
National Origin Discrimination

— FEHC Presentation —
August 31, 2016

Who We Are Why We're Here



The
Legal Aid Society—
Employment Law
Center

Stacy Villalobos & Marisa Díaz

Immigration & National Origin Program
& its Language Rights Project

- What is “national origin”?
 - What is “national origin discrimination”?
 - How can the Fair Employment & Housing Council (FEHC) strengthen and clarify protections for workers?
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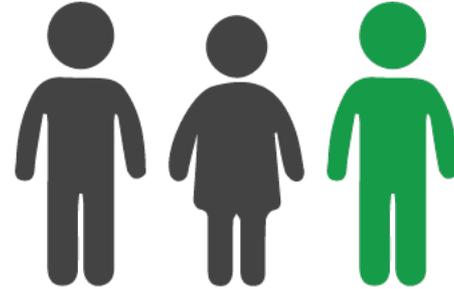
Why does this issue matter?



Ethnic Diversity in the U.S & CA

16.7% (26.3 million) foreign-born persons in the U.S. labor force (2015).

Undocumented immigrants compose approximately 5.1% (8.1 million) of the U.S. labor force (2012).



1 in 3 workers in California is an immigrant (2015).

Approximately 1 in 10 workers in California is an undocumented immigrant.



Linguistic Diversity in the U.S & CA

1 in 10 working-age U.S. adults is limited English proficient (LEP).

CA and TX have highest share of LEP working-age adults.

7 of 10 metropolitan areas with highest percentage of LEPs in working-age adult pop. in CA.

**What is “national origin”
discrimination?**

“National Origin”: Definitions

Place of birth or ancestors' place of birth.

Geographic region (i.e. Africa)

National origin group or ethnicity.

Native American tribe.

Actual or perceived & association with others.

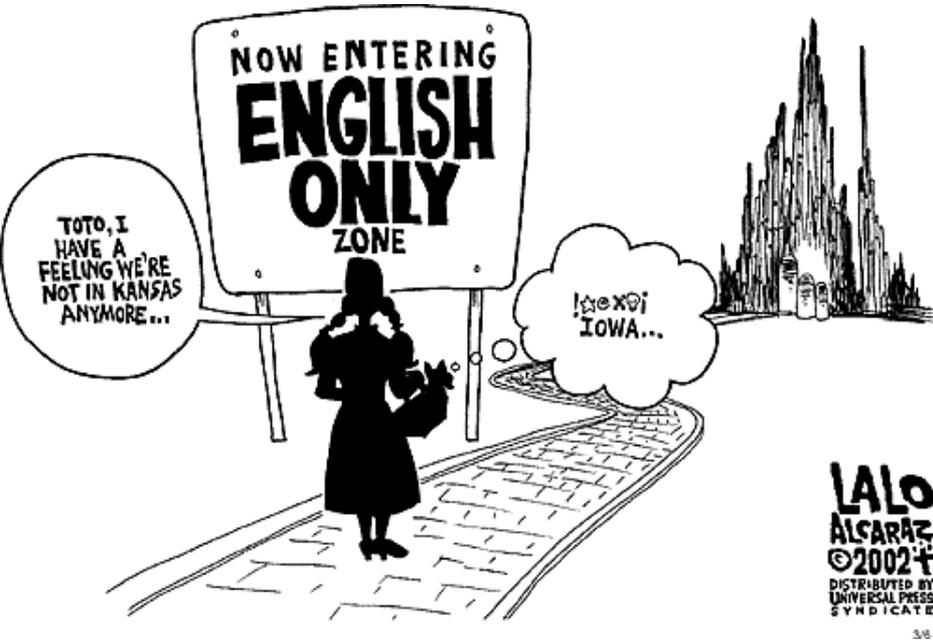
Language discrimination.

Language Discrimination

Language & Identity



English Only Policies



California Government Code
Section 12951

(a) It is an unlawful employment practice for an employer, as defined in subdivision (d) of Section 12926, to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

(1) The language restriction is justified by a business necessity.

(2) The employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

Ignorance
of
California
Law



Across the Board English Only Policies



Business Necessity

California Government Code
Section 12951(b)

For the purposes of this section, "business necessity" means 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.

Accent Discrimination & English Proficiency Requirements

Accent: To take adverse action, employer must show that accent “materially interferes with job performance”

English Proficiency: Permissible only if required for the effective performance of the position for which it is imposed

No guidance under FEHA

Undocumented Workers

Undocumented Workers

Title VII & FEHA apply to undocumented workers.

Remedies: Most remain available to undocumented workers.

- Backpay (limited) & Reinstatement (not available)

- Compensatory and punitive damages

- Lost wages for work performed

Retaliation: special concerns for undocumented workers.

- Cal. Labor Code §§ 1019, 1024.6 (AB 263).

- Cal. Labor Code § 244(b) (SB 666).

Opportunities to use FEHCs Broad Authority to Strengthen & Clarify Protections



- Defining “national origin.”
- Presumption of adverse effect of English-only policies.
- Presumption of illegality for blanket English-Only policies.
- “Business Necessity.”
- Standard for accent/proficiency requirements.
- Remedies for undocumented workers.
- CA Labor Code retaliation provisions.

QUESTIONS?

The Legal Aid Society-Employment Law Center

<http://las-elc.org/>

Language Rights Hotline: 1-800-864-1664