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***Your Employment Law Bulletin from***  
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**English Proficiency Tests Can Be Discriminatory**

**A recent article in a Baltimore newspaper discussed a discrimination lawsuit brought by former employees of a Virginia-based security firm who claimed they were fired for failing an English proficiency exam. The lawsuit alleges that the company, a government contractor, singled out workers of African descent because of their accented English, subjected them to demotions and gave them less desirable postings on government contracts. Allegedly, their supervisor would ignore African-born workers and not allow them to go into the boss's office.**

**The lawsuit creates several discrimination issues for resolution. Obviously, if the employer treated the plaintiffs differently because of their accents, that would be a form of national origin discrimination prohibited by state and federal statutes. This is called "disparate treatment" discrimination. Similarly, if the company required only its African-born employees to take the English proficiency test, this would again be a form of disparate treatment discrimination.**

**Even if the English proficiency test was administered to all employees, which appears to be the case, the test could still be found to be discriminatory if it had the effect of disproportionately excluding employees based on their national origin. This is called "disparate impact" discrimination. The former security guards appear to make such an allegation in their complaint, claiming that only African-born employees failed the test. In order to avoid liability, therefore, the security firm will have to show that the test was "job-related and consistent with business necessity."**

**In 1978, the EEOC adopted the Uniform Guidelines on Employee Selection Procedures. These Guidelines provide guidance to employers on how to determine if their tests and selection procedures are lawful for purposes of Title VII disparate impact theory.**

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