May, 2007

English Only at Work, Por Favor

Natalie Prescott

Available at: https://works.bepress.com/natalie_prescott/4/
Articles

ENGLISH ONLY AT WORK, POR FAVOR

Natalie Prescott*

I. INTRODUCTION

Foreign languages are becoming an increasingly prevalent part of American life. We encounter them everywhere—on the streets, billboards, signs, documents, television, and radio. Even “The Star-Spangled Banner” has recently been translated into Spanish.¹

Because of the growing language accommodation in the United States, many people feel it should extend to the workplace. However, those who have experienced negative consequences of language accommodation in the workplace disagree. An anonymous female attorney, interviewed for this Article, related her experiences in a bilingual workplace:

A senior partner called me into his office. “So, you are Russian,” he said. “You know, I speak a little Russian myself.” “You do?” I asked politely, expecting a predictable Russian “hello,” which usually was the only Russian word some Americans knew. He


* Litigation attorney; J.D., Duke University School of Law, with honors; M.A., Tulane University; B.A., University of Southern Mississippi, summa cum laude. My gratitude goes to Professor Allen Siegel of Duke University School of Law for his insightful advice and comments. An immigrant myself, I grew up in a bilingual environment and learned English as my fourth language. Personal experiences and the difficulties I encountered working in a bilingual workplace made me a passionate advocate of an English-only rule at work. It is important to acknowledge that this Article addresses English-only rules in the workplace and does not advocate a sweeping prohibition of foreign languages. Many languages are present in the United States, and they all should continue to be welcome in a public sphere. Nevertheless, the American workplace presents a unique situation in which policy dictates that only one language should predominate.
responded in perfect Russian, without even a hint of an accent: “I want to have sex with you.” As I sat there, speechless, not knowing how to react, I struggled with an explanation. Regardless of whether he knew what he had said, I felt insulted and hurt. In a perfect world, I would have called him out on it, explained to him the offensive meaning of the phrase, and talked to the managing partner. But in the real world, this was my first law firm job; and so I went on to discuss my assignment.  

Sexual harassment is not the only negative effect of language accommodation in the workplace. In addition to concerns over harassment, racial remarks, and hostile statements that can be made in a foreign language, employers are also concerned about serving English-speaking customers, promoting workers’ safety, and maintaining workplace harmony.  

Many legal scholars and a number of courts incorrectly assume that the ability to speak a foreign language at work is protected by Title VII of the Civil Rights Act, and some have even gone as far as to assert that it is a fundamental right. In fact, there is no statutory or constitutional protection available for foreign languages at work. Additionally, a careful examination of federal cases (including Supreme Court precedents) and the legislative history of Title VII demonstrates that there are important policy reasons to restrict individuals’ ability to speak foreign languages at work. Furthermore, an English-only rule usually applies only to employees who can speak English well.

Part II of this article provides a brief history of English-only rules in the employment context, focusing on the recent circuit split on the issue of whether an English-only rule violates Title VII. Part III seeks to

---

2. Interview with anonymous bilingual employees, in Durham, NC (Mar. 2, 2006). On file with author. Notably, conclusions drawn in this Article rely on available data for certain groups of immigrants or for certain states with the largest population of immigrants. Because this data is limited, it may not be equally representative of all groups of immigrants in all states. Nevertheless, conclusions in this Article apply to the entire immigrant population because the majority of immigrants in the United States face similar challenges with regard to English language, assimilation, education, and employment opportunities.

3. See infra Part IV (discussing policy reasons for allowing an English-only Rule in the workplace).


5. See infra Part IV (discussing the improper protection of language under Title VII and the U.S. Constitution).

6. An English-only policy at work should not be confused with the movement that seeks to establish English as an official language of the United States. Furthermore, English-only rules apply only in circumstances where an employee can speak English but chooses to speak a foreign language. See Garcia v. Gloor, 618 F.2d 264, 266 (5th Cir. 1980) (illustrating the application of an English-only rule only to those who could speak English). Therefore, this Article does not address the rights of immigrants who are monolingual and does not advocate a blanket prohibition against foreign languages.
demonstrate that neither Title VII nor the United States Constitution protects foreign languages in the workplace. After providing a detailed analysis of cases, legislative history, the Equal Employment Opportunity Commission (EEOC) guidelines, and scholarly publications, Part III concludes that some courts have improperly invalidated English-only rules in the workplace.

Part IV addresses two important policy concerns: employers’ rights to impose the rule pursuant to business necessity and the reasons some employees feel that a broad English-only rule is unfair to bilingual workers. Along those lines, Part III also discusses the steps that the employers must take to ensure that the rule is narrowly tailored and fairly applied.

Part V discusses a recent cultural shift from language assimilation to language accommodation and the negative impact of this accommodation on the workplace. This Part focuses on the crucial role of English in cultural assimilation and explores the reasons behind language hostility in the workplace.

Finally, Part V analyzes the consequences that language accommodation has on workers who are not native English speakers, concentrating on those intimately related to the lower socioeconomic status of workers with poor English skills. My ultimate conclusion is that, although language accommodation may be important in education and public spheres, an English-only rule in the workplace is necessary because it ensures employees’ ability to improve their socioeconomic status and allows employers to foster a harmonious and productive work environment.

II. A BRIEF HISTORY OF AN ENGLISH-ONLY RULE

English-only rules in the workplace have been in existence for a long time. Supporters of such rules believe that they promote workplace harmony and improves safety at work. Opponents feel that English-only

---

7. The first federal lawsuit to address an English-only policy in the workplace appears to be *Saucedo v. Brothers Well Serv., Inc.*, 464 F. Supp. 919 (S.D. Tex. 1979). While an employer in this case did not have an official English-only policy, the supervisor informed Mr. Saucedo that the company did not allow any “Mexican talk.” See id. at 921. The court stated: “The question in a case of this nature therefore becomes whether or not the employer can prove by a preponderance of the evidence that his ‘rule’ requiring only English to be spoken on the job is [a] result of business necessity.” Id. at 922. For suggestions on practical solutions to employers considering imposing an English-only rule, see Natalie Prescott, *Employers on the Fence: A Practical Guide to Immigratory Workplace*, 29 CAMPELL L. REV. 181 (forthcoming 2007) (on file with author).

rules are discriminatory and restrict immigrants’ ability to converse in their language of choice.  

“English-only” typically means that employees may only speak English at work; however, there are usually many exceptions to this rule. For example in some instances, employees are allowed, and sometimes even required, to address non-English-speaking customers in a foreign language. Additionally, employees usually can speak their native languages during breaks. However, even a narrow application of the rule can lead to claims of discrimination.

In the instances where an English-only policy is in place, bilingual employees frequently rely on Title VII to argue that restrictions on foreign languages amount to national origin discrimination. There are legal scholars who agree with this interpretation of Title VII. Nevertheless, a

---

9. See generally Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 10 LA RAZA L.J. 261 (1998) (arguing that language should be protected as an aspect of national origin); Juan F. Perea, English-Only Rules and the Right to Speak One’s Primary Language in the Workplace, 23 U. MICH. J.L. REFORM 265 (1990) (arguing both that a person’s primary language is a fundamental aspect of their ethnicity and national origin and that the difficulty of learning a second language makes the primary language immutable for many persons whose primary language is not English); Cristina M. Rodriguez, Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States, 36 HARV. C.R.-C.L. L. REV. 133 (2001) (suggesting that failure to accommodate language differences inhibits non-English speakers’ ability to participate in public life).

10. See, e.g., Gloor, 618 F.2d at 266 (“Gloor had a rule prohibiting employees from speaking Spanish on the job unless they were communicating with Spanish-speaking customers. Most of Gloor’s employees were bilingual, but some who worked outside in the lumber yard did not speak English. The rule did not apply to those employees. It also did not apply to conversations during work breaks.”).

11. See Maldonado v. Altus, 433 F.3d 1294, 1299 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006) (illustrating a rule that allowed for use of a language other than English to communicate with people with “limited English language skills”).

12. See id. (“This policy does not apply to strictly private communications between co-workers while they are on approved lunch hours or breaks. . . .’’); Gloor, 618 F.2d at 266 (“The rule did not apply to [non-English speaking] employees. It also did not apply to conversation during work breaks.”).

13. See Maldonado, 433 F.3d at 1299 (allowing the plaintiffs’ claim that the rule amounted to discrimination under Title VII to go forward, despite exceptions for private coworker conversations on breaks and conversations with family members).

14. See, e.g., id. at 1307 (“Plaintiffs allege that the City engaged in intentional discrimination in violation of . . . Title VII.”)

15. See Cameron, supra note 9, at 278-81 (discussing the connection between the Spanish language and Hispanic culture and identity); Juan F. Perea, Killing Me Softly, with His Song: Anglocentrism and Celebrating Nouveaux Latinas/os, 55 FLA. L. REV. 441, 450 (2003) (“The court thus reinforces Anglocentric norms of language and identity in the
closer look at legal precedent shows that the majority of appellate courts hold that Title VII’s protection against national origin discrimination does not include language protection.16

So far, four circuit courts have considered the legality of an English-only rule.17 It is worth noting that all but one court agreed that employers should be allowed to impose an English-only rule at work.18 In 2006, the Tenth Circuit reversed the lower court’s grant of summary judgment for the employer in Maldonado and remanded the case, noting that a genuine issue of material fact existed as to whether an English-only rule had a disparate impact on Hispanic employees.19 This created a circuit split, thereby increasing the likelihood that the Supreme Court will decide the issue.

In 1980, not long after the courts began upholding the validity of English-only rules, the EEOC issued somewhat controversial guidelines providing that such rules restricted employees’ ability to speak their native tongue and thus amounted to discrimination under Title VII.20 Since then, many courts have declined to follow the guidelines, with some explicitly noting that the EEOC guidelines are plainly wrong.21

Some lower courts, however, disagreed with the majority and ruled that a blanket prohibition against foreign languages at work is unlawful.22 Furthermore, the EEOC—relying on its own guidelines—has been aggressively pursuing the employers who imposed an English-only rule.23

workplace, a stance that contradicts Title VII’s prohibition against national origin discrimination.”).

17. Maldonado v. Altus, 433 F.3d 1294, 1316 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006); Long, 86 F.3d at 1151 (unpublished table opinion); Spun Steak., 998 F.2d at 1490; Garcia v. Gloor, 618 F.2d 264, 272 (5th Cir. 1980).
18. Maldonado, 433 F.3d at 1303.
19. Id. at 1308.
20. 29 C.F.R. § 1606.7(a)-(b) (2004).
21. See, e.g., Spun Steak, 998 F.2d at 1489 (“We do not reject the English-only rule Guideline lightly. . . . We will not defer to ‘an administrative construction of a statute where there are ‘compelling indications that it is wrong.’”) (quoting Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94 (1973)).
Not surprisingly, the cost of litigating the validity of these rules is so high that employers prefer to settle EEOC lawsuits for substantial sums. Thus, despite the fact that employers would probably win at the appellate level, businesses may choose to settle and withdraw the rule in order to avoid expensive litigation.

A careful analysis of the applicable law demonstrates that the EEOC had overstepped its authority when it created the guidelines prohibiting English-only rules. Neither Congress nor the Supreme Court has ever declared that language should be protected under Title VII. Furthermore, the legislative history of Title VII and the Court’s interpretation of the definition of “national origin” indicate that Congress did not intend to restrict employers’ right to implement an English-only policy at work. Therefore, it is essential for the Supreme Court to step in and resolve this critical issue of the legality of English-only rules in the workplace. Meanwhile, the lower courts and legal scholars must be careful in interpreting Title VII and relying on the EEOC guidelines because there are compelling reasons why English-only rules must be protected in the workplace.

III. MYTHS OF LANGUAGE PROTECTION: “FUNDAMENTAL RIGHT” AND “DISPARATE IMPACT”

Many legal scholars and employment law practitioners believe that an
English-only rule violates Title VII. Some even argue that language should be protected as a fundamental right. The EEOC guidelines construing English-only rules as a violation of Title VII make it especially difficult for medium-size companies—who cannot afford litigation—to defend their right to impose such rules. Many courts, however, explicitly stated their disagreement with the EEOC guidelines and held that an English-only rule does not violate Title VII. Nevertheless, the circuit split on the issue makes it especially important for the Supreme Court to grant certiorari on the question of whether employers can impose an English-only rule.

A. Unauthorized Protection of Language under Title VII

1. Most Courts Correctly Refused to Protect Foreign Languages at Work

Although there is now a circuit split on the issue of whether Title VII protects foreign languages in the workplace, a majority of courts have correctly decided that Title VII does not afford this protection. The Fifth Circuit was the first to recognize, in Garcia v. Gloor, that an English-only rule did not discriminate on the basis of national origin. The employer in Gloor had a policy prohibiting employees from speaking Spanish at work, unless they were assisting Spanish-speaking customers. The court upheld the validity of the rule, noting that an English-only rule did not implicate Title VII.

In Long v. First Union Corp., the Fourth Circuit similarly held that an English-only policy did not violate Title VII. The court noted that it did
not “find any national origin based animus in the manner of enforcement of the policy.”
In the most famous English-only case, Garcia v. Spun Steak Co., the Ninth Circuit agreed with the Fifth Circuit that an English-only rule did not violate title VII. In what one scholar described as a “carefully crafted opinion,” the court noted:

Here, as is its prerogative, the employer has defined the privilege narrowly. When the privilege is defined at its narrowest (as merely the ability to speak on the job), we cannot conclude that those employees fluent in both English and Spanish are adversely impacted by the policy. Because they are able to speak English, bilingual employees can engage in conversation on the job. It is axiomatic that “the language a person who is multi-lingual elects to speak at a particular time is . . . a matter of choice.” The bilingual employee can readily comply with the English-only rule and still enjoy the privilege of speaking on the job. “There is no disparate impact” with respect to a privilege of employment “if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference.”

The Ninth Circuit, therefore, made it clear in this ruling its reluctance to extend the protection of Title VII to foreign languages. After conducting an extensive review of the legislative history of Title VII, the court concluded that there was nothing to suggest that an English-only rule was discriminatory.

Even the Tenth Circuit—the only federal appellate court that has recently allowed for the possibility that an English-only rule may violate Title VII rights—has not gone as far as to explicitly say so. Rather, the court remanded the case, noting that there was a genuine issue of material fact as to whether Title VII was implicated. Lower courts have similarly “allowed employers to fire and discipline employees merely for speaking [a foreign language] in the workplace.”

Importantly, some courts have acknowledged that there may be

39. Id. at *2 n. 7
40. 998 F.2d 1480, 1490 (9th Cir. 1993)
41. Leonard, supra note 8, at 61.
42. Garcia v. Spun Steak Co., 998 F.2d 1480, 1487 (9th Cir. 1993) (quoting Garcia v. Gloor, 618 F.2d 264, 270 (5th Cir. 1980)) (citations omitted).
43. Id. at 1490.
44. Id.
45. See Maldonado v. Atlus, 433 F.3d 1294, 1316 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006) (allowing for the possibility of a Title VII claim, but not stating definitively that Title VII protects the right to speak foreign languages at work).
46. Id. at 1308.
circumstances in which an English-only rule has been crafted or applied such that it discriminates against certain employees on the basis of race or national origin, thereby violating Title VII. In these cases, however, language would be used to discriminate against a specific protected class. For example, a rule prohibiting African-American employees from “sounding Black” at work would discriminate on the basis of race. Likewise, a rule allowing Chinese and German employees to speak their languages at work while prohibiting Hispanic employees to speak Spanish would clearly target Hispanics on the basis of their national origin. Finally, a rule allowing U.S.-born employees to speak foreign languages at work but restricting the ability of foreign-born employees to do the same would most likely be discriminatory pursuant to Title VII.

Nevertheless, absent these unusual and clearly discriminatory circumstances, it is important to recognize that an English-only rule does not aim to discriminate on the basis of race or national origin. In most cases, the rule applies even-handedly to speakers of all foreign languages, thus eliminating any potential risk that a certain group is targeted on the basis of their protected status.

2. Language Does not Implicate “National Origin”

Title VII prohibits employers from discriminating against an
individual “with respect to his compensation, terms, conditions, or
privileges of employment, because of such individual’s race, color,
religion, sex, or national origin.”53 Bilingual employees usually invoke this
provision to argue that a restriction on their ability to speak foreign
languages at work amounts to national origin discrimination.54

But there are at least four reasons why this argument fails. First, the
plain meaning of the Civil Rights Act does not provide for language
protection under Title VII.55 Second, legislative history indicates that
Congress intended the term “national origin” to be narrowly defined.56
Third, recent Supreme Court cases on the subject also point towards a
narrow definition of “national origin.”57 Finally, language skills—unlike
individual’s skin color or place of birth—can be obtained, improved, and
changed, which demonstrates that this is not an “immutable” characteristic
aimed to be protected by Title VII.58

Importantly, neither Title VII nor its legislative history provides a
basis for arguing that national origin includes the right to speak a foreign
language; the Civil Rights Act is silent on the issue.59 Still, some
employees have managed to persuade the courts that the term “national
origin” applies to one’s ability to speak a foreign language.60 Nevertheless,
there remains a divide between authorities in regard to whether
“classification or discrimination on the basis of language equates with
national origin discrimination.”61 The majority of federal appellate courts,

---

54. See, e.g., Maldonado v. Altus, 433 F.3d 1294, 1316 (10th Cir. 2006), overruled by
Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006); Long v. First
Union Corp., 86 F.3d 1151, 1996 WL 281954 (4th Cir. 1996) (unpublished table opinion);
Garcia v. Spun Steak Co., 998 F.2d 1480, 1490 (9th Cir. 1993); Garcia v. Gloor, 618 F.2d
264, 272 (5th Cir. 1980).
56. See 110 CONG. REC. 2549, 2550 (1964) (statement of Representative Roosevelt)
(emphasizing the limited definition of national origin as “the country from which you or
your forebears came from”).
58. Leonard, supra note 8, at 57.
59. See id. at 101 (“Language is not mentioned in the text of Title VII. . . . One can
fashion arguments in the abstract that there is a relationship between an immigrant’s country
of origin and his primary language. There is scant evidence, however, that the enacting
Congress entertained them.”).
2000) (levying punitive damages against employer who imposed an English-only rule with
“reckless disregard” for federal law); EEOC v. Synchro-Start Prods., Inc., 29 F. Supp. 2d
911, 914-15 (N.D. Ill. 1999) (holding that English-only rule amounted to national origin
discrimination).
61. Rosanna McCalips, Comment, What Recent Court Cases Indicate About English-
Only Rules in the Workplace: A Critical Look at the Need for a Supreme Court Ruling on
Servs., Inc., 113 F. Supp. 2d 1066, 1070 (N.D. Tex. 2000) (holding that language
however, are unwilling to treat English-only rules as violations of Title VII. 62

Employers’ liability in these cases rests on the definition of “national origin,” but “Congress has offered remarkably little aid in defining” this term. 63 Therefore, it is necessary to look beyond the plain meaning of the terms of Title VII in order to demonstrate that the statute does not protect language.

The legislative history of the Civil Rights Act suggests that Congress did not intend to restrict employers’ ability to regulate languages in the workplace, and, in fact, did not aim to protect languages at all. 64 The term “national origin” in the Title VII context actually appears to be very limited in scope. 65 As one scholar describes it:

Little was said during the Civil Rights Act’s journey through Congress to clarify the meaning of “national origin.” Direct discussion of the meaning of “national origin” is confined to two statements made during floor debate. Representative Roosevelt offered a restrictive opinion that national origin means “the country from which you or your forebears came from.” He apparently wanted to make clear that labor unions could utilize a language BFOQ for its own hires when the union was dealing with immigrant workers who spoke the language of their homelands. Representative Dent added that “[n]ational origin, of course, has nothing to do with color, religion, or
the race of an individual."

Therefore, it becomes clear that when Congress drafted Title VII of the Civil Rights Act, it did not seek to protect foreign languages at work. The issue of the right to speak foreign languages was never a part of the legislative debate concerning Title VII.

The Supreme Court had occasion to review the national origin discrimination issues and to define the term “national origin” in Espinoza v. Farah Manufacturing Co. The Court explained that “[t]he term ‘national origin’ on its face refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.” Notably, the Court did not extend the definition of “national origin” to include a right or an ability to speak one’s native tongue. Therefore, “[c]onsistent with the Espinoza holding, language discrimination may escape the reach of Title VII.”

This argument is especially compelling when one considers another relevant Supreme Court case, Hernandez v. New York. In Hernandez the Court noted: “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond.” The Court, nevertheless, proceeded to hold the prosecutor’s decision to exclude Spanish-speaking jurors from the jury panel was valid. The holdings in Hernandez and Espinoza both seem to suggest that the Supreme Court does not consider language an immutable characteristic related to national origin.

67. Spun Steak Co., 998 F.2d at 1490.
68. See 110 Cong. Rec. 2549, 2550 (1964).
70. Id. at 88 (emphasis added).
71. See id. at 88.
73. 500 U.S. 352, 370 (1991) (holding that the prosecutor was justified in excluding Spanish-speaking jurors from the jury panel due to their potential inability to adhere to the official version of the translation). See also Knapp, supra note 58, at 750 (“The Supreme Court’s recent rulings on this subject, coupled with the brief legislative history, compels one to conclude that the term ‘national origin’ refers to one’s actual or ancestral place of birth. Consistent with this interpretation, discrimination on the basis of language may escape the reach of the law . . . .”).
74. 500 U.S. at 370.
75. Id.
In fact, mutability of language is the most important evidence that Title VII does not protect language. Title VII was built “on a civil rights model that promotes even-handed treatment of employees.” Some legal scholars agree that Title VII was designed to protect immutable individual characteristics—those that are usually obtained at birth and cannot be changed, or at least cannot be changed easily. These characteristics include “race, color, religion, sex, or national origin.” Linking language ability to “national origin” under Title VII goes against the intent of the drafters, which was to protect those who could not change their protected statuses or characteristics.

Unlike an individual’s skin color, religion, or gender, which are typically constant throughout a person’s life, the language abilities are not fixed at birth. Rather, people can work to improve their language abilities, and—when poor language skills prevent them from obtaining employment—they are capable of educating themselves. As mentioned earlier, English-speaking skills are usually essential to an individual’s ability to obtain employment. Therefore, the issue here is not whether we must protect those who are unable to learn English. Rather, the issue is whether we should accommodate those who can speak English but choose to speak another language at work.

As the Ninth Circuit correctly noted, not following an English-only rule “is . . . a matter of choice.” Importantly, Title VII does not protect individuals who are capable of choosing one characteristic over another. Courts have held that language is one characteristic that, unlike race or (stating that the Hernandez Court did not classify language as an immutable characteristic).

78. See Knapp, supra note 65, at 780 (“The concept of immutability lies at the heart of the favored treatment of race under the law. This view presupposes that individuals are responsible for their own circumstances.”).
79. Leonard, supra note 8, at 57.
80. E.g., Knapp, supra note 65, at 780; Leonard, supra note 8, at 57.
82. See Leonard, supra note 8, at 57 (noting that a right to speak a preferred language exceeds Title VII’s mandate).
83. One can argue that immigrants from the less wealthy countries may have fewer resources available to them that would help them learn English. However, a recent study, which addressed this issue, concluded that there is no significant difference between the level of English proficiency between immigrants from richer and poorer countries. Hoyt Bleakely & Aimee Chin, Language Skills and Earnings: Evidence from Childhood Immigrants, 86 JOURNAL OF ECONOMICS & STATISTICS 481, 489 (2004).
84. Leonard, supra note 8, at 65 (“[I]t is generally accepted that the ability to speak English is a necessary job requirement for the majority of occupations in the United States.”).
86. See Abel, supra note 62, at 360 (citing Jurado v. Eleven-Fifty Corp., 813 F.2d 1406 (9th Cir. 1987)).
gender, “is not a status fixed at birth.”87 As one scholar explains, “[u]nlike African Americans who are incapable of changing their skin color, ethnic minorities technically possess the ability to give up their mother tongue.”88 Therefore, “[t]o confer a right to speak in a preferred language goes beyond Title VII’s mandate of equal treatment and amounts to the creation of positive rights that are unconnected with equality in the workplace.”89 It appears, the antidiscrimination model of Title VII was not designed to answer the question of whether employees should be allowed to communicate in a language of their choice.90

3. The EEOC Overstepped Its Authority by Issuing Guidelines

Shortly after the Fifth Circuit decided Garcia v. Gloor91 in 1980 the Equal Employment Opportunity Commission issued guidelines interpreting Title VII’s definition of “national origin” by explicitly providing that English-only rules violate Title VII of the Civil Rights Act.92 Some lower courts immediately started relying on the guidelines as if they were a binding authority.93

In 2006, the Tenth Circuit also relied on the EEOC guidelines when the court allowed the plaintiffs in Maldonado v. City of Altus to pursue their claim of national origin discrimination.94 As a result, there is now a

88. Knapp, supra note 65, at 781. Knapp also notes, “[B]ecause of this technicality, discrimination against immigrants evokes less sympathy; a common view is that the responsibility lies with ethnic minorities themselves who choose to retain their ties with their own culture.” Id. at 781.
89. Leonard, supra note 8, at 57.
90. Id.; see also Rodriguez, supra note 9, at 135 (“[E]xisting case law treats language largely as a matter of antidiscrimination law. Such a narrow view proves insufficient as a way of understanding how language organizes people's lives and how linguistic minorities should be treated.”).
91. 618 F.2d 264, 272 (5th Cir. 1980)
92. See 29 C.F.R. §1606.7(c) (2004) (stating that an English-only rule, which at all times prohibits employees from speaking their primary language discriminates on the basis of national origin, and that an English-only rule should only be applied at certain times when the rule is a necessity).
93. See, e.g., Maldonado v. Altus, 433 F.3d 1294, 1306 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006) (holding that the guidelines are sufficient support for finding that English-only rules are discriminatory); EEOC v. Premier Operator Servs., 113 F. Supp. 2d 1066, 1074 (N.D. Tex. 2000) (noting that the guidelines are entitled to greater deference because Congress was aware of them and chose not to alter them as an interpretation of Title VII); EEOC v. Synchro-Start Prods., Inc., 29 F. Supp. 2d 911, 912 (N.D. Ill. 1999) (describing the guidelines as an evidentiary tie-breaker when the only evidence put forth by the parties is the existence of an English-only rule).
94. See Maldonado, 433 F.3d at 1316 (reversing a grant of summary judgment for employer who imposed an English-only rule).
circuit split over how much courts should defer to the EEOC guidelines regarding an English-only rule. The EEOC has also used its own interpretation of Title VII as a justification for suing employers who violated the guidelines. Faced with the burdensome cost of potential litigation and growing uncertainty over the legality of their actions, employers often choose to settle these claims and to discontinue their English-only policies. It is simply more cost-efficient for these employers to settle than litigate their right to implement English-only policies in the workplace.

The first problem with the EEOC guidelines is that they are wrong. The second problem is that some courts give too much deference to the EEOC’s guidelines. As a result, the EEOC’s statement that an English-only policy

95. See McCalips, supra note 61, at 417 (describing how courts have disagreed regarding the deference, which should be given to the EEOC guidelines). Some scholars argue that the circuit split existed before the Tenth Circuit’s decision in Maldonado. According to some, the Ninth Circuit had previously issued a decision that arguably later produced an inter-circuit conflict on the issue of English-only rules. See Gutierrez v. De Debovay, 838 F.2d 1031, 1031 (9th Cir. 1988), vacated as moot, 490 U.S. 1016 (1989) (deferring to the EEOC guidelines and ruling that an English-only rule was discriminatory). Because the Supreme Court had vacated the decision in Gutierrez, the Ninth Circuit considered the issue de novo and upheld the English-only policy in Spun Steak four years later. See Garcia v. Spun Steak, 998 F.2d 1480, 1487 (9th Cir. 1993) (“The [Gutierrez] case has no precedential authority, however, because it was vacated as moot by the Supreme Court. We are in no way bound by its reasoning.”).


97. See Housekeepers Told to Speak Only English Get Settlement, N.Y. TIMES, Apr. 22, 2001, at A1 (employer paid $2.4 million to settle the employees’ claims that they were harassed by their employer when they spoke Spanish on the job in order “to avoid spending time and money on litigation”); Employer’s English-Only Policy Brings a Settlement of $192,500, N.Y. TIMES, Sept. 2, 2000, at A1 (citing employer’s motive for settling employees’ claims that they were disciplined for speaking Spanish as the avoidance of “costly litigation”).

98. See supra note 97.

99. See, e.g., Garcia v. Spun Steak, 998 F.2d 1480, 1489 (9th Cir. 1993) (citing Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94, (1973)) (stating that the court would not reject the EEOC guidelines lightly but that it would not defer to administrative guidelines where there is a compelling indication that they are wrong).

100. See, e.g., Maldonado v. Altus, 433 F.3d 1294, 1306 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006) (“[I]t is enough that the EEOC, based on its expertise and experience, has consistently concluded that an English-only policy, at least when no business need for the policy is shown, is likely in itself to ‘create an atmosphere of inferiority, isolation, and intimidation’ that constitutes a ‘discriminatory working environment.’”); E.E.O.C. v. Premier Operator Servs., 113 F. Supp.
only rule constitutes discrimination under Title VII is often unquestioned. Courts and legal scholars put too much trust in the EEOC’s interpretation of Title VII, disregarding the reasoning of the majority of courts, careful legal analyses by scholars and practitioners, and legislative history of the Act. Some scholars even go as far as to question the impartiality and motives of the judges who have upheld English-only rules, arguing that monolingual judges are biased against bilingual plaintiffs and, therefore, cannot fairly decide these cases.

It is clear, however, that the majority of federal appellate courts have correctly decided to uphold an English-only rule at work. Congress never said that Title VII should protect languages at work. Moreover, even after the EEOC issued its guidelines, Congress still took no action to amend Title VII to include language protection. It is, of course, possible that Congress took no action because it agreed with the guidelines.

2d 1066, 1074 (N.D. Tex. 2000) (citing United States v. Rutherford, 442 U.S. 544, 554 (1979) (stating that the guidelines are entitled to greater deference because Congress was aware of them and intentionally left them unchanged); E.E.O.C. v. Synchro-Start Prods., Inc., 29 F. Supp. 2d 911, 912 (N.D. Ill. 1999) (stating, on motion to dismiss, that the guidelines shift the burden to the employer to demonstrate a business purpose in its English-only rule). See also Beth H. Storper, Comment, English-Only Policies in the Workplace as Title VII National Origin Discrimination: Garcia v. Spun Steak, 8 GEO. IMMIGR. L.J. 603, 604 (arguing that courts should strive to follow EEOC guidelines in the absence of compelling precedent to the contrary).

101. See supra note 100.

102. BILLY PIATT, LANGUAGE ON THE JOB 35,124 (1993) (discussing “the confusion of monolingual judges and legislators over the very nature of language” and asserting that courts “should be more willing to look behind the masks”); Cameron, supra note 9, at 277:

Most Anglo judges are monolingual or speak non-English languages as second languages. Thus, they have little experience with, much less sympathy for, poor treatment based on language capability. So insisting that somebody who has the ability to speak English now be required to do so does not seem nearly so serious to them as situations in which employees are terminated because of the color of their skin.

See also Perea, supra note 15, at 450 (“Unfortunately, many justifications for language restrictions seem superficially plausible and acceptable to judges who lack experience with, or knowledge about, language differences.”).


105. Locke, supra note 8, at 66-67.
However, it is more likely that Congress decided not to act because the majority of courts correctly refused to rely on the EEOC guidelines, thus interpreting Title VII in accordance with true congressional intent. For example, the leading English-only case, *Garcia v. Spun Steak*, openly rejected the guidelines as “wrong.” Another important indication that Congress disagreed with the guidelines is “the fact that in situations where Congress has wanted to eliminate the disparity created by language discrimination, it has done so explicitly under the Voting Rights Act and the Bilingual Education Act.” Congressional inaction, therefore, can hardly be read as an affirmation of the EEOC guidelines.

Furthermore, some courts and scholars failed to recognize that they are not required to rely on the EEOC guidelines. Although the Supreme Court noted in *Chevron* that administrative guidelines should have considerable weight, the Court has also “consistently held that there are limits on an agency’s power to issue regulations.” The Court noted that this power is extremely limited when an agency tries to modify or change the meaning of the statute.

Most importantly, in *Espinoza*, the Supreme Court held that when the EEOC’s interpretation of the definition of “national origin” is clearly wrong, the courts are not bound by it. In *Espinoza*, the EEOC attempted to equate national origin with citizenship. The Court noted that “application of the guideline would be inconsistent with an obvious...

106. See *Spun Steak*, 998 F.2d at 1489 (rejecting the EEOC guidelines); Long v. First Union Corp. of Virginia, 894 F. Supp. 933 (E.D.Va. 1995), *aff’d*, 86 F.3d 1151, 1996 WL 281954 (4th Cir. 1996) (unpublished table opinion) (finding that the language of Title VII does not support the EEOC guidelines); Kania v. Archdiocese of Phil., 14 F. Supp. 2d 730, 735 (E.D.Pa. 1998) (declining to give deference to the EEOC guidelines and holding that an English-only policy did not violate Title VII).

107. *Spun Steak*, 998 F.2d at 1489.


110. See *Knapp*, *supra* note 65, at 770 (detailing various instances where courts have had to make decisions regarding the deference owed to the EEOC guidelines).

111. *Chevron U.S.A, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (stating that “considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer”); *see also* *Knapp*, *supra* note 65, at 770 (noting that deference may be given to the EEOC).


113. *Id.* at 1444, n. 25 (citing Campbell v. Galeno Chem. Co., 281 U.S. 599, 610 (1930)).


115. *Id.*
congressional intent not to reach the employment practice in question. Courts need not defer to an administrative construction of a statute where there are ‘compelling indications that it is wrong.’116 The Ninth Circuit, therefore, was correct in it’s rejection of the EEOC guidelines.117

B. Improper Constitutional Basis for Language Protection

Although the majority of cases challenge an English-only rule as a violation of Title VII, occasionally plaintiffs and legal scholars also argue that the rule also violates the employee’s constitutional rights.118 Some suggest, for example, that the right to speak one’s native tongue at work is protected by the First Amendment.119 Others have gone so far as to claim that language is a fundamental right.120 Maldonado v. City of Altus is one of the most recent cases to discuss the application of an English-only rule and address whether the rule implicates First Amendment rights.121 Importantly, Maldonado is the only case at the federal appellate level, which allowed for the possibility that an English-only rule may violate Title VII.122 But even this court did not go as far as to say that an English-only rule also implicated First Amendment rights.123 In this case, the plaintiffs argued that a prohibition on speaking foreign languages at work violated their right to speak in a language of

116. Id. (internal citations and quotations omitted):

We do not reject the English-only rule Guideline lightly. We recognize that “as an administrative interpretation of the Act by the enforcing agency, these Guidelines . . . constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” But we are not bound by the Guidelines. We will not defer to “an administrative construction of a statute where there are ‘compelling indications that it is wrong.’”


120. Compare Perea, supra note 9, at 274 (arguing that “[p]rimary language should be protected as an aspect of ‘national origin,’” and that there is a fundamental right to language) with Resendez, supra note 77, at 348 (pointing out that that language is not a fundamental right).

121. 433 F.3d 1294, 1309 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006).

122. See id. at 1310 (suggesting that plaintiffs’ challenge to the English-only policy likely fails on at least two grounds).

123. Id.
their choice, equating speaking Spanish with “wearing a tee shirt on which is written ‘Proud to Be Hispanic.’” The Tenth Circuit disagreed, noting that “everyday use of Spanish was not intended, as far as the record shows, to communicate ethnic pride or opposition to discrimination” and declining to find that an English-only rule violated the First Amendment.

The right to language is not equivalent to the right to speech for First Amendment purposes. As the Tenth Circuit correctly noted, merely restricting one’s ability to speak a foreign language does not invoke constitutional protection. There must be something more involved. As long as bilingual speakers can express the same message in English, they cannot claim that their First Amendment rights are affected.

The ability to speak one’s native language at work is not a fundamental right. The Constitution of the United States contains no reference to language—national, official, foreign, or otherwise. Likewise, the Supreme Court has never held or even implied that employees have a fundamental right to language at work. Even the famous case of Meyer v. Nebraska, on which scholars sometimes erroneously rely to argue that speaking a foreign language is a fundamental right, does not go so far as to suggest the right to language at work.

124. Id. at 1311.
125. Id. at 1312 (emphasis in the original). The court went on to note that the case would be a different one if plaintiffs had used or intended to use Spanish to communicate a message regarding a matter of public concern. Id.
126. Id.
127. Id.
128. Id. at 1310-11.
130. 262 U.S. 390, 403 (1928) (“No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute [requiring all classes in Nebraska primary schools to be taught in English] as applied is arbitrary and without reasonable relation to any end within the competency of the state.”). See Abel, supra note 62, at 354 (stating that the Meyer Court “fell short of declaring a constitutionally granted language right”). Although some legal scholars have interpreted the case as conferring language rights on bilingual workers, the Supreme Court limited its holding to a finding that the Nebraska law violated the parents’ right to decide how their children are educated and the teacher’s right to pursue his profession. See Meyer, 262 U.S. at 400 (“Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.”). Nevertheless, scholars continue to incorrectly assert that Meyer recognized a fundamental right to language. See, e.g., Rodriguez, supra note 5, at 196 (interpreting the Meyer decision as one recognizing a
In *Meyer v. Nebraska*, the Supreme Court struck down the law that made it a crime to teach any subject in a foreign language.\(^{131}\) Importantly, the Supreme Court did not base this decision on grounds that the policy violated the teacher’s right to speak foreign language at work.\(^{132}\) Moreover, the Supreme Court never declared in *Meyer* that there is a fundamental right to language.\(^{133}\)

Furthermore, although the Court implicitly acknowledged that language is an important part of immigrants’ culture, in *Meyer* and its progeny, the Court chose not to protect language in the workplace. There are, after all, many compelling policy reasons for allowing employers to control the operations of the workplace.\(^{134}\)

**IV. POLICY REASONS FOR ALLOWING ENGLISH-ONLY RULES AT WORK**

Even those courts that found that an English-only rule violates Title VII acknowledged a myriad of policy reasons that would justify the imposition of the rule. For example, courts have allowed English-only rules at work when they were justified by business necessity.\(^{135}\) Additionally, courts usually respect employers’ arguments founded upon concerns for workers’ safety.\(^{136}\) Finally, in instances where foreign languages disrupted workplace harmony, courts also have allowed employers to impose the rule.\(^{137}\) As these numerous exceptions demonstrate, justifications for imposing the rule are so important and so common that a prohibition of an English-only rule at work goes against

\(^{131}\) *Meyer*, 262 U.S. at 397, 403.

\(^{132}\) Fife, *supra* note 118, at 333 (explaining that the *Meyer* court’s invalidation of the law was not based upon the plaintiff-teacher’s rights); Abel, *supra* note 62, at 354 (“Although the *Meyer* court declared the law unconstitutional, it fell short of declaring a constitutionally granted language right. Similarly, in its second case involving language, *Yu Cong Eng v. Trinidad*, the Court again refused to classify language as a fundamental right . . .”).

\(^{133}\) See generally Abel, *supra* note 62, at 354; Resendez, *supra* note 77, at 351; Valente, *supra* note 129, at 210 (discussing the implications of *Meyer v. Nebraska* and subsequent Supreme Court cases on language rights).

\(^{134}\) See infra Part IV.A.

\(^{135}\) See Long v. First Union Corp., 894 F. Supp. 933, 942 (E.D.Va. 1995) *aff’d*, 86 F.3d 1151, 1996 WL 281954 (4th Cir. 1996) (unpublished table opinion) (“[T]he defendant has asserted that this temporary rule was legitimate and necessary for business because of the complaints from fellow co-workers and the need to alleviate the tension in the workplace. . . . The policy was implemented to alleviate this tension.”).


public policy.

A. Business Necessity, Safety, and Workplace Harmony

Even if the Supreme Court eventually holds that a broad application of an English-only rule is contrary to the goals of Title VII, significant policy reasons would continue to demand the imposition of an English-only rule in a variety of circumstances. Courts have overwhelmingly upheld English-only rules in situations where they were justified by safety concerns, business necessity, or a need to promote workplace harmony. An English-only rule is especially important in situations where these categories overlap, such as those where the use of a non-English language not only threatens the objective of a harmonious work environment but also becomes a safety concern.

The EEOC acknowledges that there are circumstances where an English-only rule must be in place. When the EEOC attempted to define all of the circumstances under which the rule may be justified, the Commission came up with such an extensive list that the exceptions threatened to swallow the rule. For example, the EEOC suggests that the following situations may justify invoking an English-only policy: the performance of surgery, use of dangerous equipment, work in a laboratory, work on construction site, or jobs that require communicating with English-speaking customers. It appears, therefore, that almost any job description may justify an English-only rule under the Commission’s guidelines. Thus, the EEOC’s policy prohibiting an English-only rule is self-defeating and unnecessary.

138. See, e.g., Cosme, 284 F. Supp. 2d at 240 (finding that employer’s legitimate business reason of promoting workplace harmony complies with EEOC regulations); Kania v. Archdiocese of Phil., 14 F. Supp. 2d 730, 736 (E.D. Pa.1998) (holding that an employer who adopted an English-only policy to improve interpersonal relations in the workplace had a legitimate business justification); Long, 894 F. Supp. at 942 (concluding that the policy was enacted for legitimate business reason of alleviating tension in workplace).

139. See infra Part IV.A.2.

140. 29 C.F.R. § 1606.7(c) (2004) (“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.”).


142. See generally id.; see also Knapp, supra note 65, at 785 (discussing the EEOC manual in detail).
1. Business Necessity

Employers are permitted to implement an English-only policy if it is justified by business necessity.\textsuperscript{143} Even the EEOC’s prohibition of an English-only rule includes a generous business necessity exception.\textsuperscript{144} Because an employer has the right to control his business and is most familiar with the needs of the business and the customers, this exception is an essential tool for many employers.\textsuperscript{145} Courts, therefore, accepted the business necessity argument in a variety of cases.\textsuperscript{146}

2. Workplace Safety

Workplace safety is one of the reasons why employers invoke an English-only rule.\textsuperscript{147} Workplace safety is a subcategory of business necessity, and the EEOC treats it as a “business necessity” justification for

\textsuperscript{143} Business necessity should not be confused with the Bona Fide Occupational Qualification (“BFOQ”) exception of Title VII, which provides that employers can “hire and employ employees . . . on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e)(1) (2001). The BFOQ exception may be relevant in circumstances where an employer chooses an applicant with superb English skills over an employee who speaks poor English, justifying this by the needs of the business. See id. Business necessity, on the other hand, is a defense an employer can assert against charges of discrimination. To be a “business necessity,” a practice must bear “a manifest relationship to the employment in question.” Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971).

\textsuperscript{144} 29 C.F.R. § 1606.7(c) (2004) (“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.”). See also EEOC Compliance Manual, supra note 141.

\textsuperscript{145} See Locke, supra note 8, at 71 (noting that any future legislation on the issue should “provide that because an employer has the right to control his business where an employee deals with the public, business necessity will be presumed while employees are executing their public duties.”).

\textsuperscript{146} See EEOC v. Sephora USA, 419 F. Supp. 2d 408, 415 (S.D.N.Y. 2005) (holding that an English-only rule was justified by a need to stem hostility between monolingual and bilingual employees and by a need of supervisors to understand what is being said in the workplace); Roman v. Cornell Univ., 53 F. Supp. 2d. 223, 237 (N.D.N.Y. 1999) (finding that the rule was justified by necessity to reduce intra-office tensions); Kania v. Archdiocese of Phila., 14 F. Supp. 2d 730, 736 (E.D. Pa. 1998) (declaring that rule was justified by employer’s desire to improve interpersonal relations); Tran v. Standard Motor Prods., Inc., 10 F. Supp. 2d 1199, 1210 (D. Kan. 1998) (concluding that employer justifiably imposed the rule to address safety concerns and to prevent the perception of secretive communication); Prado v. L. Luria & Son, Inc., 975 F. Supp. 1349, 1354 (S.D. Fla. 1997) (holding that the need to understand the subordinates and the need to address customers in English constituted business necessity); Long v. First Union Corp., 894 F. Supp. 933, 942 (E.D. Va. 1995), aff’d, 86 F.3d 1151, 1996 WL 281954 (4th Cir. 1996) (holding that rule was justified by employer’s desire to improve working environment).

\textsuperscript{147} S. Craig Moore, English Only Rules in the Workplace, 15 LABOR LAWYER 295, 299 (1999).
imposing the rule. Nevertheless, safety concerns are so important, and
they generally receive little attention in discussions on this subject, that
they deserve to be addressed separately.

Secretary of Labor Elaine L. Chao stated in 2002 that “language has
become a major barrier to worker safety.” Secretary Chao noted that the
fatality rate among foreign workers is especially troublesome, as many do
not speak English well enough to understand employers’ instructions and
safety tips. According to the study conducted by the U.S. Department of
Labor, Hispanics have the highest fatality rate among all workers.

Safety issues are a potential concern for businesses that employ
bilingual workers. There is a possible danger that workers who are used
to speaking other languages at work may forget to switch to English in
critical situations. Furthermore, if bilingual workers are able to speak
their native language, they may fail to improve their English skills, which
may result in misunderstanding crucial instructions. Finally, they may
cause monolingual employees to misinterpret these instructions or may
simply distract them with an unfamiliar language. Simply put, if you
scream “be careful” in Spanish, your co-workers may not have enough time
to figure out what you are saying.

Therefore, when employers raise safety arguments as a justification
for English-only rules, these arguments should not be ignored. As one
manager explains, English-only rules based upon safety concerns may be
preventive, not reactionary, measures. Companies should not have to

148. See generally EEOC Compliance Manual, supra note 141 (explaining that “[a]n
English-only rule is justified by ‘business necessity’ if it is needed for an employer to
operate safely”).

149. Secretary of Labor Elaine L. Chao, Media Briefing On Department-Wide Initiatives
to Improve Hispanic Worker Safety and Prosperity, Feb. 21, 2002,
http://www.dol.gov/_sec/media/speeches/20020221_Hispanic_Worker_Safety.htm.

150. See id.

151. See id.; see also SCOTT RICHARDSON ET AL., HISPANIC WORKERS IN THE UNITED
STATES: AN ANALYSIS OF EMPLOYMENT DISTRIBUTIONS, FATAL OCCUPATIONAL INJURIES,
AND NON-FATAL OCCUPATIONAL INJURIES AND ILLNESSES, available at

1998) (upholding an English-only policy enacted in part to prevent injuries through effective
communication on production floor).

153. Id.

154. Chao, supra note 149. See also Abel, supra note 62, at 352-53.

155. Garcia v. Spun Steak Co., 998 F.2d 1480, 1483 (9th Cir. 1993) (recounting
employer’s justification for adopting policy).

156. Telephone Interview with a General Manager of a large company offering
“Safety is a major issue at our company. We conduct monthly training on the safety issues.
All of our training, safety instructions, and documents are in English. Employees need to
understand how important it is for them to speak English if they work for us.” Id.
wait until an accident happens to be able to justify the rule.

3. Workplace Harmony

Workplace harmony is closely linked to business necessity and safety. In some instances, foreign languages may antagonize employees and escalate tensions in the workplace.\textsuperscript{157} In some circumstances, foreign languages may disrupt business operations to a point that an English-only rule becomes a business necessity.\textsuperscript{158} In most instances, however, issues of workplace harmony are considered because foreign languages result in a myriad of conflicts and misunderstandings.\textsuperscript{159}

Employees who speak another language in the presence of their monolingual co-workers are often considered rude.\textsuperscript{160} In fact, employers note that rudeness is a very common complaint.\textsuperscript{161} One bilingual worker

\begin{flushright}
\begin{tabular}{l}
\textsuperscript{157} See Cameron, supra note 9, at 292 (discussing the assumption made by courts that employees who speak languages other than English at work create “inefficiency and chaos” at the workplace).
\textsuperscript{158} See Roman v. Cornell Univ., 53 F. Supp. 2d. 223, 237 (N.D.N.Y. 1999) (stating that as long as there are legitimate business justifications for an English-only policy, such a policy is legal); Kania v. Archdiocese of Phila., 14 F. Supp. 2d 730, 736 (E.D. Pa. 1998) (saying that English-only rules can be permitted if they are proven non-discriminatory, especially in the presence of a valid business justification); Tran v. Standard Motor Pros., Inc., 10 F. Supp. 2d 1199, 1210 (D. Kan. 1998) (reiterating the validity of English-only rules when there is a legitimate business reason for the rule); Prado v. L. Luria & Son, Inc., 975 F. Supp. 1349, 1354 (S.D. Fla. 1997) (holding that as long as there are legitimate reasons for an English-only rule at offices, the rule will be upheld).
\textsuperscript{159} See, e.g., Roman, 53 F. Supp. 2d. 223, 227 (stating that the employer’s goal of preventing non-foreign language speakers from feeling left out of conversations was a legitimate business goal); Kania, 14 F. Supp.2d 730, 736 (stating that the employer’s goal of improving interpersonal relations among employees was a legitimate reason for its English-only Rule); Telephone Interview with a General Manager of a large company offering transportation services nation-wide, in Newark, NJ (Mar. 30, 2006) [hereinafter Interview with Manager] (on file with author):

We had five complaints from employees in the last three years about their coworkers who spoke foreign languages in front of them. The employees who couldn’t understand felt that this behavior was rude and offensive. We had to sit down with the bilingual workers and address the ethical side of the problem.

We explained to them that they are more than welcome to speak other languages during breaks, but it is just too disruptive during work hours.

\textsuperscript{160} Interview with Manager, supra note 159; Leonard, supra note 8, at 132; see also Sam Howe Verhovek, Clash of Cultures Tears Texas City, N.Y. TIMES, Sept. 30, 1997, at A14 (detailing instances of employees complaining that—when bilingual employees were casually speaking in a foreign language in a small office in the presence of several monolingual employees—the monolingual employees felt like “they were whispering to each other behind our backs”).
\textsuperscript{161} Long v. First Union Corp. of Virginia, 86 F.3d 1151, 1996 WL 281954, *1 (4th Cir. 1996) (unpublished table opinion); Leonard, supra note 8, at 132; Verhovek, supra note 160 at A14.
\end{tabular}
\end{flushright}
interviewed for this article acknowledged that she sometimes speaks her native language in front of people who do not understand it, but she emphasized that she never did this at work.\textsuperscript{162} She explained that, despite her preference for her native language, she finds people who speak foreign languages at work to be rude.\textsuperscript{163} She noted, “you never know what they are talking about, and you feel left out. People shouldn’t be allowed to do this, unless they are on a lunch break.”\textsuperscript{164}

Additionally, speaking a foreign language at work may cause hostility among different groups of employees and result in harassment of monolingual employees.\textsuperscript{165} In some instances, bilingual workers used their native language to mock, ridicule, or harass monolingual co-workers.\textsuperscript{166} For example, in \textit{Garcia v. Spun Steak Co.}, the employer imposed an English-only rule after receiving complaints that several employees “made derogatory, racist comments in Spanish about two co-workers.”\textsuperscript{167}

Therefore, as evidenced by the aforementioned reasons that justify imposing English-only rules at work, it becomes clear that employers should have greater flexibility to regulate their workplaces.\textsuperscript{168}

\textbf{B. Employees’ Rights}

Despite previously discussed reasons that shed light on the importance of an English-only rule, the rule can also introduce certain problems into the workplace. Employees often feel the rule is unfair.\textsuperscript{169} Some bilingual employees explain that they have difficulties switching from one language to another.\textsuperscript{170} There are also some employees who speak with such a heavy accent that the only way they can effectively communicate with others is in
their native tongue. Additionally, many foreign workers feel that the rule curtails their right to cultural expression. Finally, some bilingual employees argue that an English-only rule is an attempt to achieve social control over ethnic minorities.

1. Code-Switching

Some employees have complained that switching between languages is difficult, especially when they have to speak to customers in their native tongue. Furthermore, some workers were penalized when they spoke their native language simply by accident. Admittedly, some employers took disciplinary actions against workers who said only a few foreign words. As a result, an English-only rule is often viewed as imposing an unfair burden on bilingual employees who inadvertently use a few foreign words in their native tongue.

Courts and scholars have tried to address this problem of code-switching, and some have further argued that the problem is so difficult

171. See EEOC Compliance Manual, supra note 141, at 42-45 (asserting that employers are not engaging in employment discrimination when they make employment decisions based upon the fact that an employee’s accent is so heavy that they cannot be easily understood).

172. Spun Steak Co., 998 F.2d at 1487; see also infra Part IV.B.2 for further discussion.

173. See Resendez, supra note 77, at 336 (“[C]ritics charge that English-only advocates use the campaign as a means of achieving social control over minorities, thus maintaining the status quo among the ruling class.”).

174. Involuntary reversions from one language to another are often referred to as “code-switching.” Leonard, supra note 8, at 121. See also, Cameron, supra note 9, at 275-77 (criticizing the Ninth Circuit for not giving the “code-switching” theory more careful consideration); Perea, supra note 15, at 448 (explaining that a “bilingual person’s choice of language in a conversation depends on many factors, such as the identity of the participants, their relation to each other, . . . and the purpose of the communication”).


176. See Garcia v. Spun Steak Co., 998 F.2d 1480, 1487-88 (9th Cir. 1993) (adverse employment actions were taken against employees who noted their use of Spanish was not “fully volitional”; Premier Operator Servs., 113 F. Supp. 2d at 1070 (adverse employment actions were taken against employees who engaged in “automatic” use of Spanish).

177. Jurado, 813 F.2d 1406 (involving a bilingual disc jockey who was fired because he disobeyed an English-only rule by saying an occasional Spanish word or phrase on the air).

178. See Cameron supra note 5 at 1362-63 (questioning the Garcia Court’s contradictory findings that English-only rules are not discriminatory because bilingual employees can easily comply with them, but that “slipping into Spanish” can be “involuntary”); Perea, supra note 15, at 448 (claiming the Gloor court mischaracterized accidental reversion to one’s native language as a conscious “choice”).

179. See, e.g., Premier Operator Servs., 113 F. Supp. 2d at 1066-70; Leonard, supra note 8, at 122. See also Garcia v. Spun Steak Co., 998 F.2d 1480, 1488 (9th Cir. 1993):
to control that it should be protected by Title VII.\textsuperscript{180} Several bilingual employees who were interviewed for this Article acknowledged that code-switching may be a problem but noted that it is easy to control when a person makes a conscious effort during the conversation.\textsuperscript{181} They also made an important distinction between situations where an employee accidentally incorporated a foreign word into her speech mid-sentence and where she “knowingly rambled in her native language through several sentences.”\textsuperscript{182}

Perhaps one way to address the problem of code-switching would be to acknowledge that many employees who are not experienced English speakers might occasionally substitute a foreign word for a word in English by accident.\textsuperscript{183} Additionally, the courts should make it clear that these workers should not be penalized for unconscious use of foreign words.\textsuperscript{184}

However, because of the likelihood of borderline cases, discipline for occasionally speaking in a foreign language should not be as strict as it has been in the past. Demotion or termination may be too harsh when it is not at all clear that an employee intentionally violated an English-only rule. It is important to recognize that a strict English-only rule may not work for everyone, and that those who cannot easily switch languages should not be unfairly penalized.

The fact that an employee may have to catch himself or herself from occasionally slipping into Spanish does not impose a burden significant enough to amount to the denial of equal opportunity. This is not a case in which the employees have alleged that the company is enforcing the policy in such a way as to impose penalties for minor slips of the tongue. The fact that bilingual employee may, on occasion, unconsciously substitute a Spanish word in the place of an English one does not override our conclusion that the bilingual employee can easily comply with the rule.

180. See, e.g., McCalips, supra note 61, at 418 (“Based on recent psycho-linguistic studies, at least one court has found that various phenomena such as code switching and the most recently spoken language phenomenon, psycho-linguistic concepts . . . , subject members of different national origins to anxieties and discomfort that native English speakers do not experience, such that language should be equated with national origin.”).

181. Interview with bilingual employees in Durham, NC (Mar. 2, 2006) (on file with author)

182. Id.

183. See Leonard, supra note 8, at 124 (naming, as one alternative, a “system of notice, warnings and progressive discipline that diminishes the possibility of punishment for” accidental code switching).

184. See EEOC v. Premier Operator Servs., Inc., 113 F. Supp. 2d 1066, 1070 (N.D. Tex. 2000) (“Credible and persuasive evidence was presented by the expert witness, Dr. Berk-Seligson, regarding research of psycho linguists in the late 1990’s, which concludes that code switching cannot typically be ‘turned off’; and that a person cannot be forced to refrain from uttering a word of the primary language simply upon direction or request, because this switching is, or can be an unconscious act.”).
2. Cultural Expression

Critics of an English-only rule also argue that the rule stigmatizes foreign workers and courts that support an English-only rule acknowledge that language is an important part of an individual’s identity, but maintain that Title VII “does not protect the ability of workers to express their cultural heritage at the workplace.” Because bilingual individuals may resume speaking their native languages in their free time, the courts are reluctant to offer protection to linguistic cultural expression in the workplace. As one bilingual employee described her experiences, “I am not complaining about speaking English at work. After all, that’s part of my job requirement. When I come home, my husband and I speak Polish to each other, and I don’t feel that I am forgetting my native language just because I don’t speak it at work.”

3. Unfairness Arguments

Another argument raised by bilingual employees is that it is unfair to prohibit them from speaking their native languages while monolingual employees enjoy the freedom to converse in English. They point out that monolingual employees do not have to make the difficult choice of which language to speak at work, and their rights and freedoms, therefore, are not restricted. Bilingual employees also insist that an English-only rule is often too broad and is applied in unnecessary circumstances, for example during lunch breaks. Furthermore, an argument could be raised that an English-only rule makes it difficult for employees with heavy accents to converse at work.

186. See Perea, supra note 9, at 279 (criticizing Garcia v. Spun Steak Co., 998 F.2d 1480, 1487 (9th Cir. 1993) for concluding that the English-only rule “did not forbid cultural expression”).
188. See id.
190. Spun Steak Co., 998 F.2d at 1487-88.
191. Id.
192. Id. at 1487.
193. Some courts held that discrimination on the basis of accent is protected by Title VII. See Berke v. Ohio Dep't of Pub. Welfare, 628 F.2d 980, 981 (6th Cir. 1980) (stating that the district court did not err in finding that the plaintiff was denied a job “because of her accent which flowed from her national origin”); Resendez, supra note 77, at 350-51 n. 161 (citing Carino v. Univ. of Okla. Bd. of Regents, 750 F.2d 815, 819 (10th Cir. 1984)) (stating that an employee's demotion due to his “national origin and related accent” was unconstitutional).
In fact, an English-only rule may be flexible and less restrictive in some circumstances and still accomplish its goals. For example, it is unnecessary to require employees to speak English during lunch breaks. However, it may be useful to encourage them, through informal conversations and sensitivity training, to do so in the presence of their monolingual co-workers so as not to offend them.\textsuperscript{194} Cases involving employees with strong accents must be approached with special care in order to ensure that the individual does not face national origin discrimination, and that he is accommodated as best possible.\textsuperscript{195} Language and communication are important workplace concerns, and employers should strive to accommodate foreign workers by making exceptions to, or eliminating, English-only rules when they are unnecessary.\textsuperscript{196}

Furthermore, employers must be careful to give workers advance notice of the rule, especially in the instances where the English-only policy is informal or the worker may not be familiar with it because he is new at the job. A company should not hold employees responsible for non-compliance with the policy about which they do not know.

Employers must also ensure that they are not penalizing those employees who have difficulties complying with the rule. Some examples would include employees who accidentally switch from one language to another for a brief moment or who speak to customers in a foreign language upon request.

Finally, the penalties in these cases must be carefully tailored to individual circumstances. When a worker does not know a word in English and substitutes it with a Spanish word, or when she switches to Chinese so that her co-worker could understand her request, or when she speaks Ukrainian off-the-clock, she should not be penalized as heavily as the employee who willfully chooses to disobey the rule. In fact, in a well-managed, responsible, and responsive workplace, she should not be penalized at all, because a sweeping prohibition against foreign languages in these circumstances may be unfair and counterproductive.

\textsuperscript{194} See Long v. First Union Corp. of Virginia, 86 F.3d 1151, 1996 WL 281954, *1 (4th Cir. 1996) (unpublished opinion) (quoting a bank employee who complained that speaking Spanish in front of non-Spanish speaking coworkers was “very rude”); Leonard, supra note 8, at 132 (citing multiple cases where speaking a native language was found to contribute to a hostile working environment); Verhovek, supra note 160 (providing examples of the perception that use of a foreign language in the workplace is rude).


\textsuperscript{196} One bilingual employee explained: “I think English-only rule is important, and it can serve as a valuable tool at work. But employees should still be able to speak other languages during lunch breaks, and when they are off the clock.” Interview with Yelena T., in New Orleans, LA (Mar. 27, 2006) (on file with author).
IV. FROM ASSIMILATION, TO LANGUAGES, TO EMPLOYMENT

It is common practice to accommodate foreign languages in almost every sphere, ranging from foreign-speaking television, to education, to governmental operations. Nevertheless, there are important reasons that demand that language accommodation should not be present in the workplace. Foreign languages often create hostility among workers, disrupt productive work environments, and jeopardize employees’ safety. Therefore, in the employment sphere an English-only rule is not only helpful but often essential.

A. FROM ASSIMILATION TO ACCOMMODATION

1. THE MYTH OF THE MELTING POT

Every year millions of immigrants come to the United States. It used to be that the very first and often the only thing they had in common was their desire to learn English. It was believed that English was “the single greatest empowering tool that immigrants” needed to succeed. During the last century, words like “assimilation” and “melting pot” were used to describe the growing success of American culture—a culture in which people of different backgrounds and religions contributed to “consistency and flavor” of the United States.

But things changed dramatically in the last century. As many schoolchildren are learning today, the “melting pot,” is being replaced by a
“salad bowl,” and immigrants are becoming more and more reluctant to blend in and to accept American culture unconditionally.\(^{203}\) As a result, the nation’s biggest challenge today is not promoting diversity but rather “maintaining its American national identity.”\(^{204}\)

2. Immigrants’ Fear of Assimilation

No one knows why many immigrants who are part of the current surge are deviating from the previous patterns of participating in American society.\(^{205}\) Some speculate that more and more immigrants are becoming hyphenated Americans out of a fear of losing their cultural roots and identity due to assimilation.\(^{206}\) At the same time, others have suggested that

\[^{203}\text{See }\text{Susan Trausch, Predicting the Melting Pot's Future: Observers Differ on Whether Assimilation Will Continue, }\text{BOSTON GLOBE, }\text{Jun. 29, 1986, at A1; John M. Fahy, Letter to the Editor, Forum Writers Offer Their Vision of California Future, }\text{CONTRA COSTA TIMES, Jan. 2, 2000, at A24 (claiming California has a grim future because immigrant groups are refusing to assimilate to American culture); Terry Johnson, Letter to the Editor, Return to the Melting Pot: Celebrate Unity, Not Diversity, }\text{SAN JOSE MERCURY NEWS, Jan. 24, 1996, at 7B:}\]

\[^{204}\text{The old image of the “melting pot,” which I learned in school, was appropriate because it emphasized the idea of assimilation. The concept was that people of different backgrounds have come together to form a completely new nationality. We do not forsake our rich cultural backgrounds, but they are secondary to our shared identity as Americans.}\]

\[^{205}\text{No one knows why many immigrants who are part of the current surge are deviating from the previous patterns of participating in American society. Some speculate that more and more immigrants are becoming hyphenated Americans out of a fear of losing their cultural roots and identity due to assimilation. At the same time, others have suggested that}\]

\[^{206}\text{2. Immigrants’ Fear of Assimilation}\]

\[^{206}\text{See generally Susan Trausch, Predicting the Melting Pot’s Future: Observers Differ on Whether Assimilation Will Continue, }\text{BOSTON GLOBE, June 29, 1986, at A1 (describing the impact of the new anti-assimilation trend on the American society).}\]

\[^{206}\text{See Joe Rodriguez, Editorial, Melting Pot Heats up: Being American Doesn’t Mean Giving up Your Own Ethnic Culture, }\text{SAN JOSE MERCURY NEWS, Nov. 18, 2003, at 7B (discussing the struggle of many immigrants to be “loyal American[s]” while retaining their cultural roots and suggesting that immigrants who are “holding on to a foreign identity” are demonstrating another manner of “being an American”). But see Bruce Cook, A Look at What Keeps the Melting Pot Simmering, DAILY NEWS OF LOS ANGELES, Nov. 15, 1992, at L21 (arguing that immigrants who resist assimilation and refuse to put their heritage behind them may penalize themselves and their children). The term “hyphenated American” was used in 1910 by President Roosevelt and refers to Americans “who can trace their ancestry to another part of the world.”}\]

\[^{206}\text{OXFORD DICTIONARY OF ENGLISH (2d ed. 2005).}\]
the real reason behind the hesitation to assimilate is that immigrants are worried about the future of their children:

As much as Americans fear that immigrants aren’t assimilating, immigrant parents fear even more that their children are assimilating too fast. Adapting to a new culture that puts a premium on individualism, the kids become selfish and materialistic. They begin to ignore their elders and tradition, lose their language and speak English, you know, like Valley Girls. Or worse, they join American street gangs.

Yet another possible reason for resisting assimilation is the parents’ fear that their native tongue will become foreign to their children. One scholar explains: “immigrants and their families learn to speak English within three generations and then use English as their primary language. Thus the immigrant group’s linguistic culture shifts to bilinguality in response to immediate external needs. Eventually the original language fades away as assimilation into American society makes it unnecessary.”

Scholars have noted the crucial link between language and both an individual’s background and cultural identity. For example, Professor Fishman notes that language is not merely a means of communication, but rather it is “a referent for loyalties and animosities, an indicator of social statuses and personal relationships, a marker of situations and topics as well as of the societal goals and the large-scale value-laden arenas of interaction that typify every speech community.” According to Fishman, language and ethnic identity are highly interdependent, and further,


Many immigrant parents say that while they want their children to advance economically in their new country, they do not want them to become “too American.” A common concern among Haitians in South Florida is that their children will adopt the attitudes of the inner city’s underclass. Vietnamese parents in New Orleans often try to keep their children immersed in their ethnic enclave and try not to let them assimilate too fast.

208. See supra note 207 and accompanying text; see also Leonard, supra note 8, at 126 (discussing how the immigrants’ descendants lose the ability to speak their grandparents’ language).

209. Leonard, supra note 8, at 126.


211. Id. at 219.
language holds a symbolic importance for its users that distinguishes them from others.\footnote{212}{\textit{See}} \textit{Joshua A. Fishman, The Rise and Fall of the Ethnic Revival: Perspectives on Language and Ethnicity} 70 ("As such, it is language-related to a very high and natural degree, both overtly . . . and covertly the supreme symbol system quintessentially symbolizes its users and distinguishes between them and others.").

Through her research, Professor Conklin has found that for “many Americans, speech is an indicator of cultural identity second in importance only to physical appearance,” and further that “accent, language choice, verbal style, [and] choice of words . . . act as a primary vehicle for creative expression.”\footnote{213}{N. Conklin & M. Lourie, \textit{supra} note 210, at 279 (1983).} Not surprisingly, when their ability to speak a native tongue is threatened, immigrants may come to resent this imposed assimilation, and thus strive to preserve their linguistic and cultural roots.\footnote{214}{See \textit{supra} notes 205-08 and accompanying text; Carmina Brittain, On Learning English: \textit{The Importance of School Context, Immigrant Communities, and the Racial Symbolism of the English Language in Understanding the Challenge for Immigrant Adolescents}, (2005), available at \url{http://www.ccis-ucsd.org/publications/wrkg125.pdf}, at 11-12 (discussing perceptions of Mexican students who lacked “interest in learning English” because they felt it jeopardized their identities as Mexicans, because their “Mexican peers discouraged speaking English,” and because their parents created a perception English was the language of Whites).} Therefore, it may be argued that the primary issue in American policy towards language ought not to be the provision of language assistance to individuals who cannot speak English. Rather, the heart of the language-policy problem is “address[ing] the bilinguals’ desire to speak their native tongues.”\footnote{215}{Leonard, \textit{supra} not 4 at 62.}

3. Crucial Role of Language in Assimilation

Traditionally, individuals who immigrated to the United States have attempted to improve their socioeconomic status.\footnote{216}{See Leonard, \textit{supra} note 8, at 126 (discussing a theory that cultures will adopt new languages in response to external needs).} A failure to learn English in the United States has been understood to place immigrants at a significant disadvantage socially and in the workplace.\footnote{217}{See \textit{id.} (noting difficulties in socioeconomic movement by individuals who do not learn English upon immigration to the United States).}

Professor Leonard noted:

Naturally one should expect particular national origin groups to alter their linguistic practices when conditions demand it. Shifts in language patterns of immigrants to the United States are a prime example of cultural adaptation. Immigrants come to this country with an expectation that they must learn English. A decision to forgo English in favor of the language of their country
As the need for foreign workers grew at the start of the twentieth century, American industry provided English training for its employees in order to improve workplace efficiency. \textsuperscript{219} At the turn of the century, a “working knowledge of English [was] as essential to the employee’s service as to his citizenship.” \textsuperscript{220}

Immigrants of the twenty-first century, however, seem to be reluctant to accept the cultural importance of learning or using English. As Professor Leonard puts it, “[t]he old consensus that persons coming to this country should adopt English as a badge of citizenship has fallen apart.” \textsuperscript{221}

More and more immigrants live in the United States without speaking English. \textsuperscript{222}

At first glance, the United States seems a welcoming place for cultural and linguistic diversity. \textsuperscript{223} Bilingual employees are in high demand, and the ability to speak a language other than English is increasingly becoming a job requirement for many employers. \textsuperscript{224} However, English-only activists are wary that immigrants who fail to learn or use English might be socially disadvantaged because of this failure. \textsuperscript{225} This begs the question of whether

\begin{itemize}
  \item \textsuperscript{218} Id.
  \item \textsuperscript{219} See Piatt, supra note 102, at 11 (explaining that among other services, industrial entities provided English training for immigrants near the start of the twentieth century).
  \item \textsuperscript{220} Id. (citing William Leiserzon, Adjusting Immigrant and Industry 120 (1969), quoting Harold McCormick, International Harvester Company, 1918).
  \item \textsuperscript{221} Leonard, supra note 8, at 59.
  \item \textsuperscript{222} See U.S. Census Bureau, Language Spoken at Home: 2004 & 2005 American Community Survey, Table S1601, available at http://factfinder.census.gov (follow “Search” hyperlink; then search for “Languages Spoken at Home”; then click on first result) (indicating that 22,305,496 of individuals in the United States spoke English less than “very well” in 2004, with this figure increasing to 23,142,029 in 2005). See also Cristina Igoa, The Inner World of the Immigrant Child, 89-90, 109 (1995) (discussing immigrant parents who encourage children to preserve their cultural identity and languages); Piatt, supra note 102, at 3-4 (discussing diversity in the workforce and a new trend towards speaking one’s native tongue); Jean Shin, The Asian American Closet, 11 Asian L.J. 1, 8 (2004) (relating a story of an Asian-American whose grandmother lived in the United States for twenty years without speaking a word of English); Stephanie Tai, Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice, 6 Asian L.J. 189, 202 n.92 (1999) (noting that two-thirds of Chinatown “residents do not speak English in their households”).
  \item \textsuperscript{223} See Piatt, supra note 102, at 5-8 (discussing the positive impact of immigrants on the United States economy and on cultural growth throughout the nation’s past).
  \item \textsuperscript{224} See id. at 26 (“Increasingly . . . learning a second or third language is becoming an advantage if not a necessity. The practicalities of doing business . . . is fueling a surge in the popularity of foreign languages.”) (citing Joel Kofkin, Fear and Reality in the Los Angeles Melting Pot, L.A. Times Magazine, Nov. 5, 1989, at 6).
  \item \textsuperscript{225} See U.S. English, http://www.us-english.org/inc/about (last visited Apr. 19, 2006) (noting that English is “the single greatest empowering tool that immigrants must have to
language accommodation by American society not only hinders but promotes many of the difficulties experienced by non-English speaking immigrants.

As it turns out, language activists are justifiably alarmed. In today’s society, being bilingual presents a myriad of challenges. Among the most important are: xenophobia, language accommodations that discourage minorities from learning English, communities where English is a second or a non-existent language, challenges associated with bilingual education, and growing instances of discrimination against bilingual employees.

B. Reasons for Language Hostility in the Workplace

So why are certain members of a society that was built on the values of diversity, multiculturalism, and tolerance for different points of view becoming hostile towards bilingualism? One seemingly obvious answer is that people are often afraid of the unknown. Regardless of what foreign language is spoken, communication in a foreign language is often perceived as secretive and suspect. Professor Leonard explains that there is “a basic human tendency toward suspicion of the unknown that cuts across all racial or ethnic lines.” People like to know what is being said in their presence, and many individuals become frustrated when someone speaks in a language they do not understand.

Additionally, workplace harmony “is imperative in any place of employment,” and employers may thus be concerned that the use of multiple languages might lead to a disruption of that harmony. Professor Leonard explains that:

A key element in creating harmonious [work] conditions is to avoid the perception of secretive communications among employees. Individuals have a well known tendency to feel succeed”).


227. See Leonard, supra note 8, at 132 (noting that speaking a foreign language often creates a perception of secretive communication).

228. Id.; see also Sam Hove Vernovek, Clash of Cultures Tears Texas City, N.Y. TIMES, Sept. 30, 1997, at A1 (describing use of Spanish in a primarily English workplace as “very rude” and seeming as if “they were whispering to each other behind our backs”).

229. Id.

230. See, e.g., Vernovek supra note 228, at A1 (describing employees of a small insurance company whose bilingual coworkers often spoke Spanish in their presence).

231. Leonard, supra note 8, at 132; see also Garcia v. Spun Steak Co., 998 F.2d 1480, 1483 (9th Cir. 1993) (describing how an employer imposed an English-only rule because it “would promote racial harmony in the workplace”).
marginalized, insulted, and even threatened when they believe that others are talking about them behind their backs. In a diverse workplace, there exists the specific possibility that Anglophones (of whatever race or ethnicity) will perceive that conversations by coworkers in a [foreign language] are targeting them on racial or ethnic grounds.\(^{232}\)

Put more simply by a Texas employer, "The only thing I asked was, ‘Let’s work together in a language we can all understand.’"\(^{233}\)

Employer concerns regarding harmonious work environments are likely grounded in complaints from employees. Employees who do not speak a foreign language may believe that they are being made fun of, or, worse, the subject of sexist or racist remarks.\(^{234}\) At times, this fear is not unfounded.\(^{235}\)

Increased employer hostility towards foreign languages may also be a result of the fast-growing number of foreign language speakers in the United States.\(^{236}\) As Professor Piatt explains, "the foreign language population with the highest visibility, Spanish, seems more likely to maintain the use of its language than have other immigrant groups."\(^{237}\) Other ethnic groups appear to be following a similar pattern of linguistic maintenance.\(^{238}\) Some immigrants are finding a growing acceptance, and a subsequent decline in the stigma associated with the speaking of foreign languages in public.\(^{239}\) There is currently a language revolution, where

\(^{232}\) Leonard, supra note 8, at 132.

\(^{233}\) Verhovek, supra note 234, at A1 (quoting Pat Polk, a Texas employer who used an English-only rule at his workplace).

\(^{234}\) See, e.g., Span Steak, 998 F.2d at 1483 (describing a situation where employees were perceived to have made derogatory remarks in a foreign language).

\(^{235}\) Michael Janofsky, Ban on Speaking Navajo Leads Cafe Staff to Sue, N.Y. TIMES, Dec. 20, 2002, at A1 (discussing a situation in which employees and customers were insulted by coworkers speaking in a foreign language).

\(^{236}\) See PIATT, supra note 102, at 3-4 (noting great diversity in the workforce and a new trend towards speaking one’s native tongue); see also U.S. Census Bureau, Census 2000 Brief: English-Speaking Ability 2-3 (2003) [hereinafter Census 2000 Brief], available at www.census.gov/prod/2003pubs/c2kbr-29.pdf (noting that the proportion of the population “who spoke English less than ‘Very well’ grew from 4.8 percent in 1980, to 6.1 percent in 1990 and to 8.1 percent in 2000”).

\(^{237}\) PIATT, supra note 102, at 3-4.

\(^{238}\) Supra note 236.

\(^{239}\) As one Russian immigrant, a mother of two, explained:

When my first son was in kindergarten ten years ago, he was embarrassed to speak Russian. At four, he asked me to address him only in English in public, explaining that he wanted to be ‘like his friends’ and didn’t want people looking at us. Times are different now. His brother, who is five, is very proud of his heritage. He is fluent in both languages and prefers English, but he often addresses me in Russian in public. His teacher told me he sometimes says Russian words in school. He thinks it’s cool to speak a foreign language.
students in one city speak eighty-seven different languages, and the population for which English is not the primary language is rapidly growing.

V. FACING THE CONSEQUENCES OF A BILINGUAL WORKPLACE

If the EEOC continues to enforce its guidelines, and employers are forced to accommodate foreign languages in the workplace, negative consequences for both employers and employees will result. Language accommodation in the workplace may potentially create a disincentive for foreign workers to learn or improve their English, making it more difficult for them to move up on the job or to achieve a higher economic and social status. Although language accommodation may be helpful in other spheres, accommodating foreign languages at work is a detriment to immigrants—one that makes it more difficult for them to become a part of the American society.

A. The Paradox of Language Accommodation

Imagine driving into a town in Michigan and seeing everything appear in French—names on the buildings, billboard slogans, and street signs. Although this scenario seems impossible, you may actually see something similar happening in other cities. For example, in 1999, the mayor of El Cenizo, Texas passed an ordinance declaring that El Cenizo shall conduct all functions in the official language of the community and establishing Spanish as said official language. Other communities may soon follow the lead. Additionally, “in Hialeah, [Florida], the city council business is conducted only in Spanish.” In some California towns, English is now a

Interview with Irina L., in New Orleans, La. (Dec. 15, 2003). See also Brittain, supra note 214, at 9-10 (a study noting that some Mexican immigrants often spoke Spanish at school, and that they did not feel they would be discriminated by peers if they spoke Spanish). But cf. IGOA, supra note 222, at 45 (“I have known children who were afraid to reveal their backgrounds for fear of discrimination or ridicule and who pushed their cultural past into the unconscious, or off onto their home life.”).

240. See Trausch, supra note 205, at A1 (referring to statistics proposed by Gerda Bikales, former head of U.S. English, an English-only advocates group).

241. Census 2000 Brief supra note 236, at 2-3 (noting that the number “of people in the United States who spoke a language other than English at home increased between 1990 and 2000,” and the proportion of the population “who spoke English less than ‘Very well’ grew from 4.8 percent in 1980, to 6.1 percent in 1990 and to 8.1 percent in 2000”); Locke, supra note 8, at 69 (asserting that 1990 Census data indicates an increase in individuals for whom English is not their primary language).

242. El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (providing that all city functions and meetings be concluded in the predominant language of the community).

243. Trausch, supra note 205.
foreign language for the majority of citizens.\textsuperscript{244} Washington, Oregon, Rhode Island, and New Mexico have adopted some form of “English plus” resolutions—offering protection to a foreign language.\textsuperscript{245} Evidence of this trend is not limited to the aforementioned localities. There is also strong presence of foreign languages in other states, including French in Louisiana,\textsuperscript{246} Russian in New York,\textsuperscript{247} and German in Wisconsin, to name a few.\textsuperscript{248}

As our society strives to accommodate newcomers, more and more street signs, official records, and government forms appear in languages other than English.\textsuperscript{249} The number of Spanish-speaking television networks is also growing rapidly.\textsuperscript{250} Major bookstores, such as Barnes & Noble, now have a foreign language section.\textsuperscript{251} Even the U.S. Post Office now has many of its forms printed in two languages.\textsuperscript{252} Furthermore, there is a growing desire among advertisers and politicians to appeal to language minorities.\textsuperscript{253} In 2002, political candidates spent at least $8 million

\textsuperscript{244} Census 2000 Brief supra note 236, at 9 (stating that in California, over fifty-one percent of the population spoke English “less than ‘very well’” in East Los Angeles, Santa Ana, and El Monte).

\textsuperscript{245} Interview with Rob Toonkel, Director of Communications, U.S. English, in Washington, D.C. (Mar. 23, 2006).

\textsuperscript{246} Federation for American Immigration Reform, \textit{Extended Immigration Data for Louisiana}, http://www.fairus.org/site/PageServer?pagename=research_research0787 (last visited Jan. 11, 2007) (indicating that in 2000, the number of French speakers in the state of Louisiana was 179,746 out of 4,468,976 residents total).

\textsuperscript{247} Federation for American Immigration Reform, \textit{New York: Census Bureau Data}, http://www.fairus.org/site/PageServer?pagename=research_research05b88holding (last visited Jan. 11, 2007) (indicating that in 2000, the number of Russian speakers in the state of New York was 218,765 out of 18,976,457 residents total).

\textsuperscript{248} Federation for American Immigration Reform, \textit{Extended Immigration Data for Wisconsin}, http://www.fairus.org/site/PageServer?pagename=research_research9034 (last visited Jan. 11, 2007) (indicating that in 2000, the number of German speakers in the state of Wisconsin was 48,300 out of 5,363,675 total).


\textsuperscript{250} Lizette Alvarez, \textit{Latinos Are Focus of New Brand of Ads}, N.Y. TIMES, Oct. 28, 2002, at A22 (“In the last decade, Spanish-language television networks boomed and Hispanics, many of them newer immigrants, increasingly turned to those networks for news and entertainment.”)

\textsuperscript{251} Leonard, \textit{ supra} note 8, at 129.


\textsuperscript{253} See, e.g., Alvarez, \textit{ supra} note 250 (discussing the efforts of politicians to attract Latino voters in the 2002 elections).
nationwide on ads geared toward Hispanics.\textsuperscript{254} As a result of language accommodation, it is becoming easier to live in the United States without learning a word of English.\textsuperscript{255}

The popularity of language accommodation in the United States is growing. It appears, the goal of such accommodation is to make it easier for immigrants to live in this country even if they do not speak English. Nevertheless, excessive language accommodation may make it more difficult for these individuals to fully integrate into American society, improve their language skills, and develop necessary job qualifications.

\section*{B. Are We Really Helping?}

Although language accommodation may have a noble goal of ensuring that immigrants feel welcome in the American society, this accommodation produces a number of obstacles for bilingual employees.\textsuperscript{256} Furthermore, the inability to enforce an English-only rule at work creates a myriad of problems in the workplace.\textsuperscript{257}

That language accommodation in the United States has increased, while the number of immigrants who speak English well has decreased strongly suggests that language accommodation contributes to the fact that there is a growing number of people living in the United States who do not speak English at all.\textsuperscript{258} Many immigrants speak English very poorly and have no desire to use the English language skills they may have.\textsuperscript{259} The

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{254} \textit{Id.}
\item \textsuperscript{255} Trausch, supra note 205, at A1; see also Jacoby, supra note 199, ("For many immigrants, learning English is no longer essential. . . . In many American cities, it is quite commonplace to get up, go to work, come home, flip on the TV, or go out to a movie without hearing a single word of English. . . . It’s estimated that half of this country’s 32 million Hispanics now get all of their news from Spanish language, radio, television, and newspapers.") (quoting ABC’s Chris Bury).
\item \textsuperscript{256} See infra Part V.C.
\item \textsuperscript{257} See supra Part IV.A.
\item \textsuperscript{258} See Abel, supra note 62, at 352-53 (noting that increased language accommodation in the United States has occurred simultaneously with the decrease of the number of Hispanic immigrants who speak English well and that “the number of Hispanic immigrants continues to increase daily and the incentive to acquire English decreases”). See U.S. Census Bureau, 2000 Census of Population and Housing, Summary Tables on Language Use and English Speaking Ability, tbl. 1, available at http://www.census.gov/population/cen2000/phc-t20/tab01.pdf (indicating that nearly 11 million citizens speak a language other than English at home and speak English either “Not well” or “Not at all”).
\item \textsuperscript{259} See Robin Benedick, \textit{Poll: Language Barriers Still Exist}, S. FLA. SUN SENTINEL, May 9, 2003, at 1A (“Getting by day-to-day without speaking English isn’t a problem for 83 percent of Hispanics who don’t speak it well or at all.”); Yankelovich Releases 2000 Hispanic Monitor Results, http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticle&art_aid=11088 (last visited Mar. 17, 2007) (“Hispanics’ preference for the Spanish language in every situation, including home, work, and media consumption, is on the rise—from 44% in 1997
\end{itemize}
\end{footnotesize}
possibility of speaking a foreign language at work may further create a disincentive to learn English. Furthermore, employers who are not allowed to impose an English-only requirement are more likely to discriminate against foreign workers. Finally, because speaking a foreign language is often perceived as rude, bilingual employees may face conflicts and discipline at work.

The most important problem related to language accommodation is that more than three million people who live in this country do not speak English at all, and this number is growing. The United States Census Bureau reports that nearly five percent of the population lives in “linguistically isolated” households, households in which all members of the household 14 years and over have at least some difficulty with English. In 2004, nearly twenty-two million people had “Limited English Proficiency”—an eight-million person increase from just six years prior. According to a 2003 survey, eighty-three percent of Hispanics in

260. A twenty-five-year-old bilingual student, who was interviewed for this Article, related the following story:

I grew up in Chinatown, born and raised in America, but my parents were both Chinese immigrants. They always told me: “There are many good jobs around here. You don’t need to speak English to work. You just need to be a hard worker.” I grew up believing that. As a result, I couldn’t speak a word of English until I was fourteen. Until then, my education and all life experiences revolved around Chinese. I have learned English since then, but inability to speak it in the early age and my parents’ discouragement set me so far back.

Interview with Sam C., in San Francisco, CA (Jan 18, 2006). See also Jean Shin, The Asian American Closet, 11 Asian L.J. 1, 8 (2004) (relating a story of an Asian-American boy whose grandmother has lived in the United States for twenty years without speaking a word of English); Stephanie Tai, Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice, 6 Asian L.J. 189, 202 n.92 (1999) (noting that two-thirds of Chinatown residents do not speak English in their households, and at least a quarter of them live below the poverty line).

261. See infra notes 283-88.

262. Long v. First Union Corp. of Virginia, 86 F.3d 1151, 1996 WL 281954, *1 (4th Cir. 1996) (unpublished table opinion) (indicating that the bank manager thought it was rude of her employees to speak Spanish in the presence of customers); Leonard, supra note 8, at 132 (discussing the suspicion that is aroused when people speak a language other than English in the presence of those who do not understand it); Verhovek, supra note 160 (relating the story of two employees who were terminated for speaking Spanish at work).

263. See U.S. Census Bureau, 2000 Census of Population and Housing, Summary Tables on Language Use and English Speaking Ability, tbl. 1, available at http://www.census.gov/population/cen2000/phc-t20/tab01.pdf (indicating that in 2000, the number of people living in the United States who did not speak English at all was 3,366,132.).


265. Compare U.S. Census Bureau, Languages Spoken at Home: 2004 American
Florida who do not speak English well or at all say it is not a problem to get by without learning English. With the increased accommodation of foreign-language speakers in the United States, fewer and fewer people speak English. In California, 39.5% of the population speaks a language other than English at home, and 20% of California population speaks English less than “very well.” Approximately 30% of Texans, New Yorkers, and New Mexicans speak foreign languages at home. Many immigrants simply may not feel the need to learn English and spend their lives without speaking it. The above statistics clearly indicate that the United States is becoming multilingual, and accommodation of foreign-language speakers is an appropriate step. But one must ask whether or not these accommodations help immigrants become more productive members of American society. If non-English-speaking immigrants are repeatedly told that they can prosper in the United States without speaking English, how does it impact their lives, their careers, and their families in the long term?

Community Survey, tbl. S1601 available at http://factfinder.census.gov (follow “Search” hyperlink; then search for “Languages Spoken at Home”) (noting that 265,683,349 individuals took part in the U.S. Census survey), and Percent of People 5 Years and Over Who Speak English Less Than “Very Well”; 2004, tbl. R1603 (noting that 8.4 percent of people in the United States speak English “less than very well”) with Peterson, supra note 112, at 1437 (“Almost fourteen million of [immigrants] lack good English-language skills, and the United States Government has designated them as individuals with “Limited English Proficiency.”).

266. Benedick, supra note 259; see also Trausch, supra note 205 (“[I]n cities such as Miami, parts of Los Angeles and in some towns along the Texas border people do not have to learn English and could spend their lives speaking Spanish.”).

267. See Census 2000 Brief, supra note 236, at 2-3 (indicating that the proportion of the population “who spoke English less than ‘Very well’ grew from 4.8 percent in 1980, to 6.1 percent in 1990 and to 8.1 percent in 2000”).

268. Census 2000 Brief supra note 236, at 5 (indicating percentages of states’ populations’ that speak a language other than English in U.S. in their households).

269. Id.

270. See Jean Shin, The Asian American Closet, 11 ASIAN L.J. 1, 8 (2004) (relating a story of an Asian-American boy whose grandmother has lived in the United States for twenty years without speaking a word of English); Stephanie Tai, Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice, 6 ASIAN L.J. 189, 202 n.92 (1999) (noting that two-thirds of Chinatown residents do not speak English in their households, and at least a quarter of them live below the poverty line); Trausch, supra note 205, at A1 (quoting Gerda Bikales, a former director of the U.S. English, who indicates that in some areas of the country such as Florida, California, and Texas, business and government are conducted wholly or partially in Spanish).

271. See Census 2000 Brief, supra note 236, at 2-3 (noting that the number “of people in the United States who spoke a language other than English at home increased between 1990 and 2000”).
C. Social and Economic Impact on Language Minorities

1. Employment

The workplace is a prime example of how language accommodation can have a negative impact on language minorities. For a variety of reasons, bilingual workplace interferes with immigrants’ abilities to be hired, be promoted, and remain employed. Job applicants who prefer speaking their native tongues may fail to improve their English sufficiently to either qualify for certain jobs, or, once hired, to receive promotions.\footnote{272} As a result, many immigrants are confined to lower-wage jobs and are unable to progress up the social ladder.\footnote{273} When businesses are forced to remove English-only rules, the incentive for non-English speakers to improve their English-speaking abilities in order to perform their jobs is also removed.

Language barriers in the workplace may produce a number of negative effects; employees who feel entitled to speak their languages at work may be perceived as rude or be met with antagonism by employers.\footnote{274} There may be a difference in how non-immigrants and immigrants perceive language etiquette.\footnote{275} In a recent survey, one-half of non-immigrants surveyed felt that “speak[ing] in a language that others around them don’t understand” equates to “bad manners;” at the same time, only one-third of Hispanics considered this behavior rude.\footnote{276} Such cultural conflicts may be reflected in employers (and monolingual employees) who often complain

\footnote{272. See Bleakely & Chin, supra note 83, at 481 (2004) (noting that “strong language skills almost certainly increase the range and quality of jobs that immigrants can get”); Interview with Sam C., in San Francisco, CA (Jan 18, 2006) (having been discouraged from learning English as a boy, Sam’s English skills were poor until his late teens, limiting his success on the SATs, effectively prohibiting him from acceptance into good universities, and disqualifying him from many quality jobs). See also Abel, supra note 62, at 352-53 (discussing immigrants’ decreased incentive to acquire English).

273. See supra note 272.

274. See Long v. First Union Corp. of Va., 86 F.3d 1151, 1996 WL 281954, at *1 (4th Cir. 1996) (unpublished table opinion) (quoting employee who indicated that the use of Spanish in front of other non-Spanish speaking employees was “very rude”); Leonard, supra note 8, at 132 (asserting that the use of unknown languages breeds suspicion among employees); Verhovek, supra note 160, at A14 (describing a workplace dispute arising from the use of multiple languages in the workplace).

275. See Benedick, supra note 259 (citing differing perceptions of use of multiple languages among respondents who are mono- and multi-lingual).

276. Id.; see also Telephone Interview with a General Manager of a large company providing national transportation services and employing two-hundred workers in Newark, NJ (Mar. 30, 2006) (noting that the company had five internal complaints in 2003-2006 from monolingual employees regarding bilingual employees using a foreign language, which was perceived as rude and offensive, with all five complaints resulting in investigation and discipline).}
that they do not want to hear a language at work that they do not understand.\footnote{277}{See Long, 1996 WL 281954, at 1* (unpublished table opinion) (discussing imposition of English-only rule in workplace); Leonard, supra note 8, at 132 (describing imposition of English-only rules to avoid workplace disruptions); Verhovek, supra note 160 (discussing an employer who asked employees to sign pledge to speak only English in the workplace, except as required to communicate with non-English-speaking customers).}

Furthermore, the ability to speak two languages at work may cause hostile, racist, or sexist remarks about monolingual supervisors or coworkers, or at least facilitate the perception that such remarks are being made.\footnote{278}{See, e.g., Garcia v. Spun Steak Co., 998 F.2d 1480, 1483 (9th Cir. 1993) (describing an English-only rule implemented in response to allegations that Spanish-speaking employees made racist remarks about non-Spanish-speaking co-workers.).} Regardless of whether hostile statements are actually made, the mere use of the second language may create the perception of verbal offense among those who do not speak that language.\footnote{279}{See id.} One survey suggests that most female employees agree that there should be some restrictions on language use in the workplace, especially in the case of inappropriate remarks.\footnote{280}{See Shell Oil Company, Shell Poll January 2000, http://www.ropercenter.uconn.edu/ipoll.html (last visited Jan. 15, 2007)(finding that more women agreed with the statement that people should not make sexist comments at work (63%), as compared to women who felt speech regulations in work had gone too far (30%).)}

If such remarks are made in a language other than English, the use of this second language creates an additional problem for the employer, who must then determine whether an offensive remark was made at all, and, if so, how to reprimand the employee for the offensive remark.\footnote{281}{See Spun Steak Co., 998 F.2d at 1488 (showing the potential difficulties an employer may experience with multiple languages in the workplace).}

Finally, because of the psychological and linguistic problems that multiple languages may introduce into the workplace, many employers feel strongly that the workplace should be monolingual.\footnote{282}{See Maldonado v. Altus, 433 F.3d 1294, 1298 (10th Cir. 2006), overruled by Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006) (explaining that plaintiffs’ claims arose from their employer’s promulgation of an English-only policy); Spun Steak, 998 F.2d at 1483 (“The company's president . . . concluded that an English-only rule would promote racial harmony in the workplace . . . [and] that the English-only rule would enhance worker safety.”); Garcia v. Gloor, 618 F.2d 264, 268 (5th Cir. 1980) (listing the following reasons as provided by the defendant-employer for why an English-only policy was necessary: “English-speaking customers objected to communications between employees that they could not understand; pamphlets and trade literature were in English and were not available in Spanish, . . . if employees who normally spoke Spanish off the job were required to speak English on the job at all times and not only when waiting on English-speaking customers, they would improve their English; and the rule would permit supervisors, who did not speak Spanish, better to oversee the work of subordinates”).} However, as Part I demonstrates, concerns about potential discrimination lawsuits may
discourage employers from imposing English-only rules. As a result, employers may try to find ways to avoid hiring bilingual workers in order to avoid communication and other language-related problems in the workplace. This conduct by employers may amount to Title VII national origin discrimination; nevertheless, creative employers may cite ostensibly legitimate reasons for not hiring foreigners, such as their imperfect English skills or heavy accents. In her work examining accented speech and associated discrimination, Professor Matsuda observes that employers “openly admit to having discriminated on the basis of accent and feel free to establish overt workplace regulations restricting the use of non-English [languages].” Therefore, employers may decide to neither hire nor promote individuals who speak foreign languages in order to avoid the necessity to implement or enforce an English-only rule.

2. Education

Additionally, some immigrants may lack incentive to learn English if they believe their foreign tongue is sufficient for the workplace. A majority of Americans feel that the ability to write, read, and speak English at work is “very important.” Hispanics similarly agree that the ability to speak English is essential to being a part of American society, and that teaching English to the children of immigrants is very important. Having

284. See Matsuda, supra note 195, at 1397 (noting the problem of accent discrimination by employers).
285. Id. at 1397. See also Telephone Interview with a General Manager of a large company providing national transportation services, in Newark, NJ (Mar. 30, 2006). (“[Our] English-only rule is important, and we expect our employees to obey it. We have a multiethnic group of workers from all over the world. If they start speaking all these languages at work, it would create chaos. That’s why we implement progressive discipline against employees who disregard the rule. First, they receive an oral reprimand, then suspension, and then termination.”).
286. See Matsuda, supra note 195, at 1346-48 (describing the ways in which employers have declined to hire job applicants with accents).
287. E.g., Interview with Sam C., in San Francisco, CA (Jan 18, 2006) (on file with author). Sam’s parents, immigrants from China, raised Sam to speak only Chinese, and they further discouraged him from learning English because they felt he would not need it to obtain work. Id.
288. The Marlin Company, Attitudes in the American Workplace IV Survey (July 1998), http://www.ropercenter.uconn.edu/ipoll.html (responding to the question about importance of workplace skills, 59% of survey participants believed the ability to write, read, and speak dominant language was “very important”).
289. Pew Hispanic Center, Fact Sheet: Hispanic Attitudes Toward Learning English (June 2006), available at http://pewhispanic.org/files/factsheets/20.pdf (finding that 57% of Latinos consider the ability to speak English essential to participation in American society, and that 92% of Latinos further believe that teaching English to the children of immigrants is “very important”).
conducted extensive studies on language skills and earnings, one scholar further concluded that “[b]etter English-language skills induce immigrants who would otherwise drop out with the equivalent of junior high or some high school education to at least complete their high school degree.”

Nevertheless, fewer people today are improving their English language skills, and this may be because it is becoming easier to speak foreign languages at work. According to a recent survey, the majority of Hispanic employees surveyed speak at least some Spanish at work: 23% speak only Spanish, an additional 10% speak mostly Spanish, 16% speak Spanish and English about equally, and 18% speak some Spanish but mostly English at work. As a whole, more workers now find speaking a foreign language at work acceptable than in the past.

Students who believe they do not need to learn English to find employment may lose their motivation and desire to improve their English language skills. Children have difficulty competing scholastically when they are not required to learn to speak, read, and write English. One might be able to draw a correlation between foreign languages becoming more acceptable at work and the generally lower verbal scores on the Scholastic Aptitude Test (SAT) seen among students who speak limited English as compared to those who use English as a primary language. Verbal SAT scores are most affected by limited English skills, with children of limited English-speaking ability generally scoring lower than

293. See The Research Network, Hispanic Opinion Poll (June, 1993), http://www.ropercenter.uconn.edu/ipoll.html (finding that at work or school, 36% of those surveyed spoke Spanish more often than English); National Opinion Research Center, General Social Survey 2000, (Feb. 2000), http://www.ropercenter.uconn.edu/ipoll.html (noting that 56% workers surveyed indicated they heard a foreign language at work at least once a week).
294. Interview with Nastasia K., an immigrant, in New York, NY (Oct. 10, 2005) (describing her experiences growing up in the United States without speaking English: “My parents pushed me to learn Polish. I only read books by Polish writers . . . [M]y family made fun of me when I spoke English. They told me, ‘You will learn English enough to get by; it is your native language that you need to learn.’ I grew up feeling I should resent English. As a result, I didn’t do well in school up until high school, when I finally learned to speak English fluently.”).
295. IGOA, supra note 222, at 91, 155; Ed Shoan, Letters to the Editor, SAN DIEGO UNION-TRIBUNE, Dec. 4, 2005, at G3.
296. See generally Nancy Trejos, Area Students Did the Math, SAT Scores Show, WASH. POST, Aug. 28, 2002, at B1 (discussing a growing gap between primarily English speakers and those with limited English abilities when taking the SATs).
those who use English as a primary language.  

Additionally, many children of immigrants are faced with pressure from their parents to preserve their language and culture. In one school, attended exclusively by Spanish-speaking students, nearly fifty percent of the students were born in the United States, yet they still do not speak English as well as native speakers. As a result, schools like this one may face added difficulties in striving to provide an adequate education to these children.

Where jobs requiring little or no education are readily available, immigrant children may find themselves working such jobs. With lower SAT scores, pressure from their parents to speak languages other than English, and the fact that multilingual workplace is a norm, many students do not successfully complete secondary education, nor have an incentive to do so. As a result, they may be forced to take employment that neither pays well nor offers the possibility of career advancement.

3. Income

Generally, immigrant-employees are low-wage earners. Studies have shown “that immigrants who speak English or improve their English skills” earn more than those who do not speak English or do so poorly. A recent study of individuals who immigrated to the United States at a young age indicates that, “[c]ompared to a person who speaks English poorly . . . , a person who speaks English well . . . earns 33 percent more and a person who speaks English very well . . . earns 67 percent more.”

297. See id.; see also College Board, COLLEGE BOUND SENIORS: NATIONAL REPORTS, available at http://www.collegeboard.com/about/news_info/cbsenior/yr2006/reports.html (last visited Feb. 25, 2006) (indicating a mean SAT score of 467 (critical reading) and 469 (writing) for test-takers whose primary language is not English, as compared to 515 (critical reading) and 506 (writing) scores for students whose primary language is English).

298. See supra Part IV.A.2; see, e.g., IGOA supra note 222, at 96 (recounting an account of a girl whose mother forced her to study Vietnamese during the summer while other children played).


300. See IGOA, supra note 222, at 109 (summarizing steps to accommodate immigrant children within American classrooms, such as having teachers try to speak immigrants’ native languages and allowing immigrant-children to wear native clothing to school).

301. See Thomas R. Ruge & Angela D. Iza, Higher Education for Undocumented Students: The Case for Open Admission and In-State Tuition Rates for Students Without Lawful Immigration Status, 15 IND. INT’L & COMP. L. REV. 257, 261 (2005) (explaining that less than 60% of immigrants have a high school diploma and that those with less education earn lower incomes).

302. Id.; Bleakely & Chin, supra note 83.

303. Bleakely & Chin, supra note 83.
Since the EEOC passed its guidelines regarding English-only rules and the corresponding decline in the implementation of such rules, there has been an increase in the number of people who speak foreign languages in the workplace. As a result, non-English speakers may earn less and encounter greater difficulty than their English-speaking counterparts at earning promotions or switching to higher-paying jobs. As one commentator observes, “[b]efore 1970 immigrants were actually doing better than natives overall, as measured by education, rate of homeownership and average incomes. But those arriving after 1970 are younger, more likely to be underemployed and live below the poverty level. As a group, they are doing worse than natives.”

4. Social Status

Social status has been defined as “the capacity of various groups and occupations to command personal deference in society.” Immigrants who fail to improve their English skills are consequently hindered in obtaining education and employment and, as a result, may find it difficult to improve their social status.

As it stands, assimilation of immigrants into American society has proven historically difficult. Newcomers often feel like outsiders, and it takes a long time for immigrants to become fully comfortable with the new culture, language, and customs. Likewise, members of American society have demonstrated a historic reluctance to immediately accept immigrants into all spheres of life.

304. See supra note 293.
305. See generally, VICTOR DAVIS HANSON, MEXIFORNIA (2003) (arguing that assimilation into American culture had been more successful than multiculturalism).
308. See Regina Austin, “Bad for Business”: Contextual Analysis, Race Discrimination, and Fast Food, 34 J. MARSHALL L. REV. 207, 215-16 (2001) (noting that typical immigrants have a low social status, holding jobs “at the bottom of the employment barrel”); see also Austan Goolsbee, Legislate Learning English? If Only It Were so Easy, N.Y. TIMES, June 22, 2006, at C3 (noting that immigrants who do not learn English are “trapped in a low-paying job with no obvious means of advancement”); Bleakely & Chin, supra note 83, at 481 (addressing “numerous empirical studies which suggest a positive association between English-language ability and earnings”).
310. See id.; see also IGDA, supra note 222, at 44-46.
311. See Tehranian, supra note 309 (explaining how, historically, immigrants have been met with a discriminatory animus upon entrance into the United States).
Many Americans perceive the influx of immigrants as impediments to the maintenance of the status quo of American society; they feel that immigrants overtly promote their own traditional cultures, speak their native languages in public, and take jobs from American citizens.\footnote{312} Therefore, education, employment, and language skills are the three most important characteristics that can help immigrants achieve higher social status and become accepted as members of this society.\footnote{313} And without these characteristics, the American workplace will continue to be a place where most immigrants perform blue-collar jobs, while speaking their native tongues at work.\footnote{314}

VI. CONCLUSION

In Hernandez v. New York, Justice Kennedy states: “Just as shared language can serve to foster community, language differences can be a source of division.”\footnote{315} As further indicated by Justice Kennedy, language in American society has a wide-ranging power to either foster cultural diversity, or to divide societies, elicit racial hostility, and promote alienation of bilingual speakers.\footnote{316} Instead of celebrating diversity and promoting tolerance towards immigrants, the presence of multiple languages may lead to “growing cultural separatism” within the United States.\footnote{317}

Language is an integral part of one’s identity. Unlike culture, experiences, and personal preferences, which can all change over time, we learn our primary language at childhood; and it accompanies us for the rest of our lives. Language accommodation has thus become more popular in the United States. Notwithstanding the fact that knowledge of English is still an essential requirement for a majority of individuals passing the test for U.S. citizenship and applying for employment, many people mistakenly assume that rules prohibiting foreign languages at work amount to

\footnote{312} Cable News Network, USA Today, Gallup/CNN/USA Today Poll, (January 2004), http://www.ropercenter.uconn.edu/ipoll.html (noting that sixty-five percent of those surveyed feel immigrants hurt the American economy by driving down wages).

\footnote{313} Interview with Nastasia K., an immigrant, in New York, NY (Oct. 10, 2005).

\footnote{314} See Mona Charen, Mexifornia, LONG BEACH PRESS-TELEGRAM, Jul. 1, 2003, at A11 (“Today, poor Mexicans continue to mow the lawns and turn the raisins in the sun, but they are no longer encouraged, far less forced, to learn proper English, adopt American history and culture as their own, and form lasting ties to their new nation.”).


\footnote{316} See id. (“Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn.”).

\footnote{317} See Valente, supra note 129, at 210 (referring to a belief by English-only advocates that bilingual programs increase cultural separatism).
discrimination.

Many monolingual Americans understand that accommodating foreign languages in public sphere is an important means to welcoming immigrants and helping them to adjust. In certain situations, Americans presented with foreign languages may simply turn their attention elsewhere; however, at work, monolingual workers may be exposed to foreign languages without the ability to avert their attention. Often, English-speaking workers cannot understand a foreign language and may consequently perceive the use of a foreign language as rude. This perception of rude behavior leads some employers to conclude that English should be the sole, or at least predominant, language of the American workplace. These employers are simply seeking to create a workplace free of distractions and disruptions.

Besides preventing disruptions, employers’ imposition of an English-only rule may promote safety within the workplace. Reliable statistics show that more Spanish-speaking employees die on the job because of poor language skills than those who speak English fluently. Important safety instructions may often be misunderstood, and important messages may not be conveyed properly by bilingual workers, either because their English is sub par, or because they fail to switch to English in emergency situations.

Finally, employers must be able to control their employees, promote harmony in the workplace, and accommodate their monolingual employees and customers. Foreign languages often create a serious obstacle to an employer’s legitimate goal of fostering a productive work environment. To reach this goal, employers must be able to impose an English-only rule if they find it necessary, without fear of lawsuits or EEOC sanctions. For these reasons, many courts have upheld English-only rules in the workplace.

Moreover, prohibiting speaking foreign languages at work may help immigrants in the long run, as studies show that more and more foreign workers fail to learn English properly because they can rely on their native languages at work. As a result of permitting foreign-language use in the workplace, fewer immigrants learn to speak English fluently. Moreover, millions of immigrants in the United States speak no English at all.

Disincentives to learn English reflect poorly on immigrants’ educational abilities, lead to lower SAT scores, and negatively affect their ability or desire to go to college. This further damages their earning potential.

---

318. See Secretary of Labor Elaine L. Chao, Media Briefing On Department-Wide Initiatives to Improve Hispanic Worker Safety and Prosperity, Feb. 21, 2002, http://www.dol.gov/_sec/media/speeches/20020221_Hispanic_Worker_Safety.htm (“It’s no secret that more that 10 million Americans speak little or no English, and that language has become a major barrier to worker safety. . . . Hispanic’s comprise 11 percent of the workforce. Yet they have a 14 percent fatality rate.”).
potential and social status. This country accommodates foreign languages to such an extent that it no longer helps immigrants integrate in this society, grow professionally, and develop their full potential; instead, it is hurting immigrants while purporting to accommodate them.

Exposure to multiple languages may foster an interest in education, encourage interaction with other cultures, and even promote learning a second language. In areas such as education and the public sector, language accommodation can help immigrants improve their English skills and provide a sense of belonging within the new society into which they have entered. Nevertheless, important policy reasons dictate that English should predominate in the workplace, and thus that employers should be able to impose English-only rules freely and without limitations.

Genesis recounts the story of the Tower of Babel, built by monolingual workers, which reached the heavens but was destroyed by God because of the act’s hubris. The story then indicates that differing languages were borne from the destruction of the tower, so that humans would no longer be able to cooperate. This simple example serves as a reminder that—although there are advantages to speaking foreign languages—doing so while at work may make accomplishing an effective result or attaining the most efficient work environment difficult, if not impossible.

319. Genesis 11:1-9
320. Id.