

ATTACHMENT G

Fair Employment & Housing Council Regulations Regarding National Origin Discrimination

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 2. Discrimination in Employment

Article 4. National Origin

TEXT

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Article 4. National Origin

§ 11027. Defenses.

These regulations incorporate the defenses set forth in section 11010.

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12940, Government Code.

§ 11027.1. Definitions.

(a) “National origin” includes but is not limited to, the individual’s or ancestors’ actual or perceived place of birth or geographic origin, national origin group or ethnicity; the physical, cultural, or linguistic characteristics of a national origin; an individual’s marriage to, or association or perceived association with, a person of a national origin group; an individual’s parental relationship with a person of a national origin group, including an adoptive, step, or foster care parental relationship; membership in or association with an organization identified with or seeking to promote the interests of a national origin group; attendance or participation in schools, churches, temples, or mosques, generally associated with a national origin group; actual or perceived citizenship status; actual or perceived association of an individual’s name with a national origin group; and language and/or accent. National origin also includes a Native American tribe.

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12940, Government Code.

§ 11028. Specific Employment Practices.

~~(a) (c) (Reserved)~~

~~(d) An employer may have a rule requiring that employees speak only in English at certain times, so long as the employer can show that the rule is justified by business necessity (See section 11010(b)) and the employer has effectively notified its employees of the circumstances and time when speaking only in English is required and of the consequences of violating the rule.~~

(a) Language Restrictions.

(1) It is an unlawful employment practice for an employer or other covered entity to adopt or enforce a policy that limits or prohibits the use of any language in the workplace unless:

(A) The policy is job-related and consistent with business necessity;

(B) The policy is narrowly tailored; and

(C) The employer has effectively notified its employees of the circumstances and time when the language restriction is required to be observed and of the consequence for violating the language restriction.

(2) For purposes of this subsection, “business necessity” means an overriding legitimate business purpose, such that:

(A) The policy is necessary to the safe and efficient operation of the business;

(B) The policy effectively fulfills the business purpose it is supposed to serve; and

(C) There is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.

(3) It is not sufficient that the employer’s policy merely promotes business convenience or is due to customer preference.

(4) English-only rules are presumed to violate the Act on the basis of national origin and ancestry, unless the employer can prove business necessity. English-only rules are never lawful during an employee’s non-work time, e.g. breaks, lunch, unpaid employer-sponsored events, etc.

(b) Employment discrimination based on an applicant’s or employee’s accent is unlawful unless pursuant to a permissible defense.

(c) Foreign training and experience. It is an unlawful employment practice, unless pursuant to a permissible defense, for an employer or other covered entity to deny employment opportunities to an individual because the individual received training or education outside the United States, or to require an individual to be foreign trained.

(d) Immigration-related Practices.

(1) All provisions of the Act and these regulations apply to undocumented workers to the same extent that they apply to any other applicant or employee. However, if an employer is found to be liable for violating the rights of an undocumented employee under the Act, the remedy of reinstatement will not be available.

(2) It is an unlawful practice for an employer or other covered entity to discriminate or retaliate against an employee because of the employee's immigration status. When undertaken for discriminatory or retaliatory reasons, unlawful practices include, but are not limited to:

(A) requesting more or different documents from individuals based on their actual or perceived national origin, or refusing to honor documents that on their face reasonably appear to be genuine;

(B) threatening to contact or contacting immigration authorities or a law enforcement agency about the immigration status of the employee or a family member (spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild, by blood, adoption, marriage, or domestic partnership) of the employee; or

(C) taking adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security number, or government-issued employment documents.

(e) It is unlawful for an employer or other covered entity to discriminate against an applicant or employee because he or she holds or presents a driver's license issued under section 12801.9 of the Vehicle Code.

(1) An employer or other covered entity may require an applicant or employee to hold or present a license issued under the Vehicle Code only if:

(A) Possession of a driver's license is required by state or federal law; or

(B) Possession of a driver's license is required by the employer or other covered entity and is otherwise permitted by law. An employer's or other covered entity's policy requiring applicants or employees to present or hold a driver's license may be evidence of a violation of the Act if the policy is not uniformly applied or is inconsistent with legitimate business reasons (i.e., possessing a driver's license is not needed in order to perform an essential function of the job).

(2) Nothing in this subsection shall limit or expand an employer's authority to require an applicant or employee to possess a driver's license.

(3) Nothing in this subsection shall alter an employer's or other covered entity's rights or obligations under federal immigration law.

(f) Citizenship requirements. Citizenship requirements that are a pretext for discrimination or have the purpose or effect of discriminating against applicants or employees on the basis of national origin or ancestry are unlawful, unless pursuant to a permissible defense.

(g) Human Trafficking. It is an unlawful employment practice for an employer or other covered entity to use force, fraud, or coercion to compel the employment of, or subject to adverse treatment, applicants or employees on the basis of national origin.

(h) Harassment. It is unlawful for an employer or other covered entity to harass an applicant or employee on the basis of national origin. (See generally section 11019(b).)

(i) Retaliation. It is an unlawful employment practice for an employer or other covered entity to retaliate against any individual because the individual has opposed discrimination on the basis of national origin, has participated in the filing of a complaint, or has testified, assisted or participated in any other manner in a proceeding in which national origin discrimination has been alleged.

(j) Height and/or weight requirements. It is an unlawful employment practice, unless pursuant to a permissible defense, for an employer or other covered entity to impose height and/or weight requirements on applicants or employees.

(k) Recruitment and job segregation. It is an unlawful employment practice for an employer or other covered entity to seek, request, or refer applicants or employees of a particular national origin or to assign positions, facilities, or geographical areas of employment based on national origin.

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12926 and 12940, Government Code.