Rule requiring employees to speak only English at work may be race discrimination

Take note if you have rules against speaking languages other than English at work: That could constitute race discrimination under Section 1981 of the Civil Rights Act of 1866. That law, enacted after the Civil War, is not as well-known as the Civil Rights Act of 1964, but in some cases, it's just as powerful.

If a worker sues under Section 1981, alleging termination for not speaking English, it won't be easy to get the case dismissed. The court will likely allow discovery and the employee will try to show that—as applied in his individual case—an English-only rule amounted to discrimination on the basis of race.

Recent case: Monica, who is from Mexico, worked as a massage therapist. She was fired after being warned that her practice of speaking Spanish at work was making customers uncomfortable.

She sued, alleging she had been fired because of her race in violation of Section 1981 of the Civil Rights Act.

Monica's employer first argued that an only-English rule could never be race discrimination because employees subject to the rule can avoid discipline simply by speaking English.

The court disagreed, saying each such case would have to be considered individually. The court used as an example another Spanish speaker who was born in the United States and spoke Spanish as a second language. He had no difficulty in foregoing Spanish. Therefore, limiting his ability to speak Spanish at work wasn't race or national origin discrimination.

But if Monica can show the English-only rule was motivated by the employer's desire to discriminate against Hispanics, then she might have a case. The court said her lawsuit could move forward.

The employer will have a chance to establish that Monica's race wasn't the reason it limited her use of language, or that she would suffer no hardship if she were required to speak English only. (*Cisneros v. UTC Providers*, WD TX, 2018)

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