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English-Only Rules and Accent Discrimination in Texas Workplaces

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This paper focuses on two areas that give rise to national origin discrimination claims under Title VII of the 1964 Civil Rights Act and under Chapter 21 of the Texas Labor Code. 42 U.S.C.A. § 2000e-2; Tex. Labor Code §§ 21.051, 21.110. Claims asserting discrimination based on English-only rules tend to be disparate impact claims whereas accent discrimination cases tend to be disparate treatment claims. Both can also lead to potential workplace harassment, retaliation or other claims.

The presence of non-English speakers in the workplace has led to workplace friction in the United States for centuries. The particulars of who the persons are that have been subject to mistreatment in the workplace (and elsewhere like schools and in general) has changed over time and is partly influenced by external political and even international factors of the times.[1]

The main legal prohibition against national origin discrimination is Title VII of the Civil Rights Act which provides that "it shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of

[1] *See e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923) (anti-German discrimination); Korematsu v. United States, 323 U.S. 214 (1944); *Yick Wo v. Hopkins,* 118 U.S. 356 (1886); *see generally*, Juan F. Perea, *Demography and Distrust: An Essay in American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269, 328-49 (1992), reprinted in part in Richard Delgado, Juan F. Perea, & Jean Stefancic, LATINOS AND THE LAW: CASES AND MATERIALS 232-40 (2008).

employment, because of… national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of … national origin." 42 U.S.C.A. § 2000e-2(a) National origin was included as one of the categories under Title VII to root out longstanding prejudice and bigotry in the workplace against those born somewhere other than the United States.

The Supreme Court has described the legislative history surrounding national origin discrimination as "meager" and described national origin discrimination as referring to the country where a person was born or where his or her ancestors were born. *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 89 (1973) (national origin discrimination in Title VII does not prohibit discrimination based on alienage or citizenship).

As one prominent case involving accent discrimination notes:

> "Preliminary, we do well to remember that this country was founded and has been built in large measure by people from other lands, many of whom came here—especially after our early beginnings—with a limited knowledge of English. This flow of immigrants has continued and has been encouraged over the years…It is no surprise that Title VII speaks to this issue and clearly articulates the policy of our nation: unlawful discrimination based on national origin shall not be permitted to exist in the workplace."

Fragante v. City and County of Honolulu, 888 F.2d 591, 595 (9th Cir.1989), *cert. denied*, 494 U.S. 1081 (1990).

Title search: Employment Law: Accent Discrimination and English-Only Rules in the Workplace in Texas

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