

## Managing Non-English Speaking Employees in the Workplace



Today's workforce is a melting pot of cultures, races, and ethnic backgrounds. While it is an advantage to have such diversity, it does pose issues when employing individuals with limited abilities to read, write, and/or speak English. Certain positions, because of their job responsibilities and safety exposures, require the incumbents to effectively communicate verbally and/or in writing. For other positions an employee's limited mastery of the English language may not be an issue because the job does not raise safety issues and requires limited interaction with English-speaking coworkers or customers. The employer's obligation to provide documents, training, and/or translators depends on the relationship between the job duties and the ability to speak and understand English.

Many employers are uncertain about the extent to which they must work around and accommodate language barriers. The law prohibits discrimination based on characteristics such as race, national origin, and ethnic background. On the other hand, the law recognizes the need for effective operations and an employer's right to make decisions based on its perceived needs. Where a language barrier affects an employee's ability to effectively and safely perform his or her job functions, a decision to require at least minimal English skills may be made on that basis. However, employers must weigh both sides of the argument when defining the essential job functions versus what is simply convenience. Here are several situations where language limitations may need to be evaluated and reasonable accommodations considered.

### Discipline and One-on-One Coaching Discussions with Management

A positive employee relations environment is one that encourages ongoing communication and coaching between supervisors and subordinates. This becomes difficult when the parties have a language difference. When it becomes necessary to counsel or discipline an employee, it is essential that all communication be clear, concise, and understood. Where it is known the employee has limited English skills, it is recommended that a translator be involved in the coaching or disciplinary meetings to ensure both the company and the employee are properly informed. If a translator is used, require him or her to sign all disciplinary documents and indicate his or her role as a participant and/or witness during the meeting.

### Employment Policies and Forms

An employer has an obligation to communicate its expectations and standards of conduct to employees. This may be done through written policies, new hire orientation, companywide or department meetings, and other methods. An employer must consider whether it is making a "good faith effort" to proactively and effectively communicate to all employees. An employer who has knowledge that an employee is not able to understand the information being presented, but makes no attempt to present the information in a way the employee understands, will have a difficult time proving it made a good faith effort should it need to defend itself against employment claims, particularly where the employee is disciplined for violating a company policy. Accommodations an employer may make include providing documents in an alternative language, presenting separate meetings with a translator, or giving the employee access to a translator as needed.

## Mandatory Postings

Federal and state governments require employers to post certain documents notifying employees of their rights and responsibilities. These postings must be in a conspicuous place where employees regularly congregate. Organizations that employ a number of individuals who cannot read English should display a separate set of postings in the alternative language. Many posters may be purchased or downloaded from the Internet, for free, in a variety of alternate languages.

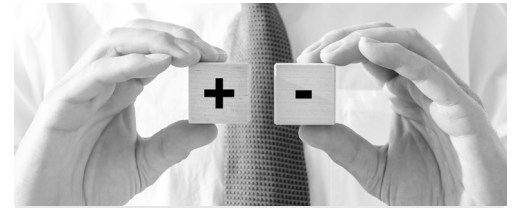
## Work Instructions

It is essential that workers understand their job responsibilities and work procedures, particularly when performing safety-sensitive duties that may result in injury or damage to equipment should prescribed procedures not be followed. Provide work instructions in an alternative language, where appropriate, and include as many pictures as possible showing proper procedures or equipment functions. If possible, have at least one team leader or supervisor identified and available to act as a translator should questions or problems arise.

There are no clear-cut answers to this situation because what is considered an essential job requirement at one employer may not be at another. Each employer must look at the organization independently to determine its legal, and oftentimes moral, obligation to its employees.

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## Pros and Cons

Being a good employer means providing employees with a work environment that is safe, efficient, and enhances production. Identifying, responding to, and accommodating language differences in the workplace, when reasonable, demonstrates good faith compliance and fosters a positive work environment.

However, accommodations may not always be feasible due to time, cost, and general business operations. Each employer must first determine the level of communication employees in each position must have in order to be safe, efficient, and effective. Simply stating that all employees must read, write, and speak English to be qualified for jobs at the organization may not be reasonable, and may be discriminatory. However, where English skills are required, particularly due to safety, interaction with internal or external customers, or effectiveness on the job, the ability to speak and understand English can be a job requirement.

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