

Equal Employment Opportunity Comm.

§ 1606.7

national origin. The title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. These Guidelines apply to all entities covered by title VII (collectively referred to as “employer”).

§ 1606.3 The national security exception.

It is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements stated in section 703(g) of title VII.¹

§ 1606.4 The bona fide occupational qualification exception.

The exception stated in section 703(e) of title VII, that national origin may be a bona fide occupational qualification, shall be strictly construed.

§ 1606.5 Citizenship requirements.

(a) In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by title VII.²

(b) Some State laws prohibit the employment of non-citizens. Where these laws are in conflict with title VII, they are superseded under section 708 of the title.

§ 1606.6 Selection procedures.

(a)(1) In investigating an employer’s selection procedures (including those identified below) for adverse impact on the basis of national origin, the Commission will apply the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR part 1607. Employers and other users of selection procedures should refer to the UGESP for guidance on matters, such as adverse impact, validation and recordkeeping requirements for national origin groups.

(2) Because height or weight requirements tend to exclude individuals on

the basis of national origin,³ the user is expected to evaluate these selection procedures for adverse impact, regardless of whether the total selection process has an adverse impact based on national origin. Therefore, height or weight requirements are identified here, as they are in the UGESP,⁴ as exceptions to the “bottom line” concept.

(b) The Commission has found that the use of the following selection procedures may be discriminatory on the basis of national origin. Therefore, it will carefully investigate charges involving these selection procedures for both disparate treatment and adverse impact on the basis of national origin. However, the Commission does not consider these to be exceptions to the “bottom line” concept:

(1) Fluency-in-English requirements, such as denying employment opportunities because of an individual’s foreign accent,⁵ or inability to communicate well in English.⁶

(2) Training or education requirements which deny employment opportunities to an individual because of his or her foreign training or education, or which require an individual to be foreign trained or educated.

§ 1606.7 Speak-English-only rules.

(a) *When applied at all times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages

³See CD 71-1529 (1971), CCH EEOC Decisions ¶6231, 3 FEP Cases 952; CD 71-1418 (1971), CCH EEOC Decisions ¶6223, 3 FEP Cases 580; CD 74-25 (1973), CCH EEOC Decisions ¶6400, 10 FEP Cases 260. *Davis v. County of Los Angeles*, 566 F. 2d 1334, 1341-42 (9th Cir., 1977) vacated and remanded as moot on other grounds, 440 U.S. 625 (1979). See also, *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

⁴See section 4C(2) of the *Uniform Guidelines on Employee Selection Procedures*, 29 CFR 1607.4C(2).

⁵See CD AL68-1-155E (1969), CCH EEOC Decisions ¶6008, 1 FEP Cases 921.

⁶See CD YAU9-048 (1969), CCH EEOC Decisions ¶6054, 2 FEP Cases 78.

¹See also, 5 U.S.C. 7532, for the authority of the head of a Federal agency or department to suspend or remove an employee on grounds of national security.

²See *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973). See also, E.O. 11935, 5 CFR 7.4; and 31 U.S.C. 699(b), for citizenship requirements in certain Federal employment.