

# Can You Make Workers Speak Only English at Work? – Ask The Expert



English-speaking only is generally not an acceptable safety policy.

## QUESTION

Can we require all workers to speak English at all times when they're at work? We've had a lot of workplace incidents that were caused by communications breakdowns.

## ANSWER

Probably not.

## EXPLANATION

Requiring workers to speak English or any other language is highly problematic because it excludes people who don't speak that language. However, under human rights laws, policies and practices that are otherwise discriminatory may still be okay if the employer can prove that they're what's called a bona fide occupational requirement (BFOR), for example, not hiring a person for a driver's position because she's blind. To justify your English-only policy is a BFOR, you'd have to show that it:

- Was adopted for a purpose that's rationally connected to

job performance;

- Was adopted in an honest and good faith belief that it was necessary to fulfill that legitimate purpose; and
- Is reasonably necessary to accomplish that legitimate purpose and that it's impossible to accommodate a non-English speaking employee without undue hardship.

Prongs 1 and 2 are pretty easy because safety is recognized as a legitimate purpose and an English-only policy serves that purpose by ensuring good communication. But as is usually the case in a BFOR situation, Prong 3 is the hard part. You won't meet that prong if there were less discriminatory ways you could have ensured that workers communicate effectively, such as providing bilingual instructions or using nonverbal signs or signals. It will be up to you to show that you considered these alternatives and the reasons you rejected them. And those reasons must amount to undue hardship. Maybe the alternatives would have cost millions of dollars, required you to lay off people, etc. But undue hardship is a tough thing to prove.

**Bottom Line:** Don't implement the English-only policy without first talking to a lawyer and verifying that you can meet all 3 prongs of the BFOR test.