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Tom Enneking, Editor

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## Limited "English Only" Policy Requiring Sales Personnel to Speak English Around Customers Valid Business Necessity

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Employers uncertain about the implications of policies designed to facilitate the operation of bi-lingual workplaces can find some guidance in a recent decision from the Eastern District of New York. The Court, in *EEOC v. Sephora USA LLC*, S.D.N.Y., No. 03-Civ.-8821, 9/13/05, held that a limited "English only" policy requiring personnel to speak English around customers was a valid business necessity.

The Equal Employment Opportunity Commission ("EEOC") initiated the action in November 2003, alleging that the defendant, Sephora USA, LLC ("Sephora") discriminated against five former employees and a potential class of Hispanic employees by maintaining an "English-only" rule that has a "disparate impact" on Hispanic and other bi-lingual employees

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## Legislative Research Made Easy: Ohio Capitol Connection

Tom Enneking  
Assistant Law Librarian

If any of you have done Ohio legislative research, you've likely run across Ohio Capitol Connection (<http://www.ohcapcon.com/olis/olin.htm>). What is Ohio Capitol Connection? It is a subscription database available at the Law Library that contains Ohio legislative information. You may also find information on current members of the Ohio General Assembly, their committee assignments, and committee agendas. It also provides links to the *Ohio Revised Code* and *Ohio Administrative Code*, links to numerous Ohio

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Carl: 10 hours, 11 sources, 6 bathroom breaks

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in violation of Title VII of the Civil Rights Act of 1964.

The policy at issue required employees to speak only English in the presence of customers, unless customers requested that the employees speak another language. The policy allowed employees to speak the language of their choice while on break, during lunch, and before and after store hours, when customers were not present. The policy read in full:

#### English in the Workplace

- Sephora does not have, and has never had, an "English-only" policy.
- Generally, cast members may speak whatever language they choose.
- However, Sephora expects cast members who are on stage during business hours to speak English whenever clients are present.
- Of course, cast members are encouraged to communicate with clients in other languages, if the client wishes to do so.
- Before opening and after closing, as well as times when no clients are in the store, cast members are free to speak any language they choose.
- Cast members may speak any language they choose when off stage -- for example, in a break room or office.
- Cast members may speak any language they choose when not on Sephora time-- on a break or after a shift.
- Cast members may be asked to speak English in other situations if there is a

business need--for example, where safety is an issue (when working on a ladder, changing out shelving, retrofits, etc.)

- While Sephora encourages the spirit of teamwork amongst all cast members, it does not expect cast members to speak English except in the limited circumstances described above.

The Court noted that the applicable EEOC guideline, which provides that "[a]n employer may have a rule requiring that employees speak only English at certain times where the employer can show that the rule is justified by business necessity," presumes that a rule requiring only English to be spoken at all times in the workplace violates Title VII. In order for an "English - only" policy to be valid it must be limited in scope and supported by a valid business necessity.

Sephora, which operates retail cosmetics stores throughout the United States, claimed that the policy was necessary to the customer-oriented nature of its business. Sephora argued that requiring employees to speak English in the presence of customers is job related for sales staff and consistent with its business needs of politeness and approachability as components of customer service, characterizing the policy as "a common sense rule against offending customers."

The Court agreed, stating: "When salespeople speak in a language customers do not understand, the effects on helpfulness, politeness and approachability are real and are not a matter of abstract preference. . . . promoting politeness to customers is a valid business necessity for requiring sales employees to speak English in their presence," The Court further noted that the business necessities described by Sephora

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were similar to those the EEOC itself has suggested are proper.

The EEOC Compliance Manual provides that "situations in which business necessity would justify an English only rule" include "communications with co-workers, or supervisors who speak only English," "situations in which workers must speak a common language to promote safety," "cooperative work assignments in which the English only rule is needed to promote efficiency," and "[t]o enable a supervisor who speaks only English to monitor the performance of the employee whose job duties require communication with coworkers or customers."

The Court was quick to limit its decision to the legality of the policy itself, however, and did not address questions regarding the legality of its enforcement, such as whether individual managers applied more restrictive standards to when languages other than English could be used; whether the policy was properly communicated; or whether expectations expressed in employee training conflict with the policy.

For more information, please contact a member of Dinsmore & Shohl's Labor and Employment Law practice area.

**Editor's note:** This article is intended to inform about legal matters of interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.



*Ohio Capitol Connection, cont'd from page 1*

newspapers, and links other states' and the federal government's websites. The true value of Ohio Capital Connection lies in its analysis of Ohio legislation, which includes the status of Ohio bills and any related committee reports.

### Current Legislation and Information

If you are interested in researching current Ohio legislation, the best place to start is on the webpage covering the 126<sup>th</sup> Ohio General Assembly. Simply enter a house bill or senate bill number in the search bar, hit Enter, and you are taken to a wealth of information related to your bill. A drop-down menu permits you to search bill dating from the 117<sup>th</sup> General Assembly (1989). For example, if you entered on House Bill 66 and selected the 126<sup>th</sup> General Assembly, you find four links to the following:

1. Text of the Act – the text of the final or most recent version of the bill. You would learn that Governor Bob Taft signed the bill into law on June 30, 2005;
2. Amendment and Substitute Bills – shows modifications or versions of the bill that have been rewritten to include amendments. You would discover that the Senate Finance Committee accepted an amended version of House Bill 66 on May 31, 2005;
3. Bill History – a chronological breakdown of the bill as it passed through the legislature, from the time it was introduced to the time it was passed. Representative Chuck Calvert introduced House Bill 66 on February 15, 2005, and the bill underwent numerous revisions until the governor signed it into law.
4. LSC Analysis – a nonpartisan, narrative description of the bill, showing its objectives and legislative history. For

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## Tech Tip: Lexis – Connectors

Julie Koehne, Assistant Law Librarian

### Using the AND Connector

Because AND can connect terms that are far apart from one another, searches using AND will find more documents than searches using the W/n connector. As a general rule, use AND when it doesn't matter where your search terms appear in a document. The AND connector can also help you begin your research, until you find more specific terms. Use the W/n connector when there is a spatial connection between your search terms. The W/n connector dictates that words or phrases must appear within N words of each other; the value of "n" may be any number up to 255.

For example, if you want information about preserving land in Ohio using a land trust, you could use this search: **land trust AND Ohio**. However, to find documents that are relevant when your search terms are less specific, you may need to use the W/n connector.

For example, the following search will find more relevant documents than if you used the AND connector: **Business loss w/10 tax deduction**. This search will look for the words business loss within ten words of tax deduction.

If you're looking for a document in which the same term occurs twice, such as a court case with Marvin v. Marvin as respondents, do not use the AND connector, as it would find many unrelated documents. Instead, use the W/n or W/seg connector, such as: **Marvin W/5 Marvin** or **Marvin W/SEG Marvin**.

If you're researching a phrase that contains the word "and," omit that word from your search. Otherwise, "and" is interpreted as a connector. For example, if you're looking for "profit and loss" statements, your search request should be **profit loss**. Omitting "and" ensures that the words "profit" and "loss" appear near each other in the document.

### Using AND when searching abstracts

Because abstracts are usually short, the AND connector is a good choice when searching for multiple terms. The following search in an abstract file finds a large number of documents, but the chances of document relevancy are great

### Did You Know Our Members Receive:

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  - handbooks
  - rules
  - treatises
  - jury verdicts
- ❖ Borrowing privileges to nearly all materials in the Library's collection, including CLE materials.



Ohio Capitol Connection, cont'd from page 4

House Bill 66, the LSC analysis is more than 700 pages in length.

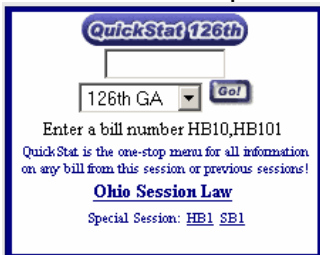
Accompanying these links is other information, such a detailed budgetary activity, different versions as the bill passed through Ohio's legislative houses, and amended and substitute bills (if any).

The 126<sup>th</sup> General Assembly page also furnishes general information on the Ohio General Assembly, including recently introduced legislation, the times of legislative sessions, links to committees and calendars, and the rosters of the House and Senate.

**Legislation**

If you are interested in the deeper legislative offerings of Ohio Capitol Connection, it has an entire set of web pages devoted to legislative research. On the front page, you can search bills that have been introduced and passed during the current legislative session. If you know the topic of a bill but not its number, you can search them by full-text. Furthermore, you can conduct a full-text search of analyses and reports.

On most of the research pages, you will find the QuickStat option. QuickStat is the one-



stop menu for all information on any bill from any session. It contains the same information as if you did a regular bill search. More importantly, this page gives you direct access to the *Digest of Enactments*.

Prior to 1995, the *Digest of Enactments* was called *Summary of Enactments*. Also known as the *Digest*, this publication is a synopsis

of all bills enacted since the preceding *Digest* and is designed to indicate general purpose and effect of an act's various provisions. It contains *ORC* sections enacted, amended, or repealed, and a short summary. The *Digest* is organized by subject area and contains bill numbers, sponsors, and effective dates.

<b>Sub. H.B. 36</b>	
Reps.	Willamowski, Core, Latta, Book, Harwood, Schlichter, Seitz, Chandler, Cirelli, C. Evans, Flowers, Hagan, Hughes, Otterman, Reidelbach, Schmidt, J. Stewart
Sens.	Blessing, Dann
Effective Date: April 27, 2005	
Eliminates the restriction on a court in divorce or legal separation proceedings under which it could award reasonable attorney's fees only if it determined that the party ordered to pay attorneys fees had the ability to do so.	

Excerpt: *Digest of Enactments* (2004), p. 16.

From this same page, you can search Ohio legislation, but with supplemental information. Highlights include:

1. Full Text of Bills and Acts - all bills, including enacted legislation, from the current General Assembly containing your search term. Unlike other pages, you can see deleted language, which is surrounded by double brackets "[[ ... ]]" All new language is written with capital letters.
2. Full Text of Analysis and Committee Reports – The LSC writes the text and analyses of all bills. Written in "plain English," these analyses are a summary of the bill's content with references to existing law. They also contain the fiscal impact of legislation, as mandated by the Legislative Budget Office.
3. Bills and Acts Modifying Ohio Revised Code Sections - all bills that have or are attempting to enact, amend or delete an *Ohio Revised Code* section,

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in both proposed and enacted legislation. You cannot search the full text of bills, but rather the specific section of the bill that lists the *ORC* sections being modified.

### **Legislators and Committees**

If you're interested in members of the Ohio House and Ohio Senate, as well as the makeup of various committees, look no further than the Legislators and Committees pages. On the Legislators page, you will find roster for Ohio's two houses, their leaders, seating charts and maps of the State and Congressional Districts. On the Committees page, you will find links to all House and Senate Committees. If you click the link to the Election and Ethics committee, you will be taken to the roster of its members; from there you can link to bills sponsored by this committee and the committee agenda and reports.

### **Full Text Documents**

[http://www.ohcapcon.com/csec/docs/all\\_desc.htm#lib](http://www.ohcapcon.com/csec/docs/all_desc.htm#lib)

Ohio Capitol Connection publishes a number of other full-text documents, covering legislation and related areas of Ohio government. From the Document Search page, you can search any number of databases, such as the House and Senate Journal Daily Summaries, which contain the bill number, sponsor, and a brief synopsis of contents. More importantly, you can search the Hannah Report.

### **The Hannah Report**

The Hannah Report is a daily newsletter that covers political activity in Ohio. Included in this database are reports of committee activities, Senate and House floor session reports, and late-breaking news. The

Hannah Reports collection contains articles written during the General Assemblies, 1989-present, which you can search by keyword and phrase.

### **The Budget Corner**

Thorough a bi-weekly publication entitled *On the Money* and written by Levin, Driscoll & Fleeter, a research firm specializing in state budget issues, you may examine comments and ongoing analysis of the state budget situation in Ohio. You'll find back issues of *On the Money* from August 2004-present, and you may search issues via the search bar located near the center of the page. You may subscribe to *On the Money* via email— you will be notified when a new issue is available. Newsletters are available as PDFs, and you will need Adobe Acrobat to view them.

### **Conclusion**

This article scratched but the surface of the information available on Ohio Capitol Connection. The numerous sources needed in researching Ohio Legislation are combined into a single source. Your membership to the Cincinnati Law Library gives you access to this database, and at little cost.

## Multimedia at the Law Library

No, we don't have *12 Angry Men*. But we have had numerous requests for a TV with VCR or DVD player. Now, Association members can use a 20" Panasonic TV with internal DVD and VCR to review deposition tapes, surveillance footage, or other multimedia. The TV is on a cart and can be rolled into one of our conference rooms for you and your clients to review.

Check at the Circulation desk to use the TV or call ahead if you would like to reserve a time.

## Free Books

The Law Library purchases many new materials each year, but a significant part of our collection consists of updated treatises and resources. As we "weed" replaced materials from the Law Library collection, we are making the more useful volumes available at the front of the Library. Feel free to check the shelf to see what's being discarded and give it a new home. Unfortunately, we can't accommodate requests or reservations, so the books are available first come, first served.

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ADDRESS CORRECTION REQUESTED

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# JANUARY 2006 LIBRARY NEWSLETTER

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