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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.

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

§ 1606.8 Harassment.

(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.

(c) [Reserved]

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

[8] See CD CL68–12–431 EU (1969), CCH EEOC Decisions ¶6085, 2 FEP Cases 295; CD 72–0621 (1971), CCH EEOC Decisions ¶6311, 4 FEP Cases 312; CD 72–1561 (1972), CCH EEOC Decisions ¶6354, 4 FEP Cases 852; CD 74–05 (1973), CCH EEOC Decisions ¶6387, 6 FEP Cases 834; CD 76–41 (1975), CCH EEOC Decisions ¶6632. See also, Amendment to *Guidelines on Discrimination Because of Sex*, §1604.11(a) n. 1, 45 FR 7476 sy 74677 (November 10, 1980).

APPENDIX A TO § 1606.8—BACKGROUND INFORMATION

The Commission has rescinded § 1606.8(c) of the Guidelines on National Origin Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at *www.eeoc.gov.*, or by calling the EEOC Publications Distribution Center, at 1–800–669–3362 (voice), 1–800–800–3302 (TTY).

[45 FR 85635, Dec. 29, 1980, as amended at 64 FR 58334, Oct. 29, 1999]

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

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AUTHORITY: Secs. 709 and 713, Civil Rights Act of 1964 (78 Stat. 265) as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92–261); 42 U.S.C. 2000e–8, 2000e–12.

SOURCE: 43 FR 38295, 38312, Aug. 25, 1978, unless otherwise noted.

GENERAL PRINCIPLES

§ 1607.1 Statement of purpose.

A. *Need for uniformity—Issuing agencies.* The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. *Purpose of guidelines.* These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. *Relation to prior guidelines.* These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.