



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

DEPT. OF TRANSPORTATION
DOCKET SECTION

QA 28089

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October 24, 1997

Docket Clerk
U.S. DOT Dockets, Room PL-401
400 Seventh St., S.W.
Washington, D.C. 20590-0001

Re: Docket No. FHWA-97-2759- 35

Dear Sir or Madam:

This responds to your request for comments on the Federal Motor Carrier Safety Regulations' (FMCSRs) English language fluency requirement for interstate commercial motor vehicle drivers, as published in the Federal Register on August 26, 1997. See 62 Fed. Reg. 45200-45201 (1997) (ANPRM). The Equal Employment Opportunity Commission (EEOC or Commission) enforces federal laws prohibiting employment discrimination, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e-17 (Title VII). Title VII bars employers from discriminating in employment on the basis of race, sex, color, national origin, or religion. In addition to its enforcement duties, the EEOC is responsible for working with other federal agencies that enforce federal laws, regulations, or policies that impact equal employment opportunity. See Executive Order 12067, 43 Fed. Reg. 28, 967-28,969 (1978).

We commend the FHWA for considering civil rights issues as it revises the FMCSRs English fluency requirement. The purpose of this letter is to provide information about Title VII which we believe will be helpful to the FHWA's drafting effort. As employers covered by Title VII, most motor carriers are subject to Title VII's strict standards governing the use of English fluency job selection criteria. Motor carriers that comply with these Title VII standards will ensure that their use of language fluency job requirements does not violate Title VII's prohibition against national origin discrimination.

Title VII's Prohibition Against National Origin Discrimination As It Applies to English Fluency Job Requirements

Under Title VII, a decision to deny employment opportunities because an individual is unable to communicate well in English, or because an individual has a foreign accent, may amount to discrimination on the basis of national origin in violation of Title VII. 29 C.F.R. § 1606.6(b)(1). To avoid violating Title VII's prohibition against national origin discrimination, employers should ensure that English language fluency requirements are applied evenhandedly and are narrowly tailored to reflect the language abilities necessary to perform the duties of the particular job at issue. Specifically, if an employer's across-the-board language fluency requirement has a disproportionate impact on individuals of a particular national origin, the employer must demonstrate that the requirement is job-related and necessary to its business. Vol.

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II EEOC Compl. Man. (BNA) at 623:0020. In addition, if an employer applies a fluency requirement differently to an individual on the basis of her/his national origin (or race, color, sex, or religion), the employer must be able to show that it did so for a nondiscriminatory business reason. An employer's assertion of language inability as the reason for denying an individual an employment opportunity will be considered a pretext for discrimination if evidence shows that the individual was able to satisfactorily perform job tasks, including those involving reading, writing, and speaking English. Id.

The Current Regulatory English Fluency Requirement for Interstate Drivers of Commercial Motor Vehicles

The current FMCSRs require that, to be qualified, a driver must be able to read and speak the English language sufficiently to: (1) converse with the general public; (2) understand highway traffic signs and signals in the English language; (3) respond to official inquiries; and, (4) make entries on reports and records. 49 C.F.R. § 391.11(b)(2). The ANPRM states that, when the English fluency requirement was originally promulgated, it was intended that the employer was "presumed to know what communication skills may be necessary for the type of cargo handled, the route to be taken, and the contact with the public that may be necessary." See 62 Fed. Reg. at 45200. The employer was responsible for assessing a driver's proficiency with the English language "in the context of his or her duties and responsibilities." Id. While this suggests that the English fluency requirement was intended to be tailored to a particular job, the language of the regulation itself does not appear to allow for this.

We share the concern of the American Civil Liberties Union that, as currently written, the FMCSRs' English fluency requirement may conflict with the federal civil rights laws. See ANPRM, 62 Fed. Reg. at 45200. With regard to Title VII, the current fluency regulation may require abilities that are not, in fact, necessary to perform the duties of a particular interstate commercial motor vehicle driving job for a particular employer. For example, it is possible that satisfactory performance of a particular job might not require the ability to converse with the general public, or might not require fluency in English to converse with the general public. In this way, the current fluency requirement might conflict with Title VII.

Revision of the English Fluency Requirement to Require Functional Communications/Comprehension Ability Necessary to Ensure Safety

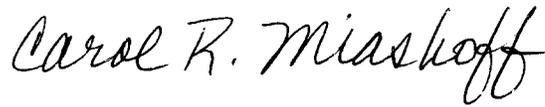
The ANPRM states the FHWA's intention to modify the current English fluency qualification standard to require only that drivers have the "basic functional communications/comprehension ability necessary to ensure safety." To measure this ability, the FHWA is considering imposing "performance oriented" standards "based on tasks a driver is expected to perform." See 62 Fed. Reg. at 45201.

We applaud the FHWA's intent to more narrowly tailor the English fluency requirement to abilities "necessary" to safe performance of the job. We caution, however, that such necessary

communication skills may vary from job to job and from employer to employer. To better ensure compliance with Title VII, a revised qualification standard and any performance-oriented standards of measurement should require only those communication/comprehension abilities necessary to safe performance of a particular interstate commercial motor vehicle driving job with a particular motor carrier employer. This might be achieved by drafting a qualification standard in broad terms that could be applied in a manner appropriate to a specific job for a specific employer. Performance-oriented standards might be task-specific and applied so that a driver would not be considered unqualified based on failure to meet any standard that is not required for safe performance of a particular job.

If you have any questions, or would like to discuss these comments, please contact me at (202) 663-4689.

Sincerely,

A handwritten signature in black ink that reads "Carol R. Miaskoff". The signature is written in a cursive, flowing style.

Carol R. Miaskoff
Assistant Legal Counsel for Coordination