

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

ESC INTERPRETATION NO. 271

TO: Employment Security Commission
FROM: Thomas S. Whitaker, Chief Counsel
SUBJECT: Language proficiency requirements in job orders

QUESTION: Whether the Job Service may accept and service job orders from employers where the job order indicates that only applicants who are unable to speak English will be considered for the job.

ANSWER: Yes, provided the employer can clearly demonstrate that the ability to speak English is necessary for the successful performance of the job.

DISCUSSION:

Absent a clear connection between the ability to speak English and successful job performance, there is the appearance of national origin discrimination. The Equal Employment Opportunity Commission has framed guidelines on discrimination because of national origin. Under the guidelines, English-only policies create a presumption of a discriminatory work environment based on national origin. Requiring English language skills as a condition of consideration for a job would be in violation of Title VII of the Civil Rights Act of 1964 unless the employer can demonstrate the relationship of the English language skills requirement to the successful performance of the job.

A case decided by the U.S. Court of Appeals for the Ninth Circuit illustrates this point. In Fragante v. City and County of Honolulu, 888 F.2d 591 (9th Cir. 1989), a Filipino brought suit against the City and County of Honolulu when he was not selected for a clerk job. Because the job involved constant contact with the public, the district court found that “the oral ability to communicate effectively and clearly was a legitimate occupational qualification for the job in question” and dismissed the claim. On appeal, the Circuit Court of Appeals affirmed and declared:

An adverse employment decision may be predicated upon an individual’s accent when - - but only-when - - it interferes materially with job performance. There is nothing improper about an employer making an honest assessment of the oral communication skills of a candidate for a job when such skills are reasonably related to job performance.

Id. At 596.

Unless the employer can show that a particular language ability is necessary for the successful performance of a job, inserting such requirement in a job order would be indicative of illegal national origin discrimination. An example of a legal language requirement is requiring an applicant for the position of outreach worker who works mainly with Hispanic farmworkers to be able to speak Spanish. Because these workers are often required to translate from English to Spanish, they can be required to speak both English and Spanish. On the other hand, requiring workers to be able to speak English where that is not necessary to perform the job would indicate illegal national origin discrimination.