



Managing Language Use in the Workplace

Karl Krahnke
Colorado State University

Lynn Hoffman
University of Northern Colorado

Keiko Krahnke
University of Northern Colorado

ABSTRACT

The US workforce is increasingly linguistically and culturally complex. This paper examines the behavior of speaking languages other than English in the workplace, which sometimes results in conflict and litigation. In this paper, the authors examine this phenomenon from sociolinguistic (social relationships, code-switching, and subject matter proficiency) and legal perspectives. Suggestions to employers for effectively managing the multilingual workplace are also presented.

Introduction

It is now well-known that the US workforce is increasingly linguistically and culturally complex. One effect of this is that in many work settings, employees may be able to speak languages other than English and sometimes do so. This behavior is sometimes seen as objectionable by management and by other workers, often resulting in serious conflict. In some cases employers have made regulations against speaking languages other than English while in the workplace. Challenges to these regulations have resulted in a number of court cases.

According to the Equal Opportunities Employment Commission in 2000:

Complaints against companies implementing English-only policies have almost quintupled in the last four years. So far this year, the EEOC has received 365 complaints based on English-only policies, compared with 77 in 1996, when it began tracking the charges. The EEOC has prosecuted about 20 lawsuits each year and has been increasingly successful in reaching out-of-court settlements (Shim, 2000).

In this paper we examine some of the sociolinguistic facts that underlie speakers' use of languages not generally spoken in the workplace and the reactions of those who do not speak or understand those languages. The purpose of the examination is to provide a better understanding to managers and employees of the values and feelings involved in language choice and use. Next, we review the legal issues involved in the issue of language use in the workplace and



*Note: This paper was originally selected as a Best Paper at the 2002 IBAM National Conference and has been double-blind reviewed. The paper was revised and resubmitted to JBAM for publication after editorial review.

in restrictions imposed by employers. Finally, we suggest some steps that management can take to foster positive linguistic relationships in the workplace and to minimize the possibility of litigation over this issue.

Sociolinguistic Perspectives

The issue arises when employees use a language among themselves that differs from the majority of workers, management, or the country or culture where they are employed. In the United States, the most prevalent situation involves one in which English is the majority or typical language and some employees speak a non-English language or use their language among each other on the job either for work-related or for non-work-related communication. Throughout this paper, however, we will not refer to English and non-English languages, because the issue is not just one with English. In any situation in which there is one language that is socially regarded as the most common, other languages are often accorded little importance. The situation we describe here could occur with many other languages, so we will use the somewhat inelegant but more inclusive terms *dominant* and *subordinate* languages to reflect the social status and attitudes of languages. This is not to suggest that “dominant” languages are in any way better than “subordinate” ones. It is simply the case that it is socially regarded as more “normal” or “natural” or “practical” to use one language (English in the case of the US-- The situation can be quite different in other countries) than to use others.

Social Factors

Language use may seem a simple matter of being consciously aware of what language one is speaking and of choosing a language on the basis of what some others, usually of a cultural or linguistically dominant group, think is appropriate. However, the reality can be quite different. First, linguists have found that the majority of language use is relatively unconscious. That is, we speak from an automatic and relatively unmonitored competence (Pinker, 1994). A simple test is to have someone repeat the exact words they used in several previous utterances. It is usually very difficult to do this. We “remember” the content, the meaning of what we say, but not the words, the language. A dramatic example of this was observed by one of the authors when he was present in a conversation among a number of bilinguals who were accustomed to code-switching, switching between languages frequently during a single conversation. At one point the author stopped the speakers and asked what language they had just used. Surprisingly, they were unable to say. He then asked what caused them to shift from one language to another. Not only did they find it difficult to give reasons, they were generally unaware that they had been switching. Many studies of code-switching report similar observations (Grosjean, 1982; Romaine, 2000). The implications of the possible unconsciousness of language choice are that participants in a conversation may not be fully aware of what language they are using at that moment because they remember what they were talking about but not necessarily what language they were using. This may be surprising and



even incredible to some monolinguals, but it is typical among many bilinguals who regularly use multiple languages to talk about the same subject matter.

Second, at times, there can be strong social relationships among participants that affect the freedom of language choice. These may be of at least two types. In one, there may be a hierarchical relationship in which one or more members of the group have a stronger power or respect position than others. Those in the weaker or lower position may be obligated to behave in a way that is dictated to some degree by the more powerful. If a higher status person speaks to a lower status person in a non-English language, the latter may be obligated to respond in the same language. To respond in English might be an act of disrespect.

Another social relationship may be one of intimacy or closeness. Most people do not typically use a second or foreign language with an intimate who also has that language as a second or foreign language. Imagine speaking to your spouse or children in a language everyone studied in school. To use a less familiar language can be a sign of social distance or even dislike or dismissal. Similarly, two or more members of a linguistic/cultural group in a workplace setting may find it socially dysfunctional to speak English with their peers. Employer requirements to speak only English may be counterproductive to employers when these requirements decrease communication, cooperation, teamwork, esprit de corps, and coordination. One large-scale example of this was the practice of slave traders of placing captured individuals together from different language groups to minimize communication and discourage cooperation that could lead to revolt.

Conversely, use of a subordinate language (a language other than English for most US businesses) can lead to community among the users and alienation between them and the speakers of English, the dominant language. Balancing this management challenge can be difficult and done incorrectly, often leads to litigation which is addressed later in this paper.

Overall and Subject Matter Proficiency

Equally misunderstood by many monolingual individuals is the difficulty a non-English speaker may have in expressing their purpose in a language in which they are not proficient (Grosjean, 1982). Monolingual English speakers easily overlook this because the non-English speaking individual seems to speak English fluently. The non-English speaker's vocabulary may be limited, however, either in general or for some types of subject matter, such as the kinds of culturally specific matters that members of a cultural group might talk about. For example, if employees talk with each other about their families, a child's behavior, or health, they may not find it possible to do so in English because they simply do not have the language proficiency to do so. So they are faced either with not talking about some subjects or trying to do so in English and suffering serious limits on communication. In addition, some non-native-English speakers may not be proficient in communicating legal or financial matters that are complex and for which their English is not adequate. Are they to be prevented from having such conversations?

It is important to remember that language ability or proficiency has several dimensions. We can be overall stronger or weaker in a language, but we may also be more or less able to use a certain kind of language. Even competent English speakers may find it difficult



to engage in medical conversations or fluent discussion of mortgages, or they may not be good at coffee table or cocktail lounge gossip. Second language speakers usually have these same limitations, only more exaggerated.

Effects on Non-participants

Arguments against the use of other languages among employees in the workplace often take the form of complaints by non-speakers of the "other" language that they think they are being talked about, often critically, or that they just don't understand what others are saying. This is a difficult issue, and one that has both social and practical dimensions. First, the feeling of being talked about is a common one that is rarely true. It is based in several deep social values. One is that we naturally try to comprehend and assign a meaning or purpose to almost all the speech we encounter, even if it is in a language or variety we do not understand (Green, 1996). A version of this is what allows a lot of cross-linguistic and cross-cultural communication to succeed, despite the lack of a "common language." But when the language is not directed at us and we have no clue as to its content, we naturally fill in the content with something that "makes sense." One principle governing human communication is to avoid obscurity (Green, 1996). Speaking a language that others do not understand is, in effect though not necessarily on purpose, engaging in obscurity, and can easily be open to an interpretation of purposeful concealment. What is worth being concealed? Their assumption is that the non-English speakers are criticizing them. It is similar to any participants in a social situation making some effort to conceal their speech, such as by speaking with low volume or even whispering.

Another social value is the felt inadequacy that often comes with not being able to speak another language and the accompanying feeling that being able to do so in the presence of non-speakers is "getting away with something" or "showing off." It creates a mini-situation in which the participants with social power (i.e. the speakers' of the socially dominant language) are deprived of that power by speakers of the subordinate language. The natural outcome is often resentment and even anger. It is hardly necessary to remind ourselves of the obvious, that the limited-ability speakers of the subordinate language may be regularly experiencing this kind of powerlessness.

The US "tossed salad" has created a multi-lingual workplace with many languages. Because workplaces mirror actual society, employers have experienced numerous languages at work. Sometimes this leads to frustration or concern by coworkers and managers. To deal with this situation, some organizations have instituted English-only rules at work and have limited the employment opportunities of non-English speaking workers. The next question becomes, "What are the legal rights of both employers and employees?"

Legal Issues

The legality of restrictions on the use of subordinate languages in the workplace is unclear. Nationally, no specific legislation has been enacted to address this issue, and although there have been a number of relevant court decisions, none has provided broad and clear precedent. This lack of legal clarity is probably largely a result of the complexity of the



issue. Nevertheless, managers must attempt to make workplace policy that is practically, ethically, and legally justified.

Most legal actions regarding the use of language in the workplace are based on the 1964 Civil Rights Act. The Act prohibits discrimination on the basis of race, sex, national origin or national ancestry, and color (Title VII of the 1964 Civil Rights Act). Subsequent laws prohibit discrimination on the basis of age, religion, and disability. The law established the federal agency, the Equal Employment Opportunity Commission (EEOC), to oversee implementation and enforcement of the acts. The EEOC issues guidelines for employers on topics covered by the act. The courts do not have to follow the guidelines but give them great credibility or deference.

EEOC's policy on English-only rules is set out in its Guidelines on Discrimination Because of National Origin (Part 29, Code of Federal Regulations, Section 1606.1). It is the Commission's position that rules requiring employees to speak only English in the workplace have an adverse impact on individuals whose primary language is not English or who are limited in English proficiency. Such English-only rules, when applied at all times, may violate Title VII on the basis of national origin (<http://www.eeoc.gov/press/9-1-00.html>).

A key issue in the application of the Guidelines to workplace language policy has to do with the interpretation of the relationship between national origin and language. The Guidelines make no specific mention of language, so applications to questions of discrimination often hinge on whether a worker's use of language is somehow tied to her national origin. The indirectness with which language is considered makes the issue less than clear.

Practical suggestions for workplace policy that are based on the almost forty-year history of the Guidelines and accompanying litigation tend to agree that the use of non-dominant languages can be restricted if their use affects safety or is necessary for the conduct of the business.

EEOC Guidelines on Language Discrimination

The EEOC defines national origin to include an individual or their ancestor's place of origin and their "physical, cultural, or linguistic characteristics of a national origin group (EEOC Guidelines part 1606, 2002). The guidelines specify that the two prevalent forms of discrimination, disparate treatment and disparate impact, apply to national origin cases. They further state that citizenship requirements that have the effect or purpose of discriminating on the basis of national origin will also be prohibited. Section 1606.7 specifically prohibits blanket English only rules that require employees to speak only English at all times in the workplace. Arguing that language is an essential national origin characteristic, the EEOC believes that English only rules create national origin discrimination. They argue that such rules "create an atmosphere of inferiority, isolation, and intimidation" (EEOC Guidelines Section 1606.7).

The Guidelines specify that such rules may only be applied at certain times when the employer has a clearly articulated business necessity for the rule. However, the employer should



inform its employees about the rule and the consequences of violating the rule. Employer failure to notify employees of the rule and the situations where it applies nullifies the rule.

In general the EEOC makes it clear that it will carefully scrutinize such rules for disparate impact, disparate treatment, and for the existence of a legitimate business reason for such a rule.

Court Cases on Language Discrimination

Outcomes of litigation over language regulation in the workplace have been mixed, reflecting the indirect nature of legislation, the social and legal complexity, and the application of “common sense” to the issue.

In general the courts have followed the EEOC guidelines except for a few cases. On the specific question of limitations of workers’ use of non-dominant languages in the workplace, the decisions have gone in several directions. In most cases they uphold employer use of English-only rules only where there is a clear business purpose for such a rule. In addition, they will uphold oral proficiency in English where there is a business purpose for the rule such as serving the public.

Examples of recent cases that were decided in accordance with the guidelines include the following:

- In 1999, in *Martinez v. Lenox Health Care and Vencor, Inc.*, a US District Court in California ruled against an employer who established English-only regulations in a nursing home work setting. Employees were disciplined for speaking a non-English language among themselves, contrary to rules established by the employer. One plaintiff said, "One time, I asked a Latino housekeeper to clean a resident's room. We were both standing at the entrance to a resident's room, but there were no residents present because they were all in the dining room. The supervisor heard the brief exchange in Spanish and called us into his office, where we were admonished for violating the English-only rule. The way the supervisor acted made me feel like less of a person just because I speak another language. It all felt like another excuse to crush us Latinos." Another said, "I was told that this was America and that if I was unable to speak English, this was neither the place nor job for me" (<http://www.aclunc.org/aclunews/news499/nurses.html>).
- In 2000, the Federal District Court of the Northern District of Illinois, Eastern Division settled a suit that eight former employees had brought against Watlow Batavia, Inc. for disciplining the workers for speaking Spanish with co-workers on an assembly line. The settlement was in favor of the employees (<http://www.eeoc.gov/press/9-1-00.html>).
- In July, 2000, the U.S. District Court for the Northern District of Texas, Dallas Division ruled against Premier Operator Services, Inc. in a suit in which Spanish-speaking employees were fired after they refused to sign English-only agreements, even though they had been hired for their Spanish-speaking ability. The agreements would have prevented them from speaking



Spanish at any time while they were in the workplace, even on breaks. According to the EEOC, which filed suit against the company:

In deciding the case, Judge Stickney relied on expert testimony from linguist Susan Berk-Seligson of the University of Pittsburgh, who testified that "code switching," an unconscious habit where persons who are bilingual switch from one language to another during casual conversation, makes it extremely difficult to completely suppress one's primary language. The judge also rejected the idea that the policy and its enforcement promoted harmony, or was needed to improve communication, stating, "Quite the opposite...the policy served to create a disruption in the workplace and feelings of alienation and inadequacy by...proven performers" (<http://www.eeoc.gov/press/9-19-00.html>).

- In April, 2001, the EEOC reached a landmark settlement of \$2.44 million against the University of Incarnate Word (UIW), a private educational institution in San Antonio, Texas, for 18 Hispanic housekeepers who were forbidden to use their native Spanish language. The housekeepers were subjected to an unlawful English only policy that, in the court's opinion, resulted in severe and pervasive harassment for over 10 years. The institution agreed to pay \$1 million to the 18 former employees, and 18 tuition waivers for their families each providing for eight full semesters of study at UIW for each recipient (<http://www.eeoc.gov/press/4-20-01.html>).

On the other hand, some rulings have tended to support the establishment of English-only rules:

- Recently, the Superior Court of New Jersey upheld the firing of an employee for speaking Spanish while at work. The court based its decision on New Jersey law (Law Against Discrimination). The employer had said, "This is America, you got to speak English, you don't have to be talking in Spanish. I am going to have to get rid of one of you. . . ." and "I'm sorry that I have to let you go like this because you are a nice girl and a quick learner but I cannot have you speaking Spanish in my office" (<http://lawlibrary.rutgers.edu/courts/appellate/a4053-99.opn.htm>).

The employee described her use of Spanish in this way, "It is a common custom among people of Spanish national origin to speak Spanish to each other. Bilinguals even combine English with Spanish. It just happens. I have always habitually done this and to this day I still do it and no employer I have ever worked for to this day has ever complained except the above Defendant" (<http://lawlibrary.rutgers.edu/courts/appellate/a4053-99.opn.htm>).

The decision was based on whether the employee was fired on the basis of national origin. The court did not feel that discrimination had occurred and upheld the firing of the employee for violating a workplace restriction.

- An unusual and widely cited ruling was made by the Ninth Circuit in *Garcia v. Spun Steak Company*. The employees, Garcia and Buitrago, were production line workers in a unionized plant that processed poultry and meat products for wholesale distribution. Of the 35 workers, 24 were Spanish speaking. And their English ability varied greatly. Two employees spoke no



English, others had limited English proficiency, and others such as Garcia and Buitrago spoke English fluently.

The court did not follow the guidelines to determine if there were any business justifications for the English only policy. They argued that since Garcia and Buitrago could speak English fluently, they were at the most only inconvenienced by the limitation on speaking Spanish. However, the dissenting judge in a rare blistering objection noted that “Some of the most objectionable discriminatory rules are the least obtrusive in terms of one’s ability to comply.” He noted that blacks were able to comply with the rules that they sit in the backs of buses but that it was still blatant discrimination. Interestingly the judge cited the harsh repression of the Basque language, Ukrainian, Georgian, Byelorussian, Albanian, and Kurdish languages as examples of national origin discrimination (*Garcia v. Spun Steak Company*, 1993). Further, by implication, the ruling establishes that workers who do **not** have fluency in English may be inconvenienced by an English-only rule.

Finally, in January, 2002, the California legislature passed a bill (AB 800) that directly addresses the question we are considering here. It forbids the regulation of language use in the workplace unless matters of safety or business necessity dictate otherwise.

Suggestions for Employers

Overall, then, the direction of legislation and litigation is against the establishment of English-only (or any dominant-language only) regulations in the workplace. There is room for interpretation, however, using the criteria of workplace safety and business necessity. In addition, conscientious management should be concerned about workplace morale and in creating a positive working environment whether language regulations are in place or not. What, then, should management do to safely and effectively navigate this increasingly important workplace challenge?

The safest course of action for employers is to follow the EEOC’s guidelines because most courts follow them. To do this, employers need to perform a job analysis to determine the essential job functions. This analysis will determine if the job has safety, communication, or oral communication requirements that create a legitimate business necessity or business reason for any rule requiring English only or English proficiency.

It follows that the courts will carefully scrutinize blanket English only rules for a whole group of workers such as a department or a whole company. It is difficult for such a blanket rule to avoid including jobs that do not require oral communication. However a small department or small group of jobs may meet this standard such as hospital emergency rooms or airplane cockpits where clear, concise, quick, and accurate communications are necessary to safely complete the jobs. As opposed to these few exceptions, most blanket English only rules would not meet the EEOC’s business necessity standard.

The EEOC’s guidelines are clear that they expect a job specific analysis. Only after such an analysis can employers conclude that this specific job requires a certain level of oral proficiency. The assistance of applied linguists, who have developed quite sophisticated



techniques for language needs analysis for specific jobs, might be useful here. What this means is that job requirements should be reviewed for the language specificity. Is English (or whatever the dominant language is) required in the carrying out of the job requirements? When might language choice be irrelevant?

In addition to the detailed guidelines provided by the EEOC, a useful set of guidelines for the establishment of language regulation in the workplace has been provided by the ACLU and can be found at: <http://aclunc.org/language/lang-report.html>

Another need is for policy to be clearly and adequately articulated before problems arise. If personnel are hired with an understanding of and acceptance of company policy on language use, then later difficulties can be headed off. Unfortunately, few companies see ahead to these questions and fail to be proactive; they often simply do not see the problem until it arises. Effective and practical policies can be formulated that cover matters such as what activities require the use of the dominant language and at what level and kind of proficiency (e.g. interacting with customers, explaining work procedures), when and where other languages can be spoken (e.g. to resolve work-related difficulty, in the break room), how the dominant language can be invoked by management and coworkers (e.g. management can ask for paraphrases of work-related talk that was carried out in a different language), and so on. Again, needs analyses carried out by applied linguists can be useful.

Finally, non-policy side of the issue can be effectively addressed through a number of locally situated measures.

- Overall, it is most important that management anticipate and face personnel conflict arising from differing language use. This can be done largely through awareness on the part of everyone involved.
- It is important that management not take a resigned or negative attitude toward the issue but do take responsibility for an articulated local set of guidelines or policies. The manager cannot simply say, “The law says we have to let them do it.” or “I can’t do anything about it.”
- Rarely is it likely that workers will refuse to speak the language of the workplace if and when the need for it is clear. It is the responsibility of management, therefore, to make such requirements clear and explicit, and in an understanding way. If people who do not understand or speak the subordinate language understand that its use is not negatively affecting job performance, they will be less likely to object. More importantly, guidelines or procedures should be established that make the use of the dominant language mandatory if and when it is necessary. There can be emotionally or socially neutral cues agreed on, such as simply having a worker say, “English, please.” when some common communication is necessary. Knowing that resource is available can reduce the sense of helplessness or powerlessness that dominant language speakers may feel when they are faced with a language they do not understand.
- Management can arrange some discussion sessions in which the issue of language use is openly talked about. This is an opportunity for the dominant language speakers to express their discomfort and the subordinate language speakers to express their reasons for using a different



language. The question of “they are talking about us” can also be discussed directly, workers can be made aware of what behaviors are arousing suspicion, and assurances can be made that this is not going on, should not go on, and will not go on. If sensitivities are high, a procedure might be suggested by which subordinate speakers are asked to provide reassurances about the topic of their conversation.



References

Books, Articles and Other Sources

- Court speaks: English only rule unlawful; awards EEOC \$700,000 for Hispanic workers (2000). Retrieved from the World Wide Web: <http://www.eeoc.gov/press/9-19-00.html>, June 15, 2002.
- Equal Employment Opportunity Commission (2001). Guidelines on discrimination because of national origin. *Code of Federal Regulations*, 29 CFR 1606.7
- EEOC Reaches Landmark 'English-Only' Settlement; Chicago Manufacturer To Pay Over \$190,000 To Hispanic Workers (2000). Retrieved from the World Wide Web: <http://www.eeoc.gov/press/9-1-00.html>, June 15, 2002.
- Grosjean, F. (1982). Life with two languages. Cambridge, MA: Harvard University Press.
- Green, G. (1996). Pragmatics and natural language understanding. Mahwah, NJ: Lawrence Erlbaum Associates, Inc.
- Language rights (2002). ACLU of Northern California. Retrieved from the World Wide Web: <http://aclunc.org/language/lang-report.html>, June 15, 2002.
- Nursing Home Workers Win Language Rights Settlement (1999). Retrieved from the World Wide Web: <http://www.aclunc.org/aclunews/news499/nurses.html>, June 15, 2002.
- Pinker, S. (1994). The language instinct. New York: Harper-Collins Publishers.
- Romaine, S. (2000). Language in society. New York: Oxford University Press.
- Shim, M. (2000). English-only workplace suits continue to rise. Retrieved from the World Wide Web: (<http://www.englishfirst.org/workplace/workplaceacluprop63.htm>), June 15, 2002.

Laws and Court Cases

- Behar v. Watlow Batavia, Inc. (2000). Quoted in <http://www.eeoc.gov/pres/9-1-00.html>.
- Civil Rights Act of 1964, as amended. 42. U.S.C. 2000e et seq.
- Garcia and Buitrago, United Food and Commercial Workers International Union v. Spun Steak Company. 13 F. 3rd. 296 (9th Circuit, 1993). Review denied by U.S. Supreme Court- reported in <http://www.eeoc.gov/pres/6-22-94.html>.



Martinez et al. v. Lenox Health Care and Vencor, Inc. (1999). Quoted in <http://www.aclunc.org/aclunews/news-499/nurses.html>.

Premier Operator Services. (2000). Quoted in <http://www.eeoc.gov/pres/9-19-00.html>.

Garcia v. Spun Steak Company. 13 F.3rd. 296 (Ninth Circuit, 1993). Certiorari denied by U.S. Court- reported in <http://eeoc.gov/press/6-22-94.html>

University of Incarnate Word v. EEOC (2001). Quoted in <http://www.eeoc.gov/press/4-20-01.html>.