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# When Language Differences are Present, Companies Must Work Harder to Prevent Unintended Litigation

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A recent New York case reinforces the need for companies to ensure that business meetings and calls are designed to be inclusive and certain groups of participants are not included or excluded based on their understanding of a particular language. On March 13, 2024, a U.S. District Court judge in New York dismissed a Section 1981 retaliation claim filed by a former employee of Mizuho Bank, Ltd. In his First Amended Complaint ("FAC"), which contained eleven causes of action, the former employee alleged that his Japanese supervisors discriminated against him on the basis of his race, national origin, gender, familial status, and disability under various Federal, New York State and New York City statutes.

For his Section 1981 retaliation claim, the former employee complained that "all important corporate issues were discussed exclusively in Japanese, even when non-Japanese speakers were present. . . . [H]e opposed the exclusion of non-Japanese speaking employees by requesting repeatedly that [the bank] conduct business discussions in English. . . . Nevertheless, Defendants persisted in speaking Japanese during business meetings and calls." Because the Japanese employees were discussing issues that affected his job, the former employee argued that he "needed to know what they were talking about."

To establish his claim for retaliation, the former employee had to show that (1) he participated in a protected activity, (2) the bank knew of the protected activity, (3) he faced an adverse employment action, and (4) there was a causal connection between the protected activity and the adverse employment action. In the Opinion and Order, the judge agreed with the bank's contention that "the one protected activity alleged in the FAC—'protesting the exclusion of non-Japanese speaking employees from business discussions' conducted in Japanese . . . does not qualify as such, given that Mizuho's decision not to bar the use of Japanese in the workplace does not discriminate based on race." Although the former employee argued that "allowing Mizuho employees to speak Japanese 'effectively exclude[d] from the discussion non-Japanese employees,'" the judge found that the classification was "made on the basis of language i.e., English-speaking versus non-English-speaking individuals, and not on the basis of race, religion or national origin." In short, the judge found

the classification to be based on “whether a person knows Japanese,” noted that the employee “could have chosen to learn Japanese,” and the bank “was not required to force employees to use a particular language.”

Although speaking Japanese (or another non-English language) in meetings or calls when non-Japanese speakers are present is allowed, companies should consider various options to ensure business meetings or calls are inclusive and not exclusionary based on language. To ensure business meetings or calls are productive and are built on a culture of trust, companies could consider periodically stopping the non-English discussion to summarize the key points of the discussion, arranging the seating to alternate those who speak the dominant language and those who don’t speak the dominant language, engaging translator services, and summarizing the meeting discussion in English and the non-English language to ensure key discussion or decision points were fully-developed and understood by all attendees.

*Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.*