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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 Where these laws are in conflict with title VII, they are superseded under section 708 of the title.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

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.


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

5See CD DL52–1–1535 (1971), CCH EEOC Decisions ¶ 6000, 1 FEP Cases 921.

6See section 4D(2) of the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607.4D(2).
§ 1606.8

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.8

(b) Ethnic slurs and other verbal or physical conduct relating to an individual’s national origin constitute harassment when this conduct:

(1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment;

(2) Has the purpose or effect of unreasonably interfering with an individual’s work performance; or

(3) Otherwise adversely affects an individual’s employment opportunities.

APPENDIX A TO §1606.8—BACKGROUND INFORMATION


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