ticular discourse of power—in this case, legal discourse—will likely prove intellectually challenging.

Here, I offer a specific example. In the cases I examined, a distinction is rightly made between one's native language and what is termed one's primary language. Although I have not been able to locate the source of this latter construct, one's primary language often seems to be treated by the Courts as the one a person uses most frequently, is most comfortable using, feels most confident using, has the greater (or greatest) range of styles and registers in, and so on. (Sometimes, the primary language is assumed necessarily to be the native language, a problematic assumption, I contend.) Certainly, most sociolinguists would be uncomfortable with any attempt to link primary language with a person's 'race', on the one hand, or national origin, on the other in some immutable fashion. At the same time, there must be some nonrandom and abiding—immutable—link between primary language and race or national origin if the Title VII Guidelines are to be relevant in any way. The exercise of thinking about matters of bilingualism and bilingual language use with such categories quickly demonstrates the brittleness of the "terministic screens" (Burke 1966) of both law and sociolinguistics.

5 English-Only Rules and Linguistic Human Rights

It is especially interesting to examine English-Only in the workplace rules in light of research in the framework of linguistic human rights, much of which has come out of Europe and is associated with the work of Skutnabb-Kangas (e.g., Skutnabb-Kangas & Phillipson 1995b). Skutnabb-Kangas and Phillipson begin the introduction to an essay on the past and present state of such rights by noting:

> We will provisionally regard linguistic human rights in relation to the *mother tongue(s)* as consisting of the right to identify with it/them, and to education and public services through the medium of it/them....In relation to *other languages* we will regard linguistic human rights as consisting of the right to learn an official language in the country of residence, in its standard form (1995a, p. 71, emphasis theirs).

In their work, they note that such rights are both individual and collective (Phillipson, Rannut, & Skutnabb-Kangas 1995, p. 2) and that discussions of these rights are especially pertinent in light of the situation of linguistic minorities—indigenous peoples, immigrants (or migrants), and refugees, each of which may be treated quite differently as groups within a

given polity (Skutnabb-Kangas & Phillipson, 1995a, p. 71). Although they use both "indigenous" and "autochthonous" without distinction, the authors appear to have in mind all native-born minorities, regardless of the provenance of their ancestors. Hence, American Indians who speak an indigenous language, American-born bilingual Mexican-Americans, African-Americans who speak African-American Vernacular English natively, and Deaf signers of ASL could qualify as linguistic minorities for the purposes of (most?) discussions of linguistic human rights in the United States. Because these authors often tie linguicism, or prejudice based on language, to racism and ethnicism (prejudice based on a person's ethnicity or ethnic background), it is not clear how they would treat a group like speakers of Appalachian English, though they would surely be opposed to any sort of overt or covert discrimination based on language or language variety.

In analyzing international covenants and national constitutions with respect to their stance on linguistic rights in education, Skutnabb-Kangas and Phillipson considered two continua, which they map in Cartesian space: the degree of overtness of the rules (to what degree are minority languages and language rights mentioned?) and the degree of promotion (to what degree is a language prohibited, explicitly or implicitly tolerated, overtly or covertly proscribed as a basis for discrimination, permitted, or actively promoted?).

With respect to the first criterion, overtness, the Title VII Guidelines explicitly mention language and languages other than English that can be related to national origin. At the same time, their primary focus appears to be limiting the total imposition of English in the workplace in an effort to prevent national origin discrimination rather than protecting a language other than English for any reason other than preventing such discrimination. Thus, with respect to matters of promotion, we might contend that while mandating the use of English at all times is proscribed (or at least automatically subject to "close scrutiny") and requiring English (only) is permissible if the requirement can be shown to be a "business necessity," languages other than English, provided they can be linked to national origin, are to be tolerated.

In their discussion of linguicism, the authors contend that it is reproduced by glorification of the majority and its language(s), the stigmatization of the minority and its language(s), and rationalizations that justify the status of each by favoring the majority, whether in terms of the value of its language(s), essentially constructed, or its noblesse oblige, in granting rights and assistance to a minority. One easily finds evidence of these processes in Hernández-Chávez's (1995) analysis in the same volume of language policy in the U.S. and in much English-Only discussion.

I note that in citing this work on linguistic human rights, I do not wish to be seen as giving this framework my unfettered support. As Skutnabb-

Kangas and Phillipson acknowledge, many details remain to be worked out regarding this way of thinking about language in society. Certainly, I do not feel I have adequately worked through the potential or likely consequences of taking language to be a human right. Because of the power granted the discourse of human rights, I hope for additional discussion of the value and limitations of this framework, which may well prove useful for further analysis of English-Only rules.

6 Courses of Action?

Having been a student of sociolinguistics for going on three decades now, I can imagine some readers may wish to engage with the issues raised by English-Only rules and rulings. As I sometimes note in classes I teach, sociolinguists are often expected to act as the conscience of the larger discipline, and our research or at least the topics we work on get trotted out in discussions of the discipline's relevance or usefulness, especially to life outside the academy. Because we are dealing with issues of law, federal regulations, and their interpretation, we are not in a position to make or interpret law except for the few sociolinguists who have law degrees; such prerogatives belong to the legislature, policy makers, and the courts.

However, it seems there are at least three possible avenues for engagement. First, waiting by the phone in case an attorney calls is one possibility. Yet, despite the poet John Milton's claim that "They also serve who only stand and wait" (1655), this alternative seems as unproductive as buying lottery tickets. A second alternative, one more likely to appeal to the political activists among readers, is to lobby the folks who create laws, write regulations, and appoint judges if one wants clarification of or changes in the laws. A final alternative, one of a different sort, is to give serious thought to how we present or fail to present information about issues relevant to this and related topics in our teaching.

In considering this avenue for engagement, I wish to make clear that I am not imagining teaching students the specifics of English-Only legislation in the workplace or elsewhere from the perspective of the law—once again, we are not attorneys. Rather, I wonder if we might not engage the various perspectives involved—those of the employers, the employees, whether bi- or multilingual and monolingual, the law, and our society—as a way of examining matters of one's place in the social order and language ideology. Reading and analyzing the short article by Roffer and Sanservino or the white paper by Carey and Seagull, the perspectives they take on English-Only rules in the workplace, the assumptions about language they represent, and the limits of those assumptions, for example, would make an interesting

assignment as would a comparison and contrast of the two. One could similarly compare Girion's (2000a) news article about the Watlow case and the company's press release about the settlement.

I think too about the kinds of information we provide about the nature of bi- and multilingualism, codeswitching and code choice, along with the very real limitations of popular and professional metaphors of 'choice' and 'preference', among others. Finally, I wonder about the courses we choose to teach and the issues we choose to raise in those we do. Too often, it seems, we fear applying disciplinary knowledge to specific social circumstances, preferring instead vague generalizations about the systematicity of all language varieties and the evil of dialect prejudice.

For those who, like Hymes (1973), believe sociolinguistics should have some liberatory potential, we've got a ways to go to get there. Part of the challenge, even more so now than in 1973, is deciding on the possible meanings of 'liberatory', figuring out who is being liberated, from and into what, who gets to decide the answers to these complex questions, and what languages they will use while doing so.

Appendix A: Part 1606. Guidelines on Discrimination Because of National Origin (Sections Relevant to English-Only in the Workplace Rules)

§1606.1 Definitions of national origin discrimination.
The Commission defines national origin discrimination broadly, as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, origin; or because an individual has the physical, cultural, or linguistic characteristics of a national origin group....

§1606.2. The scope of title VII protection.
Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, sex, or national origin. The title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. These Guidelines apply to all entities covered by Title VII (collectively referred to as "employer").

§1606.6 Selection procedures.

...

(b) The Commission has found that the use of the following selection procedures may be discriminatory on the basis of national origin. Therefore, it will carefully investigate charges involving these selection procedures for both disparate treatment and adverse impact on the basis of national origin. However, the Commission does not consider these to be exceptions to the "bottom line" concept:

(i) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent* or inability to communicate well in English.*...

1606.7 Speak-English-Only rules.

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

(ii) *When applied only at certain times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified as a business necessity.

(iii) *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 an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rules and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin....

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*Indicates footnote, which gives references to additional federal law, including earlier EEOC rulings.

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