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ENGLISH MANDATE MAY DISCRIMINATE LOSS PREVENTION CAREER CENTER CONTACT LODGING LAW

"ENGLISH ONLY" MAY BE DISCRIMINATORY

Many believe that in theory, hoteliers should be able to manage all aspects of guest interaction including requiring that employees speak only English in the workplace. Such rules, however, may be in conflict with federal civil rights law and guidelines issued by the Equal Employment Opportunity Commission.

...by DAVID E. MORRISON, ESQ. and MICHAEL L. SULLIVAN, ESQ.

THIS MARCH, THE EEOC and The Melrose Hotel Co. of New York settled thirteen employees' complaints of a hostile work environment at The Melrose, including allegations that Hispanic employees were subjected to an "English Only" rule, for \$800,000. The EEOC receives hundreds of similar complaints; accordingly, it's important for hotel owners, operators, and managers to consider how best to balance the interests of creating and delivering a unique brand experience with the rights and interests of an increasingly diverse workforce.

This diversifying work force in America makes the debate over "English Only" far from an academic exercise. For example, the number of persons of Hispanic or Latino ethnicity employed in the U.S. grew from 17.9 million and 18.6 million in 2004 and 2005, respectively, to over 19.5 million as of May, 2006. The American Hotel & Lodging Educational Foundation reports that 25.8% of the hourly recruits in the lodging industry in 2004 were Hispanic. The *Bureau of Labor Statistics* provides an even further detailed breakdown of the percentages of persons of Hispanic or Latino ethnicity employed in 2005. They comprise:

- 14% of all persons employed as hotel, motel and resort desk clerks
- 23.7% of all persons employed in the traveler accommodation industry
- 30.6% of all building and grounds cleaning and maintenance occupations
- 35.2% of all maids and housekeeping cleaners

With an increasingly diverse staff comes an inevitably greater potential for a language barrier in the workplace. In fact, as of 2000, 10.3 million Americans spoke little or no English at home, representing

a 53% increase from the number reported in 1990. For the hospitality industry in particular, therefore, decisions on whether to adopt policies regarding "English Only" in the workplace must be well thought out.

Discrimination based on National Origin

Title VII of the Civil Rights Act of 1964 prohibits discrimination in the workplace against any person based on one's national origin. The EEOC has issued guidelines identifying four general forms of national origin discrimination:

- rules requiring employees to speak English at all times in the workplace
- an employer's refusal to hire an applicant based on the applicant's manner of speaking or accent
- harassment in the form of ethnic slurs or physical conduct because of an employee's national origin, creating a hostile work environment
- requiring only certain national origins to provide employment verification, while not mandating it for all employees

Although the EEOC guidelines further state that any policy requiring "English Only" in the workplace is presumed to violate Title VII (thereby shifting the burden of proving the necessity of the policy to the employer), the guidelines allow for an exception. An employer may require employees to speak only English at certain times where the employer can show a business justification for the requirement.

Best Practices

There are several practices that hotel operators and owners should follow to ensure compliance with Title VII. The following practical tips will aid in developing a fair policy while allowing a hotel to better manage employee communications with guests.

— First, do not have or enforce a blanket "English Only" policy. Such a broad policy will almost certainly violate Title VII. As with any other workplace policy, the adoption of this type of policy must be done for nondiscriminatory reasons. A policy that restricts the speaking of another language, for example, during lunch, in the employee break room, when making personal telephone calls, or before and after work if inside the building, will likely be seen as discrimination on the basis of national origin.

— Second, any "English Only" policy should be limited to those situations that may be categorized as a business necessity. These include:

- communications with customers, coworkers, or supervisors who only speak English
- coordination of tasks in emergencies as better facilitated through a common language
- where an English-only rule is needed to promote efficiency for cooperative work assignments
- enabling a supervisor who only speaks English to monitor the performance of an employee whose job duties require communication with coworkers or customers

Therefore, in the context of hotel operations, if it is necessary for guest services personnel to use English when communicating with guests, a policy requiring English in those situations might be justified. Or, English may be required for communications with supervisors who only speak English. In establishing such a policy, however, a hotel should weigh and consider these business justifications against any possible discriminatory effects.

— Third, any "English Only" policy should expressly contain exceptions for appropriate circumstances. This will ensure that the policy is flexible and adaptive to the business justifications of the hotel as they may change.

— Fourth, the workforce must be put on notice of any "English Only" policy. It is important that the

employees understand the reasons for such a policy, as well as the consequences that may occur for violation. According to its guidelines, the EEOC will consider any employer's application of an "English Only" policy, without effective notification, as discrimination on the basis of national origin.

Perhaps the best advice that can be offered, though, is that if you adopt a policy, do not call it "English Only"; it is a misleading title that raises unnecessary red flags. Some other title, such as "Guest Communications" or "Effective Employee Communication," more properly describes the desired goal of the policy. After all, effective communication within your hotel is what you should be striving to achieve.
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LOSS PREVENTION

EVALUATE — THEN COMMUNICATE

The state of disaster preparedness in America's cities was the topic of a July 26 press release by the U. S. Conference of Mayors. The assessment? First responders still lack the communications structure necessary to effectively coordinate. Could the same be said of our industry? It is incumbent upon the lodging industry to evaluate its capability to communicate within the hotel and with staff members offsite, on a 24/7 basis.

...by RAY ELLIS, JR.

WE KNOW ONLY TOO WELL how important disaster-preparedness and well-planned communication operations are to the safety and security of our guests, staff, and properties. With the right assessment, planning, and training, we can be confident that we're ready to tackle the next emergency, whatever form it may take.

Do you have a complete roster of every member of your staff from the highest-ranking officer to the most recently hired kitchen worker? Do the listings include land-line and cell phone numbers? Are there email addresses where appropriate? Have you established a "telephone tree?" In such a system, each individual contacted has several individuals to whom they must communicate any information required by the hotel's disaster-preparedness plan. The program compensates for individuals who cannot be contacted, preventing failures in communications that might cut off a significant number of employees. The "tree" is computerized with back-up offsite and at corporate headquarters as well.

Onsite communication is vital. Two-way communication between staff is critical within most facilities in today's world of "need to know" immediacies. Remember to have a back-up of "runners." For example, if you are investigating, or operating under a bomb threat, the impulse from an electronic device or spark from an electrical system could trigger the bomb. A messenger is the only effective alternative.

Establish a "chain of command" for internal communications. All too often, an incident occurs during the nighttime hours when the fewest staff are present. If the nature of the incident does not require a call for *all* staff to report to the premises, you must designate the primary and back-up persons to be contacted. We've emphasized the need for redundant systems before. When one person or system is unavailable or fails, to what level do you move? Plan your communications to a depth of as many as six

options.

Another important aspect of communications: quickly conveying information to guests. Say you're under a tornado or flood watch, or there's a blackout and you're operating with back-up generators at a limited power capacity. Time and again, the major complaint of guests and line staff interviewed after an emergency situation is: "We did not know what was happening. We did not know what options, if any, were available to us."

If your public address system is operating, use it to share what you know as soon as you know. Otherwise, have staff distribute notices under the doors throughout the property. Be sure department heads and supervisors are "in the communications loop" and have them immediately share information with staff. This will empower staff to share information with guests, but not with the media. Upon advice of counsel, you may decide the staff should not share information with guests verbally. In this situation you would utilize only your public address system or memoranda to each guestroom. On the other hand, it poses a problem if the staff know the answer when questioned by a guest but cannot share that information, so you must weigh your options carefully when planning. You don't want unprepared communications circulating; that could jeopardize the safety and stability of your guests, staff, and property.

When it comes to the media, there's no question: every member of your staff *must* understand that there is a single spokesperson for the establishment. Here again, think "redundancy." If the spokesperson is incapacitated or absent from the site, who is next? Your plan must include several individuals designated as backup media liaisons and make clear what circumstances determine who the backup contact should be.

Communication with first responders is immediate and mandatory. It is better to have five or six staff put through an alarm to the fire department than to have everyone think it has been taken care of by another staff member. However, there should be a protocol. Upon discovery of a fire, sound the alarm and call the PBX to contact the fire department and emergency teams on premises, instructing them to respond to the fire site unless the fire has moved beyond the initial stage (small-scale and capable of being quelled by a portable fire extinguisher). The staff should be trained to try to extinguish the fire with a portable fire extinguisher after sounding the alarm and notifying the hotel telephone operator, or, as may be required, after a direct call to the fire department. Many jurisdictions mandate a fire control center in which the ranking fire responder may give instructions regarding which guests should remain in their rooms (in a fully sprinkler-equipped facility) and which should be evacuated through the nearest fire stairwells.

Finally, there are communications that can create problems if we are unaware they have been initiated. A 911 call from a room cannot be intercepted; all you can determine is that it has occurred. The call must go through to the local 911 call center. Obviously, in terms of response capacity, we should know about the call and make an immediate response to the room to provide any assistance prior to the arrival of the police or other emergency responders.

Tragically, we are all only too aware of the greatly heightened need for security and disaster preparedness in our society. As well as the "traditional" concerns related to weather disasters, fires, flooding, and crime, we in the lodging industry must now consider the prospect of terrorism as well. Nevertheless, through effective and efficient planning and training, we can prepare our staff and assist our guests in the event of an emergency, doing our best to bring everyone through the crisis safely and securely. >>

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