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§ 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 an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.[7] Therefore, the Commission will presume that such a rule violates title VII and will closely scrutinize it.

(b) *When applied only at certain times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

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[3] See 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).

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

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

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

[7] See CD 71–446 (1970), CCH EEOC Decisions ¶6173, 2 FEP Cases, 1127; CD 72–0281 (1971), CCH EEOC Decisions ¶6293.