

can my boss really **do** that?

BY PATTY LAMBERTI

My boss recently said that our office is an English-only zone and that if we are caught speaking Spanish—even during a break—he'll fire us. Is that legal?

It's not a simple yes-or-no answer. John Trasvina of the Mexican American Legal Defense and Educational Fund says the legality of such rules depends on the federal court that governs your state. "For example, the Fifth Circuit court, which covers Texas, has ruled that it's okay for employers to have these rules. But the Ninth Circuit, which covers California, has ruled that it's not," he says. In fiscal year 2004, the Equal Employment Opportunity Commission (EEOC), the federal agency that investigates employment-discrimination cases, received 155 complaints about employers who'd established English-only policies. The rule of thumb: It's legal as long as an employer can prove that speaking English is necessary for business purposes or safety reasons, as might be the case in air-traffic-control towers, hospitals or construction sites. But in other industries, courts have generally sided with employees, especially when it comes to breaks. In 2000, a federal court ordered a long-distance-operator service to pay more than \$700,000 to 13 Hispanic workers who were told they couldn't speak Spanish to anyone but non-English-speaking customers at work, including during lunch. If you believe that your boss is being biased, contact the EEOC (see "If You Think Your Case is Strong," page 97).



My boss always makes comments about what a nice body I have. I've told him to stop it, but he says that because we are both Latinos, it's like we're familia and I should know he's just kidding around. How can I get him to back off?

Tell him that in this country, there is no "except for Latinos to Latinas" clause in sexual harassment laws. Irma Herrera, executive director of Equal Rights Advocates, a San Francisco-based nonprofit that defends women who face discrimination, says, "So many Latinas, from low-wage workers to professionals, deal with sexual harassment at work because Latinas are considered mysterious and exotic." You already told your *jefe* to cool it. Since he hasn't, contact your human resources department or the

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EEOC, which recently won a \$875,000 settlement for 18 women, half of whom are Latinas.

I overheard my jefe snicker that Latinos are lazy. Can I show him how unlazy we are by suing him?

There's no law that's stopping you from filing a lawsuit, but you probably won't win. Carla Barboza, a former attorney for the EEOC, says, "Winning a lawsuit based on one single comment is unusual. But if you were to be fired by that boss, then that comment may be evidence of discrimination." And remember, your boss may not have broken the law by

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if you think your case is strong . . .

- ▶ **1 Gather all evidence.** This includes e-mails, notes you have taken and any eyewitness accounts of your boss behaving badly.
- ▶ **2 Talk to human resources.** Companies always suggest that you come to HR with problems, but this is often in their own interest—protection in case you file a lawsuit. They can tell a court, “We knew about the problem and tried to fix it.” But doing so may still be worth it to you. Good HR executives will mediate interoffice situations and not just tell you to work it out with the offender.
- ▶ **3 Consider filing a claim with the EEOC** (eEOC.gov for locations or 800/669-4000), whether or not you follow steps 1 and 2. You can do this on your own for free or through a lawyer. Either way, the commission will rule on a case’s merit prior to the filing of a EEOC lawsuit.

saying this, but he probably violated the company’s policy against discrimination. So report him to human resources. They may give him a warning or even fire him. Either way, they’re supposed to keep your complaint on file in case it becomes part of a pattern of behavior.

I have an accent when I speak English, and my boss told me that I couldn’t be promoted to another department because customers “might not understand me.” But no one has ever had a problem understanding me before. Is what he did really legal?

Nope. This sounds like a clear-cut case of discrimination. A boss can refuse to promote a person with an accent, but only if the accent interferes with the work. For example, if you wanted to be promoted to a position as a hotel concierge, guests must be able to understand you. If they can’t, the hotel has the right to keep you where you are. But before you start crying discrimination, perform a litmus test on your accent: Do people often ask you to repeat yourself? If not, complain to human resources. If they don’t offer a satisfactory explanation as to why you weren’t promoted, contact the EEOC.

I have diabetes. I was a waitress and had to take a break every few hours to check my blood glucose levels. My boss, who knew I was diabetic, fired me because he said that my breaks kept tables waiting too long. Can he get away with that?

Not at all. You may not feel disabled, but people with diabetes are protected by the Americans with Disabilities Act, which guarantees civil rights and equal opportunity to people with disabilities. Your boss is legally required to make what the act calls “reasonable

accommodations,” including breaks to check your glucose levels. Call the EEOC or a lawyer and file a claim. In the meantime, if you have to get a new job, don’t hide your condition because you fear being stigmatized. You don’t have to say, “I have diabetes,” during the interview. But if your boss ever asks why you take so many breaks, tell the truth (after all, skipping a test could prove disastrous) and advise him of your rights.

I’m a door-to-door saleswoman. My boss always sends me to the Latino neighborhoods because he thinks customers there will relate to me better and buy more of our products. But many of these neighborhoods are dangerous, and I don’t feel safe. He says that if I want to keep my job, I have to do what he says. Is he right?

“The simple answer is yes,” says Houston employment attorney David Lopez. “Refusal of a supervisor’s order is insubordination. But if non-Hispanic salespeople are allowed to choose their territory and you are not, that might be discrimination.” And if your paycheck is adversely affected by your route—meaning that other salespeople make more money because of the neighborhoods they cover and not just their skills—you may be a victim of discrimination. Make friends with your colleagues, and eventually you should get an idea of how much they earn. Also keep a daily journal about what happens at work. Document your boss’s explanation, word for word, of why you can’t work in another neighborhood. Details that seem insignificant now may be crucial when you present your case in court later. **L**

¿MI JEFE PUEDE HACER ESO? 1) “Mi jefe ha declarado que en la oficina solamente se puede hablar en inglés, y que si nos sorprendía hablando en español, aún durante los periodos de descanso, nos despediría. ¿Es esto legal?” Depende de los tribunales federales de cada estado. En Texas, por ejemplo, la corte dijo que el jefe tiene derecho, mientras que en California dijo que no. Por regla general, los patrones tienen derecho a exigir que se hable exclusivamente en inglés por razones de seguridad o por la naturaleza del negocio. **2)** “Escuché a mi jefe decir que los latinos somos vagos. ¿Puedo demandarlo?” Puedes, pero probablemente no ganarás el caso. Sin embargo, si tu jefe te despide, entonces el comentario puede ser evidencia de discriminación. Repórtalo al departamento de recursos humanos de la compañía. **3)** “Hablo inglés con acento y mi jefe dijo que no podía darme una promoción porque los clientes no me entenderían. ¿Es esto legal?” No. Esto es un caso clarísimo de discriminación. Pero antes de proceder, haz una prueba para asegurarte de que todos te entienden bien: ¿Te tienes que repetir a menudo? Si no es así, reporta tu jefe a recursos humanos. **4)** “Soy vendedora ambulante y siempre me envían a los barrios latinos, pero muchos de estos son peligrosos. Mi jefe dice que si quiero mi empleo, tengo que hacer lo que él diga. ¿Está él en lo correcto?” Sí. Rehusar la orden de un superior es un caso de insubordinación. Pero si a las vendedoras no hispanas les permiten escoger sus territorios, eso sí pudiera ser discriminación. **5)** “Trabajo de camarera y cada rato tengo que chequear mi nivel de azúcar porque soy diabética. Mi jefe me despidió porque dice que los clientes tienen que esperar. ¿Eso está permitido?” No. Estás protegida por la ley y él tiene que permitirte recesos razonables por ser una persona con una incapacidad. **6)** “Mi jefe latino siempre me echa piropos. Me quejo, pero él dice que estamos en familia. ¿Qué hago?” Dile que la ley de acoso sexual tiene que ser acatada por todos, latinos o no.