

## Chapter 1: Focus on Civil Rights of Limited English Speakers: Language Access to Government Benefits and Services

Every day, thousands of immigrant workers turn to state and federally funded labor agencies to access critical benefit and enforcement programs, including job training, health and safety protections, anti-discrimination protections, wage and hour protections, unemployment insurance (UI), and workers' compensation. Every day, immigrant workers find the agencies are ill-equipped to assist them in their language.

Even though federal law protects their right of access to public services and benefits, immigrants with limited English proficiency (LEP) face obstacles to enforcing their rights on the federal level. Title VI has never been fully enforced with respect to agencies that receive federal funds. In August 2000, a ray of hope emerged: then-President Clinton issued Executive Order 13166, "Improving Access to Services for persons with Limited English Proficiency."<sup>1</sup> The Executive Order called on federal agencies to develop Guidance for compliance with Title VI, and the U.S. Department of Labor has done so. NELP and many other advocacy groups commented on DOL's final Guidance, which retreats in some significant aspects from its interim Guidance issued in January 2001, and from the US Department of Justice Guidance, which is intended as a model for other federal agencies.<sup>2</sup> While the Guidance is now final, it is doubtful that the federal Civil Rights Center within DOL will have adequate staff or tools with which to enforce the federal law.

In 2001, the U.S. Supreme Court dealt another blow to immigrant workers seeking to enforce Title VI. In its ruling in *Alexander v. Sandoval*, the Court decided that individuals have no private right of action to sue directly under Title VI. Rather, they would have to wait for the government to take up the cause of enforcing the right to be free from the discriminatory impact of "English only" state administration of benefits and services.<sup>3</sup>

The U.S. Supreme Court's decision in *Alexander v. Sandoval* makes it all the more critical that advocates use whatever tools are available at the state and local level to protect immigrant workers' rights to access state services and benefits.<sup>4</sup> Though workers may not be able to bring suit directly under Title VI against an agency that discriminates, they may have private rights of action to enforce national origin discrimination laws at the state level. Advocates must pursue these avenues of litigation, but they must also focus on passage of more detailed state statutes that will give agencies clear direction on their obligations to provide access to state benefits and services to limited English-speaking workers.

<sup>1</sup> See, 68 Fed. Reg. 32290 (May 29, 2003), available at <http://www.usdoj.gov/crt/cor/lep/DOLrecipientguidancefin.htm>.

<sup>2</sup> See, NELP's comments at <http://www.nelp.org/docUploads/DOL%20LEP%20comments%20final%20063003%2Epdf>. U.S. Department of Justice Guidance, was published at 67 Fed. Reg. 41455 (June 18, 2002). US Department of Labor Interim Guidance was published at 66 Fed. Reg. 4595 (Jan. 17, 2001).

<sup>3</sup> *Alexander v. Sandoval*, 532 U.S. 275 (2001).

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## LEP Access to Work-Related Benefits and Enforcement of Workers' Rights on the State Level

The Court's decision in *Alexander v. Sandoval* and the barriers to implementation of Title VI at the federal level make it extremely important that immigrant worker advocates both urge state agencies to comply with Title VI and use whatever state law is available to protect immigrant workers' access to publicly-funded programs.

Many state bureaucracies that administer services are ill-equipped to provide access to immigrant workers with limited English proficiency. Several state unemployment agencies indicate that they simply provide no forms or translated brochures to any immigrants in any language.<sup>5</sup> At least two states, Connecticut and Illinois, explicitly (and illegally) require that those immigrants who need interpreters at public hearings on their cases must provide their own.<sup>6</sup> In 22 states, more than half of unemployment insurance claims are filed through a telephone system, which makes it even more complicated for LEP workers to negotiate the system.<sup>7</sup>

Despite the lack of enforcement of these federal rights by federal agencies against the state agencies that receive their funds, some states have provided language access to their state services, most notably public benefits and unemployment insurance, for many years. This paper reviews those state programs that specifically provide for translation of written materials and oral interpretation in their unemployment insurance and other programs.

## Model Laws on Access to State Agency Services for LEP Workers

### *State Language Access Laws*

The California Dymally-Alatorre Bilingual Services Act of 1973 requires any state agency to distribute non-English language written materials through its local offices or facilities that serve a substantial number of non-English-speaking persons.<sup>8</sup> In the 2002 legislature, in SB 987, California revised the Bilingual Services Act's criteria for what constitutes a "substantial number of non-English-speaking people." The new law is the country's most comprehensive. It requires every state agency and state department to establish an effective bilingual services program that develops, implements, coordinates, and monitors a departmental plan, including a procedure for accepting and resolving complaints. The agency or department's survey and plan to provide services to non-English-speaking people must be updated every two years.<sup>9</sup>

Also in 2002, Maryland enacted SB 265, an access law that requires all state agencies to provide services to individuals with limited English proficiency, and all vital documents offered by state agencies to be translated into any language spoken by 3% of the overall population within a geographic service area. The law also requires all other state entities to review their functions regularly to determine the need to create further access for LEP

<sup>5</sup> Wayne Vroman, *Low Benefit Reciprocity in State Unemployment Insurance Programs* (2001), Table VI-3 Main Methods of Claims Filing, Specialized Claims and Claimants in Special Circumstances.

<sup>6</sup> Conn. Agencies Regs § 31-237g.23; 56 Ill.ADC § 2720.210.

<sup>7</sup> U.S. Department of Labor, *Initial Claims Filing Methods CY2000*, available at <<http://www.workforsecsecurity.doleta.gov/unemploy/initclaims.asp>>

<sup>8</sup> Cal. Gov. Code § 7290-7299.

<sup>9</sup> S.B. 987 (Cal. 2002), available at <<http://www.leginfo.ca.gov>>

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individuals. Maryland licensing boards must present evidence to the General Assembly within two years regarding whether English should be a bona fide requirement of professional licensing.<sup>10</sup>

Massachusetts unemployment compensation law requires that all notices and materials be available in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 or .5% of all residents of the commonwealth.<sup>11</sup> (The Massachusetts law is available on the NELP website.)

Florida law requires state agencies to translate educational and instructional materials they produce to describe their services and benefits.<sup>12</sup>

Texas and New Jersey statutes explicitly address bilingual services for Spanish-speaking claimants only.<sup>13</sup>

A number of states and localities require, either as a matter of law or policy, interpreters to be provided in administrative hearings. These include Arkansas, District of Columbia, Indiana, Maine, Minnesota, New York, Oregon, Rhode Island, Texas, and Washington.<sup>14</sup>

### **Local Language Access Ordinances**

Along with the states mentioned above, some cities have proposed or enacted local language access ordinances that guarantee access to local services. The most comprehensive of these are in San Francisco and Oakland.

#### **Highlighted Campaign: San Francisco City and County Ordinance**

This ordinance is a local version of California's state language access law.<sup>15</sup> The local ordinance requires city departments to offer bilingual services and materials if a substantial or concentrated portion of the public utilizing their services does not speak English effectively because it is not their primary language. In addition, it sets aside a budget for a language bank. LEP communities themselves identified problem agencies through their requests for assistance to two local groups: the Employment Law Center's language hot line and Chinese for Affirmative Action. Immigrants in the communities lent their personal stories to the effort and spoke out at hearings and dealings with the press.

The greatest challenge for advocates was in dealing with cost issues. They employed several strategies, including educating agencies about the use and costs of paid translators and about the difficulties in using volunteer translation. The city's purchasing department entered into discussions about negotiating lower rates for the city on a volume basis.

<sup>10</sup> S.B. 265 (Md. 2002), available at <<http://mlis.state.md.us/2002rs/bills/sb/sb0265e.rtf>>

<sup>11</sup> Mass. Gen. Laws Ch. 151A § 62A.

<sup>12</sup> Fla. Stat. Ch. 443.151.

<sup>13</sup> N.J. Stat. Ann. § 31:9A-7.2; Tex. Lab. Code § 301.064.

<sup>14</sup> Ark. Code Ann. § 25-15-101; D.C. Code Ann. § 31-2702; Ind. Code § 4-21.5-3-16; Maine (statement on agency website at <[www.janus.state.me.us/labor/uibennys](http://www.janus.state.me.us/labor/uibennys)>); Minn. Stat. § 15.441; N.Y. Unemp. Law Tit. 12, Ch. 7 § 461.4; Or. Rev. Stat. § 45.275; R.I. (statement on website at <[www.dlt.state.ri.us/bor](http://www.dlt.state.ri.us/bor)>); Tex. Lab. Code § 301.064; Wash. RCW 2.43.030.

<sup>15</sup> Text of each ordinance available on the web page of the Employment Law Center, at <<http://www.las-elc.org/origin.html>>

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After intensive efforts by advocates over the span of two years, the San Francisco ordinance was passed by the Board of Supervisors on June 4, 2001. Once it passed, Chinese for Affirmative Action hired a staff member to oversee implementation of the new ordinance.

### **City of Oakland Ordinance**

The city of Oakland "Equal Access to Services" ordinance establishes, over a period of two years, equal access for LEP individuals to city services and programs. The ordinance states that city departments must employ sufficient bilingual employees to provide services in languages spoken by 10,000 city residents. All agencies must maintain recorded telephone messages in each language. Agencies must submit a compliance plan to the City Council on an annual basis.<sup>16</sup>

### ***Proposed Local Language Access Ordinances***

#### **New York City**

At the writing of this report, the New York City Council is considering a language rights bill, Intro. 38, that affords access to all city services to LEP individuals. It obligates agencies to track the language preference of applicants for services. It affords differing levels of availability of translated documents to different language groups, based on the data gathered. Most notably, it includes a private right of action to sue to enforce individual violations of the law.<sup>17</sup>

### **Model State Anti-Discrimination Laws**

Some states that lack a specific state law guaranteeing access to state services and benefits for LEP individuals nonetheless have laws guaranteeing that state agencies will refrain from national origin discrimination. This may provide an opportunity for advocates in such states to negotiate with state agencies, or litigate if necessary, when they fail to provide access to limited English-speaking individuals.

The U.S. Supreme Court's decision in *Alexander v. Sandoval*, that affected individuals cannot sue in federal court under Title VI to enforce their rights, makes it all the more critical that advocates use whatever tools are available at the state and local level to protect immigrant workers' rights to access state services and benefits. Though workers may not be able to bring suit in federal court directly under Title VI against an agency that discriminates, they may have private rights of action to enforce national origin discrimination laws at the state level.

A number of states have enacted state anti-discrimination laws that provide for either state agency enforcement or enforcement through private rights of action. These laws often obligate state agencies to refrain from activities that have the effect of discriminating on the basis of national origin. Thus, even where states do not have a specific language access law that is enforceable through a private right of action, anti-discrimination laws can be used by advocates to undercut the ill effects of *Alexander v. Sandoval*.

<sup>16</sup> Chap. 2.30.030, Oakland Municipal Code, available at <<http://bpc.iserver.net/codes/oakland>>

<sup>17</sup> The New York City proposal is reprinted at <<http://www.nelp.org>>

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Connecticut specifically provides for an independent, private right of action against a state agency that engages in discriminatory practices, including discrimination based on national origin.<sup>18</sup> (A model state law, adapted from the Connecticut law, is available on the NELP website.)

The state of Kansas provides a private right of action for enforcement of its national origin discrimination law, after filing a complaint with the state Human Rights Commission. The Kansas statute covers practices, such as an “English only” state policy, that have a discriminatory impact on persons of particular races or national origins.<sup>19</sup>

A number of additional states have anti-discrimination laws that cover national origin discrimination by state agencies, but do not specify whether or not private enforcement is possible. These are Minnesota, Missouri, North Dakota, and Virginia.<sup>20</sup>

## **State Laws That Offer Special Protections to Non-English Speaking Employees**

Some states have enacted legislation that provides certain workplace protections to non-English-speaking employees. These include California’s anti-“English only” workplace law and several state laws that deal with issues of language access and migrant status.

### ***Highlighted Campaign: California***

California became the only state in the nation to protect employees from “English only” rules in the workplace in September 2001. Former Governor Davis signed AB 800, an amendment to the California Fair Employment and Housing Act that prohibits employers from requiring employees to speak only in English without a valid business necessity. AB 800 requires employers to provide employees with notice of the policy and consequences for violation.

The bill was enacted after intense work to promote it over a ten-year period, spearheaded by the California American Civil Liberties Union (ACLU), the Employment Law Center’s Language Rights Project, and a strong coalition including Mexican American Legal Defense and Education Fund (MALDEF), National Council of La Raza, the California Immigrant Welfare Collaborative, Chinese for Affirmative Action, and others. (The California law is available on the NELP website.)

A number of states have enacted specific laws that provide additional bilingual notices of rights to non-English speakers. Nebraska’s law states that an employer who recruits any non-English-speaking persons who reside more than five hundred miles from the worksite, must provide a bilingual employee:

- 1) to explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment; and
- 2) to serve as a referral agent to community services for the non-English-speaking employees.<sup>21</sup>

<sup>18</sup> Conn. Gen. Stat. § 46a-71 – 76 § 46a-99.

<sup>19</sup> Kan. Stat. Ann. § 44-100; KS ADC 21-40-1.

<sup>20</sup> Minn. Stat. § 363.12(4); Mo.Rev. Stat. § 213.070(3); N.D. Cent. Code 14-02.4-15; Va. Const. Art. I, §11.

<sup>21</sup> Neb. Rev. Stat. § 48-2402.

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Iowa's law is similar to the Nebraska law and also requires that return transportation to the place of recruitment be provided to the worker under certain circumstances.<sup>22</sup> (The Iowa law is available on the NELP website)

### ***Highlighted Campaign: Connecticut***

The Connecticut Act to Prohibit the Employment Exploitation of Immigrant Labor was signed in July 2001. The Act requires the Commissioner of Labor to produce outreach materials to immigrant workers, in their languages, that explain their workplace rights. The Act "... prevent(s) illegal advantage being taken of such laborers by reason of their lack of information about their rights, credulity or lack of proficiency in the English language."<sup>23</sup> This LEP program is funded by employer penalties.

After a series of successful actions against employers of undocumented immigrant workers, the New England Council of Carpenters decided they needed a change in state law to educate immigrant workers about their rights under state law. This was an effort by a coalition of immigrant-rights activists to ensure enactment of the law and to build a base for future campaigns. The coalition included the Latino and Puerto Rican Affairs Commission, NELP, SEIU Local 32 B-J, the Connecticut Department of Labor and Waterbury Good Jobs Now.

### ***Highlighted Campaign: New York***

New York's unemployment insurance system typifies the problems that are characteristic around the country, where agency measures to reach LEP individuals have been patchwork at best. In New York, all regular walk-in unemployment offices were closed in 1997, leaving most immigrant workers to file their unemployment claims through an automated telephone that has prompts only in English and Spanish or an English-only internet sight in order to apply and certify for benefits. There are two walk-in centers in the entire city staffed with people who speak Chinese languages only. To access an interpreter, claimants must first navigate a series of automated options given in English. Moreover, people who do not speak English or Spanish are told to bring their own interpreters.

Recognizing that this is a serious problem, particularly since September 11 and the recession have increased the numbers of unemployed immigrants in need of benefits, a group of advocates and community groups, including the Legal Aid Society, the New York Immigration Coalition, NELP, YKASEK, Roza Promotions, NY 911, Korean Community Services, UNITE and others have begun meeting to develop strategies to address this problem. Advocates from the Legal Aid Society and the New York have already initiated negotiations with representatives from the NY Department of Labor to address this issue, and a recent report by the Brennan Center identifies some of the problems faced by New Yorkers seeking to recover benefits to which they are entitled.<sup>24</sup>

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<sup>22</sup> Iowa Code § 91E.3.

<sup>23</sup> SHB 6657 (2001). See Appendix., *infra*.

<sup>24</sup> Annette Bernhardt, RECESSION AND 9/11: ECONOMIC HARDSHIP AND THE FAILURE OF THE SAFETY NET FOR UNEMPLOYED WORKERS IN NEW YORK CITY, available at <<http://www.brennancenter.org/programs/ui/index.html>>.

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## Talking Points on Language Access

- Use data from your own state. State level data on languages spoken at home in each state from the 2000 census are published by Grantmakers Concerned with Immigrants and Refugees.<sup>25</sup> Substate level data can be obtained directly from the Census Bureau.<sup>26</sup>
- Emphasize that language access is already the law, and has been since at least 1974. Under federal law, if an organization receives public funding, it must make its services available to all of the public, including those that cannot speak English.
- Limited English-speakers are not asking for special accommodations or privileges. The issue is equal access to government services. If applicable, emphasize the high number of immigrants/limited English speakers in the relevant area. Immigrants pay taxes, represent a significant portion of the workforce, operate small businesses, and contribute to civic life.
- Use sympathetic stories from your own state of immigrant workers denied access to unemployment insurance, as well as other employment services and complaint mechanisms operated by agencies that receive federal funds. Immigrant workers who do not speak English proficiently are routinely denied the full range of protections and services available to all other workers, due to the absence of specific state policies implementing Title VI.
- Emphasize that providing access to benefits is not necessarily costly: In 2001, California's Department of Social Services spent a total of \$648,312 to staff an internal team of 13 employees to translate documents into Spanish, Chinese, Cambodian, Russian, and Vietnamese, and an average of approximately \$22,000 per year in contracts with outside vendors for translations into other languages. This is a negligible cost for an \$18 billion budget.
- Lack of services in their language keeps workers from applying for unemployment compensation. Some statistics say that 50% of people who do not apply for unemployment compensation do not apply because they do not even know they are covered by unemployment insurance. A simple outreach program can go a long way toward increasing access.<sup>27</sup>
- To counter the argument that immigrants should learn English instead of expecting services in their language: emphasize the length of time it takes to learn English as an adult, characterize limited English speakers as "individuals in the process of learning English" (or if applicable, as elderly) and explain that rights and obligations begin the moment one enters the country.

<sup>25</sup> GCIR, *U.S. Immigration Statistics by State*, available at < [http://www.gcir.org/about\\_immigration/usmap.htm](http://www.gcir.org/about_immigration/usmap.htm).>

<sup>26</sup> Substate data is at <<http://www.census.gov>.> Use the "American Factfinder" tool on the website. For help with searching, contact Andrew Stettner at NELP, e-mail [astettner@nelp.org](mailto:astettner@nelp.org).

<sup>27</sup> Washington State has a large Spanish-speaking farm worker population that is subject to winter layoffs. In winter 1999-2000 the state conducted a simple outreach program by means of a Spanish-language flier and short radio advertisements and ads and articles in Spanish-language newspapers. Unemployment insurance claims among Spanish-speakers rose by 17% from fourth quarter 1999 to the fourth quarter of 2000.

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- Meet with potential opponents individually to address their concerns before the legislation is introduced. Often their concerns are either unfounded or can be addressed by minor modifications to the legislation.
- The most important part of the legislation is implementation and enforcement. The relevant government agencies need to take the legislation seriously from the beginning. Make sure that advocates will monitor implementation and be able to tell whether government agencies are complying (for example, from reports that the agencies are required to submit, not only from anecdotal evidence).

### **What Can Advocates Do?**

- √ Publicize sympathetic stories about the consequences to immigrants who have been denied services because of language.
- √ Survey the community about problems encountered in dealing with state agencies. Do immigrants have access to job training programs, unemployment insurance systems, workers' compensation systems, human rights agencies, and agencies that enforce their health and safety and wage and hour laws?
- √ Bring claims under state anti-discrimination statutes or file complaints with the U.S. Department of Labor regarding state programs that receive federal financial assistance.
- √ Insist that state agencies follow the DOL Guidance: request a specific inventory of forms translated and interpreters provided, a study of local demographics and the input of community groups in developing an LEP plan. Provide the state with model plans.
- √ Work to pass state laws with specific guarantees of access to government benefits, including work-related benefits.
- √ Work for the passage of state laws mandating employers to give language-appropriate notice of workplace rights.

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