

Is Speaking English a Valid Job Requirement?

by Quenda Behler Story

Before my husband's retirement, when he was still running a job site, he objected to hiring people who couldn't speak English. When I pointed out that that could be a problem under the antidiscrimination laws, he said, "I don't discriminate. I just want the people who work for me to be able to speak and read English. Is that such a big legal problem?"

It could be. It depends. The law doesn't require you to hire people who can't speak or read English, *but* (and this is a big *but*) not hiring someone because he or she can't speak or read English could be *evidence* of unlawful discrimination.

Here's the problem: If someone charges you with illegal discrimination, the law cannot open up your head and look inside to see if your intent was innocent — it has to guess at your intent from what you actually did.

Suppose you don't have a particularly diverse labor force. Why is that? Is your insistence on English-language skills the only reason? You have the right to require English-language skills *if they're necessary*, but how necessary are they on a construction site?

Written Information

Let's start with safety posters. Could you defend yourself against a charge of illegal discrimination by saying, "I only hire people who can read English because they have to be able to read those posters the government makes me put up." No, you could not. Those safety posters are available in several languages and with clear illustrations for people who don't understand the written text. On the basis of those posters, it's not clear that your hire has to be

able to read at all.

What about the instruction manuals and safety warnings that come with modern tools? Do you really have to put a nail gun in the hands of someone who's not sure how it works? Of course not. You shouldn't put a power tool in the hands of anyone, even someone who speaks perfect English, who cannot demonstrate that he or she knows how to use it correctly. Does that mean that your hire has to be able to read the English in the tool manual? No.

the same ethnic background, at least one of whom speaks some English, might be looking for work at the same job site. Using one employee as an interpreter for another might be inconvenient, but it's not a big problem — you're not teaching rocket science here. You're saying things like: "Tomorrow we start on the dry-wall — don't forget to bring your sanding block."

If you're doing something dangerous, however, like excavating or using explosives for demolition,

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First, just like the safety posters, tool manuals come in different languages. I've even seen one that included Croatian. Second, you should have a better system for ensuring safe tool use than just handing your employee a manual to read. Most guys don't read past the first page in the manual, no matter what their language is.

Verbal Communication

That brings us to the question of *speaking* English. If you're running the job, you need to be able to tell people what to do. Is that enough of a problem that speaking English could be considered a legitimate job requirement?

If it's *critical*, yes, but you've got to be careful here. Convenient is not the same as critical. For example, sometimes more than one person of

that's different. The people in the danger zone must be able to communicate quickly and efficiently.

Remember that the legal question is not how you can keep people from accusing you of things, because, whether it's bad workmanship, negligence, or unlawful discrimination, you can't. People are going to do what they want to do. But you *can* see to it that they don't have a legal leg to stand on. The best and quickest defense against a charge of unlawful discrimination is a diverse work force with reasonable job requirements that apply to everyone. 

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