



Legal Alert: Tennessee Governor Signs Law Permitting English-Only Policies

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On June 23, Tennessee Governor Phil Bredesen signed into law a bill permitting English-only policies in the workplace. Well, sort of. The law adds a new section to the Tennessee Human Rights Act that declares:

It is not a discriminatory practice for an employer to institute a policy in the employer's workplace that requires all employees speak only in English at certain times when the employer has a legitimate business necessity for such a policy, including but not limited to the safe and efficient operation of the employer's business

The specific language of this new provision was debated and revised in an effort to balance the concerns of employer and employee rights groups.

To whom can it apply?

Although an earlier version of the bill applied to both employees and applicants (requiring applicants to "agree" to speak English-only if hired), the final version allows an English-only policy to extend only to employees. However, as noted below, although the law ostensibly permits application of English-only policies to **"all employees,"** employers should carefully consider whether such a broad application would be justified under the circumstances of their workplace.

Limiting Language: "At Certain Times" . . . "Legitimate Business Necessity" . . . "Safe and Efficient"

The statute limits application of the English-only rule to **"at certain times when the employer has a legitimate business necessity for such a policy."** There was much debate about this provision. The final version replaced the words "while engaged in work" with the broader language "at certain times" followed by the limiting business necessity language. An earlier version of the bill specifically articulated the business necessity provision to mean (1) communications with customers, co-workers, or supervisors who speak English, and (2) in emergencies or other situations in which workers must speak a common language to promote and ensure safety. Such language mirrored an EEOC guidance, which also permits English-only rules for "cooperative work assignments in which a common language is needed to promote efficiency." However, the final Tennessee law deleted that enumeration, and instead, the law as passed requires a legitimate business necessity but does not otherwise define that term other than to say that it *includes but is not limited to*, **"safe and efficient operation of the employer's business."**

Notice and consequences

In order to invoke an English-only policy, an employer must give employees notice of the policy and the consequences of violating it. The law does not specify whether notice in English only is sufficient.

New Law?

Significantly, this law has no effect on the federal laws and regulations on English-only rules, including the EEOC position that permits English-only rules only "if needed to promote the safe or efficient operation of the employer's business." A spokesperson for the Governor stated that the Governor signed the law because it does not change Tennessee law with respect to English-only provisions, and it contains an additional unrelated section protecting volunteer rescue squad workers from termination if they are absent from or late to work because they responded to an emergency. See T.C.A. § 4-21401(d).

Bottom Line

Employers should be cautious if considering an English-only policy. Such a policy should be narrowly tailored to reflect truly legitimate business necessity that can be clearly demonstrated if challenged. Under both Tennessee state and federal law, employers should not prohibit employees from speaking other than English on rest or meal breaks or other non-working times. Further, before adopting such a policy, employers should weigh the business necessity for the policy against the potential negative impact on employee morale and any diversity initiatives of the company.

If you have any questions regarding this Legal Alert or other labor or employment law issues, please contact the author of the Alert, Delaine Smith, dsmith@fordharrison.com or the Ford & Harrison attorney with whom you usually work.