National Origin Discrimination

FEHC Presentation
August 31, 2016
Who We Are
Why We’re Here

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• What is “national origin”?
• What is “national origin discrimination”?
• How can the Fair Employment & Housing Council (FEHC) strengthen and clarify protections for workers?
Why does this issue matter?
Ethnic Diversity in the U.S. & CA


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.
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.

Linguistic Diversity in the U.S. & 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
(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.

California Government Code
Section 12951
Ignorance of California Law
SPEAK ENGLISH ALWAYS
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
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 FEHC’s 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-elic.org/
Language Rights Hotline: 1-800-864-1664