

Employment Best Practices

EEOC Guidance:

Accent discrimination

“An employer may not base a decision on an employee's foreign accent unless effective spoken communication in English is required to perform job duties and the individual's accent materially interferes with her ability to communicate in English.”

Fluency requirements

“An English (or foreign language) fluency requirement is only permissible if it is required for the effective performance of the position for which it is imposed.”

English-only rules

“English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote safe and efficient job performance or safe and efficient business operations. Employers must provide adequate notice of English-only rules.”

More available at [EEOC.gov](https://www.eeoc.gov)

Title VII

Language and Accent Issues



What Would You Do?

Q. How would you respond?

You interview a candidate for a position who is the most qualified and experienced for the position. You and your team make a recommendation to the CEO, the final decision-maker, to hire the applicant. After her final interview with the CEO, you are told that you need to go back to the applicant pool and “find someone who I can understand clearly” for the position.

Q. What would you say?

You overhear a coworker repeatedly berating a colleague who speaks with a slight accent. The coworker mockingly imitates the colleague's accent and makes comments about “you people coming here and taking jobs away.” The coworker notices you standing in the doorway and tries to laugh it off as if he was “just joking.”

Get more free HR Expert Toolkits!

Visit

The HR Academy®

<https://humanresources.academy>

In *Jajua v. Diakon Lutheran Soc. Ministries*, the U.S. District Court for the Eastern District of Pennsylvania denied the employer’s motion for summary judgment regarding Alice Jajua’s claim of national origin harassment and discrimination related to her accent. Jajua was born in Sierra Leone, lived in Liberia and Ghana, and immigrated to the United States in 1993. She worked as a nurse at Diakon’s nursing home facility and experienced frequent derogatory comments from her coworkers about the smell of her food in the break room and suggestions that “Africans come to America and take our working hours and money.” *Id.* at 649. When she interviewed for a shift transfer, the employer rated Jajua highly on all skills evaluated, but inexplicably delayed the transfer for almost three months, even though the employer frequently transferred other employees much more quickly. When she asked about this, Jajua was told “the doctors said because of your accent, they will not understand you.” *Id.* After she inquired about the delay, Diakon immediately processed her transfer, which the court said demonstrated it had no legitimate concerns about her abilities to perform the role after the transfer.

Jajua v. Diakon Lutheran Soc. Ministries, 299 F. Supp. 3d 645 (E.D. Pa. 2018).

The Bottom Line:

If an accent does not “materially interfere” with an employee’s ability to communicate in English, an employer may not base an employment decision on the accent. Discrimination against someone because of accent or language issues is illegal under Title VII of the Civil Rights Act of 1964, as amended. Language, accent, and national origin are all connected, and Title VII expressly prohibits discrimination based on national origin. Many courts have ruled similarly to the court in *Jajua v. Diakon Lutheran Soc. Ministries*, noting the relationship between national origin, language, and accent issues.

Disclaimer:

Nothing in the HR Academy’s Expert Toolkits and online resources constitutes legal advice. Our informative resources provide Human Resources professionals with useful information related to federal employment law and recent court cases in a variety of jurisdictions. Always consult an attorney with employment law questions. Also note that not all cases in the Academy’s Expert Toolkits constitute mandatory authority in every jurisdiction. While Supreme Court cases are mandatory authority, circuit court decisions and U.S. District Court decisions relate to the specific jurisdiction in which the case was heard. The HR Academy does not provide legal advice, and our Expert Toolkits are provided solely as informational supplements for training and staff development.