**Human Rights and Workplace Language Policies in Yukon**

The Yukon is becoming more multi-cultural and many Yukoners speak languages other than English and French. The Yukon *Human Rights Act* (the *Act*) states that it is public policy in Yukon to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. As such, it is important that employers and workers are aware of their respective rights and responsibilities under the *Act* so that they may avoid potentially discriminatory conduct when considering the creation of a language policy or rule for their workplace.

The *Act* does not specifically include “language” as a protected characteristic (ground). However, the *Act* does state that it is discriminatory to treat a person unfavourably on the basis of their ancestry, national or ethnic origin, or linguistic background. The language a person speaks or their accent may be protected from discrimination in connection with any of these other protected characteristics.

The *Act* also states that a policy or action is not discrimination if the treatment is based on reasonable requirements for the employment. A workplace language policy that balances the rights of workers with requirements of the workplace can advance employers’ work-related objectives while respecting the rights of workers.

In some situations, proficiency in a certain language may be a reasonable and legitimate requirement for employment. For example, it may be reasonable to require all workers to communicate in a language understood by the entire workplace for safety reasons or to serve their clients. On the other hand, prohibiting workers from using another language with each other during their lunch break may violate the *Act* if the policy goes further than what is a reasonable requirement for the work or a matter of business necessity.

When considering an English-only rule in a workplace, some questions that may be useful to consider are:

1. Is the rule related to the ability of workers to do their job?
2. Did the employer create the rule out of an honest belief that the rule is necessary for workers to be able to do their job?
3. Are there other ways of accomplishing the same work-related objective that may be less discriminatory?
4. If there are other ways of accomplishing the same work-related objective, are there barriers to doing so that may amount to undue hardship (e.g. reasons relating to issues of safety, financial hardship, business efficiency, contractual requirements, or disruption to the public)?

Before adopting an English-only rule, employers may wish to consider whether there are any alternatives that could accomplish the same work-related objective. For example, an open conversation between workers and employers about their respective concerns and goals around language use in the workplace may be just as effective as a rule or policy.

Real or perceived customer preference cannot be used to justify discriminatory practices. In more general terms, just because others encourage someone to discriminate does not make it acceptable. A workplace language policy based on real or perceived customer preference may violate the Yukon *Human Rights Act.*

The Yukon Human Rights Commission encourages employers or workers to contact the Commission if they have any questions about language policies in their workplace.

**Further sources:**

1. Ontario Human Rights Commission Policy on Discrimination and Language

Though this document references the Ontario *Human Rights Code*, many of the principles and examples are consistent with the Yukon *Human Rights Act*. Please contact the Yukon Human Rights Commission if you have any questions about whether a particular point is applicable to Yukon.
<http://www.ohrc.on.ca/sites/default/files/attachments/Policy_on_discrimination_and_language.pdf>
2. US Department of Labor policy on English-Only Rules

The laws referenced are not directly applicable to Canada, but much of the information is potentially instructive.

<https://www.dol.gov/oasam/programs/crc/EnglishOnlyRulesFS.htm>

**Case Law:**

1. *Dhamrait v. JVI Canada*, 2010 HRTO
* It was found that an employer’s comments about two employees’ use of Punjabi on their break were discriminatory.
<http://canlii.ca/t/29tnd>
1. *Islam v. Big Inc*., 2013 HRTO
* In situations where the use of a language other than English is causing friction in the workplace, it is best practice for persons in charge to take steps to diffuse the situation (e.g. holding an all staff meeting to discuss communication and find compromises).
* To determine whether a workplace language rule is reasonable, both the rule itself and its application must be considered.
* When observing workers breaking the English-only rule in the workplace, the employer did not ask why the rule was being broken. Instead, they made comments mocking the use of the other language. As such, even if the rule was not discriminatory, the way in which it was applied was.
<http://canlii.ca/t/g2bws>
1. *Fletcher Challenge Canada Ltd. v. British Columbia* (Council of Human Rights) 1992
* Language has a dual aspect. It can be strongly connected to culture and race, but it can also be a learned tool for communication.
* “a rule requiring proficiency in a language is not necessarily one which generalizes about a person's ability to perform a job based on membership in a group”

<http://canlii.ca/t/1dgnn>

1. *Hajla v. Nestoras and Welland Plaza Restaurant* (1987), 8 C.H.R.R. D/3879 (Ont. Bd. Inq.)
* “it is not a defence (sic) to say that one discriminated as a matter of business or economic advantage or necessity, to meet the wishes of other persons, such as customers, tenants or employees.”

<https://archive.org/details/boi87_003>