Avoid significant liability by following proper implementation

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As our country evolves and its citizenship becomes more diverse, questions regarding limitations on the language used in the workplace are becoming more common. In the past, English was so widely spoken that workplace language issues did not arise frequently. However, U.S. immigration patterns have changed significantly, and the workplace is the primary environment where members of different cultures come together to accomplish goals, requiring communication. Additionally, to maintain employee morale, employees need to be comfortable at work. In attempting to create a successful and harmonious workplace, many dental practice owners have contemplated implementing workplace policies restricting the language spoken in the workplace to English.

Laying the groundwork

English-only policies are controversial and can lead practice owners to significant liability exposure if improperly implemented. The Equal Employment Opportunity Commission (EEOC) guidelines presume that English-only rules constitute discrimination, making employees more likely to win complaints before the EEOC. A practice owner must show that the English-only rule is necessary to safe and efficient job performance. The EEOC presumes that English-only rules create an atmosphere of inferiority, isolation and intimidation; however, there may be legitimate reasons for a practice owner to institute these rules. In fact, English-only rules may prevent a hostile work environment among English and non-English speaking employees.

If an employee sues his or her employer, alleging that an English-only rule constitutes illegal discrimination, the employee must show that the rule adversely affects a protected class (people of their national origin, race, etc.). The owner of the dental practice then has an opportunity to show that the rule is consistent with business necessity and is job related. Even if the practice owner shows a business necessity, the employee may still prevail by showing that an alternative to the English-only rule could have accomplished the same goal with a less adverse impact on the protected class.

English-only rules are not specifically addressed by Title VII of the Civil Rights Act of 1964, the federal workplace discrimination code. However, there is a question as to whether one’s primary language can be treated as a characteristic of national origin, triggering the protections of Title VII. In 1988, a federal court held that discrimination based on linguistic characteristics of a national origin group could render a viable claim under Title VII. However, this ruling did not give much power to the linguistic protection allowed under the EEOC guideline because effective communication is a requirement of most occupations. English-only rules relate directly to linguistic characteristics, however, national origin does not necessarily relate to linguistic characteristics. Since the EEOC defined national origin to include linguistic characteristics, claims of national origin discrimination on the basis of an English-only rule can generally be brought under Title VII.

Deciding whether the English-only rule is essential to the operation of a dental practice can be difficult. The need for English-
only rules in dental practices may be much greater than the need for such rules in large corporations, because dental practice owners have fewer employees and resources.

The safety and productivity of dental practices are uniquely tied to their employees, in contrast to large employers. Because there are so few employees in a dental practice, lack of communication can be detrimental to the output of the practice. Because each case requires an in-depth, fact-based analysis to determine business necessity, dentists should consult a qualified attorney before implementing an English-only rule within their practice.

Applying the law to dental practices

Dental practice owners who have a justifiable business necessity for an English-only rule may be prevented from enforcing the rule because of their inability to bear the financial burden of litigation.

The financial constraints on dentists are unfortunate, because situations often arise within their practices that could justify use of an English-only rule. Unlike large corporations, practices often: (i) require their employees to work closely together, (ii) do not have access to resources that would allow them to deal with a variety of languages in the same work environment, and (iii) cannot transfer or discipline employees easily. Therefore, the business necessity test should be handled differently when applied to a dental practice.

The business necessity test can be summarized as a determination of whether the English-only rule is necessary for the safe and efficient operation of the practice. The business purpose must be important enough to override any racial impact, the rule must carry out the purpose that it purportedly serves, and there must be no acceptable alternative practice that would better accomplish the business purpose advanced, or accomplish it equally well with less racial impact. The main issue is whether the English-only rule is necessary for the continued viability of the practice.

Courts use six factors to justify an English-only rule in the workplace, which are: (i) worker safety, (ii) ensuring effective supervision, (iii) increasing the productivity and efficiency of the business, (iv) promoting worker harmony, (v) improving customer relations and satisfaction, and (vi) improving an employee’s English skills when English is not their primary language. While each of these justifications may be somewhat relevant for dental practice owners, the most useful justifications are discussed below.

When English-only might be OK

First, courts have upheld English-only rules implemented to ensure effective supervision. Several courts have found that business necessity justified rules to ensure that English-speaking supervisors could understand what was being said in the workplace. Effective supervision is extremely important in dental practices.

The dentist’s ultimate business goal is to run the practice productively and efficiently, and dentists must be able to understand the employees to do so. If employees are speaking about work-related topics, the dentist has an interest in asking them to speak English to ensure that they are not misunderstanding each other. If employees are speaking about personal topics, the dentist has an interest in asking them to restrict that speech to lunchtimes and breaks, no matter what language they speak.

Second, courts have upheld English-only rules implemented to increase the productivity and efficiency of the business, which closely ties into the effective supervision factor.

An English-only rule may increase a dentist’s productivity because it ensures that work conversations are carried on in a language that everyone can understand. The issue is whether there is more disruption to the work environment with or without the English-only rule. This is a persuasive argument. Hostility among employees can negatively affect the productivity and efficiency of the practice. Creating an English-only rule may increase productivity for dentists because all the workers would understand each other.

Third, courts have upheld English-only rules because they promote worker harmony. Dentists or employees who speak only English may feel threatened, isolated, and/or alienated by non-English speakers. This factor is extremely important when dealing with dental practices. Courts have upheld the use of English-only rules to avoid isolation or alienation of employees who only speak English. Rather than creating an atmosphere of inferiority, isolation, and intimidation, these rules can actually alleviate an atmosphere of racial tension. While English-only rules cannot be justified by fear and prejudice, dentists have a legitimate interest in ensuring that their employees are not making derogatory comments about each other, either as harassment or basic ill will.

Finally, a fourth justification for the business necessity of an English-only rule is to improve customer relations and satisfaction. Dentists usually have no trouble justifying a rule requiring employees to speak English with English-speaking patients. However, dentists cannot discriminate based on a patient’s fear or prejudice. Depending on the patient base, it may improve patient relations to implement an English-only rule. A patient may feel intimidated if he or she cannot understand what workers are saying, because patients who primarily speak foreign languages may be comforted by the use of languages other than English. Courts have held that improved customer relations are in and of themselves insufficient to justify business necessity.

Conclusion

While dental practice owners may have legitimate business justifications for implementing an English-only rule, it is very important for the practice owner to understand the possible legal ramifications of such an action.

Because this area of law is relatively undeveloped, it is strongly recommended that any practice owner who is considering implementation of such a rule seek advice from an attorney who is familiar with employment law.