

HOUSE No. 1851

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act opposing unnecessary language restrictions in the workplace..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 151B, Section 1 of the General Laws, as appearing in the 2006
2 Official Edition, shall be amended by adding to the end thereof the following:

3 24. The term "Business necessity" shall mean an overriding legitimate business
4 purpose such that the business policy in question is necessary to the safe and efficient operation
5 of the business, that the business policy effectively fulfills the business purpose it is supposed to
6 serve, and there is no alternative practice to the business policy that would accomplish the
7 business purpose equally well with a lesser discriminatory impact.”

8 Section 2. Chapter 151B, Section 4 of the General Laws, as appearing in the 2006
9 Official Edition, shall be amended by adding to the end thereof the following:

10 20. (A) No person may be disqualified from entering into, pursuing a career in, advancing
11 in, or otherwise enjoying the benefits of employment or participation in any business, profession,
12 vocation, or employment because of national origin or ethnic origin, unless based upon a bona
13 fide occupational qualification.

14 (B) Except as provided for in part (C) of this subsection, it shall be an unlawful
15 employment practice for an employer, employment agency, or labor organization to adopt or
16 enforce a policy that limits or prohibits the use of any language in any workplace, unless both of
17 the following conditions exist:

18 (1) The language restriction is justified by a business necessity.

19 (2) The employer, employment agency, or labor organization has notified its
20 employees of the circumstances and the time when the language restriction is required to be
21 observed and of the consequences for violating the language restriction.

22 Except as provided for in part (C) of this subsection, it shall be further presumed by the
23 Commonwealth and its courts that any policy adopted or enforced that limits or prohibits the use
24 of any language in any workplace adversely affects and demoralizes persons who are speakers of
25 that language, by creating an atmosphere of inferiority, isolation, and intimidation. Enhancement
26 of the esprit de corps or level of comfort of employers, managers, co-workers, customers, or
27 clients who prefer not to hear a specific language being spoken in their presence shall not be
28 deemed to be a valid business necessity under the meaning of this section, provided that an
29 employer may mandate that employees speak a specific language when speaking to (rather than
30 merely in the presence of) an employer, manager, co-worker, customer, or client if such a
31 mandate meets the business necessity and notification provisions of this subsection.

32 Any policy which allows only a specific language to be used for communication (e.g., an
33 “English Only” rule) shall be construed by the Commonwealth and its courts as a prohibition
34 against the use of all other languages.

35 It shall be lawful for an employer, employment agency, or labor organization to limit or
36 prohibit employees from engaging in personal (rather than business-related) communication
37 while on the job, without establishing business necessity, provided that such communication is
38 limited or prohibited equally for all languages, and provided further that the employer,
39 employment agency, or labor organization has notified its employees of the circumstances and
40 the time when the personal communication restriction is required to be observed and of the
41 consequences for violating the personal communication restriction.