

# English Only Policy at Leon's Frozen Custard Sparks Legal Controversy

A Milwaukee frozen custard shop recently garnered national news coverage regarding its "English only" policy.

A company policy that required Leon's Frozen Custard employees to interact with customers only in English came under fire on May 17, 2016 when a customer overheard a Leon's counterperson tell another customer, in Spanish, "I'm not allowed to speak Spanish to you." When this customer also placed his order in Spanish, he received the same response. After receiving "numerous requests" to investigate Leon's English only policy due to this incident, the League of United Latin American Citizens has called on the U.S. Equal Employment Opportunity Commission (the "EEOC") to launch a federal investigation into Leon's English only policy.

Leon's initially took the position both that expecting the business to accommodate orders placed in other languages would be disruptive and that it is easier to run a business when everyone is speaking the same language. In defending the policy, Leon's suggested that, under the policy, an employee likely would not be fired if he or she spoke another language to a customer, but may be reprimanded. As the story generated more media attention, however, Leon's changed its position to allow employees to communicate with customers in whatever language the customer speaks—though it is still preferred that customers order in English and employees all speak to one another in English.

This incident serves as a reminder to employers that they should review their English only policies and practices to ensure they comply with the law.

## Employment Law Implications

Title VII. Title VII of the Civil Rights Act of 1964 protects employees from employment discrimination, including discrimination based on race and national origin. Discrimination on the basis of national origin includes discrimination based on linguistic traits, such as an employee's accent. Title VII permits employers to adopt English only policies under certain circumstances. As with any other policy, an English only policy must be adopted for nondiscriminatory reasons. The policy should relate to specific workplace circumstances and be

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justified by "business necessity." For example, an English only policy may be justified in emergencies or other situations where employees must speak a common language for safety reasons. If an English only policy is adopted, it should be narrowly tailored to the employer's specific circumstances that necessitate the policy.

National Labor Relations Act ("NLRA"). While the specific language of Leon's English only policy has not been published, to the extent the policy indicated that Leon's prefers that employees speak *to one another* only in English, the policy may be subject to challenge by the current National Labor Relations Board ("NLRB") as interfering with employees' exercise of their Section 7 rights under the NLRA. The NLRA makes it an unfair labor practice to interfere, restrain or coerce employees in the exercise of their rights to self organize, engage in concerted activities, or discuss the terms and conditions of their employment with one another. Prohibiting employees from speaking to one another in a non English language may be interpreted by the NLRB as chilling employees' exercise of their Section 7 rights.

## Take-Home Lessons

Business Justifications. In evaluating whether to adopt an English only policy, an employer should weigh its business justifications against potential discriminatory effects the policy may have. While the EEOC has not established a precise test for making this evaluation, some relevant considerations include:

- Evidence of safety justifications for the policy;
- Evidence of other business justifications, such as supervision or effective communication with customers;
- The likely effectiveness of the policy in carrying out the employer's desired objective; and
- The English proficiency of the employees affected by the policy.

Practical Considerations. As a practical matter, Leon's is located in Milwaukee's south side, in a community populated by many Spanish speaking persons. When deciding whether to adopt an English only policy, it is important that an employer consider not only whether the policy is lawful but also whether it would ultimately alienate customers or, as Leon's discovered, spark controversy.

If you have any questions regarding English only policies, please contact [Katie D. Triska](#) or your Reinhart attorney.



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