

Employer's 'speak English' rule potentially perilous

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Q *Our employment applications are available in English. If an applicant applies in a language other than English and our recruiters cannot read the responses, what do we do with the application? Are we able to disqualify the candidate?*

A Immigrants are protected from employment discrimination under Title VII of the Civil Rights Act of 1964 and various state civil rights acts, including the Arizona Civil Rights Act (ACRA). In addition to other protected categories, Title VII and the ACRA protect against discrimination based on national origin, which includes bias based on language. Therefore, you must take care when engaging in practices that exclude employees or candidates because of their inability to speak English.

There are times when you may exclude a candidate who can't speak English. According to the Equal Employment Opportunity Commission (EEOC), you *can* implement a rule requiring employees to speak only English in the workplace if you can show the standard is justified by business necessity. Justifications may include (1) jobs in which employees would be required to communicate with customers or coworkers who speak only English or (2) situations in which they must speak English to promote safety.

So, the short answer to your question is an applicant should *not* be automatically disqualified because he doesn't speak English unless you can justify an English-only rule. Your question doesn't indicate whether the applicant is applying for a position in which such a rule is justified by a business necessity. If it is, the candidate can be automatically disqualified. If not, you should figure out a way to

translate the application to give the individual a chance at the position.

While we're on the topic, you shouldn't require employees to speak only English in the workplace at all times—including breaks and lunch time—because the EEOC has stated the rule “will rarely be justified.” Additionally, if you do have an English-only rule, you may not take disciplinary action against an employee for breaking it unless you've clearly communicated the standard to all workers, including the consequences for violations.

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