



U.S. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

OSHRC 25

LANGUAGE ACCESS PLAN

November 4, 2015

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Policy Statement and Language Access Plan of the Occupational Safety and Health Review Commission for Improving Access to Services for Persons with Limited English Proficiency¹

I. INTRODUCTION

The United States is home to millions of national origin minority individuals who have limited English proficiency (“LEP”). Because of their limited proficiency in speaking, reading, or understanding English, otherwise eligible LEP persons are often denied pertinent information or services, experience delays, or make decisions based on inaccurate or incomplete information. This potential barrier to the exchange of information is of particular importance to the Occupational Safety and Health Review Commission (hereafter “OSHRC,” “Commission,” or “Agency”). Members of the public, including LEP persons, are the principal beneficiaries of the Agency’s mission to provide administrative trial and appellate review of citations or penalties resulting from Occupational Safety and Health Administration (“OSHA”) inspections of American work places. The Commission functions as a two-tiered federal administrative court, with established procedures for: 1) conducting trials, receiving evidence, and rendering decisions by its Administrative Law Judges (“ALJs” or “Judges”) and 2) discretionary review of ALJ decisions by a panel of Commissioners.

Executive Order 13166, 65 Fed. Reg. 50, 121 (Aug. 16, 2000), directs all Federal agencies to “examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening the fundamental mission of the agency.” The Executive Order further directs each agency to “prepare a plan to improve access to its federally conducted

¹ This document supersedes all prior directives, policies, plans, or statements on the same topic.

programs and activities by eligible LEP persons.”² On December 7, 2000, the Commission issued its original LEP Plan, in which the Commission noted the importance of providing the LEP community with meaningful access to administrative trials and appellate review of citations issued by OSHA. The initial plan also described the Commission’s efforts to provide services to the LEP community and the steps the Commission planned to take in order to ensure that a proper level of service would continue to be available to persons with little or no ability to communicate with the Agency in English.

On February 17, 2011, the United States Attorney General issued a Memorandum For Heads of Federal Agencies, among others, regarding the Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166 (“AG Memo”). The AG Memo requested that each agency join the Department of Justice (“DOJ”) in recommitting to the implementation of Executive Order 13166 by: 1) establishing a Language Access Working Group (“LAWG”) to be responsible for implementing the Executive Order; 2) evaluating and/or updating its LEP Plan; 3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans, and protocols; 4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; 5) notifying the public of its LEP policies, plans, and procedures; 6) assessing non-English language proficiency when considering hiring criteria; 7) collaborating with other agencies for written translations intended for mass distribution; and 8) including a statement that it does not provide federal financial assistance when transmitting its language access plan (together “Eight Steps”).

In August 2011, the Commission updated its original LEP plan and reiterated the Commission’s commitment to the LEP community. The updated plan (“2011 LEP Plan”) utilized information provided at the March 15-16, 2007 LEP National Conference sponsored by the DOJ’s Civil Rights Division, along with several other federal agencies, as well as information obtained from point-of-contact OSHRC personnel, including judges.

² The Executive Order directs each agency providing federal financial assistance to issue guidance to recipients of such assistance on their legal obligations to take reasonable steps to ensure meaningful access for LEP persons under the national origin nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, and its implementing regulations. The Commission is exempt from this requirement because it does not provide federal financial assistance.

In May 2014, the Agency head delegated responsibility for developing, implementing and administering the Policy Statement and Language Access Plan (“PS/LAP”) to the Office of Chief Administrative Law Judge (“OCALJ”) since the largest number of interactions with LEP persons and the Commission occur in the context of a proceeding conducted by one of the Commission’s Judges.³ The Chief Administrative Law Judge (“CALJ”) has re-delegated the responsibility for implementing and administering the PS/LAP to the PS/LAP Administrator.⁴ This PS/LAP is the product of the Commission’s periodic evaluation and updating of its LEP services, policies, plans and protocols. It also takes into consideration feedback to the 2011 LEP Plan offered by DOJ’s Federal Coordination and Compliance Section.

II. COMMISSION POLICY STATEMENT

A. General Language Access Policy Statement

In carrying out its statutory mission, the Commission functions as a judicial body and is responsible for the adjudication of workplace safety and health disputes under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 - 678 (“the Act”). The Commission, which serves as a federal administrative court at the trial and appellate levels, acknowledges that English proficiency is useful for meaningful participation in Agency proceedings. This is due to the use of legal terms, principles and procedures involved in adjudicating the rights and responsibilities of employers and the rights of employees under the Act.

The Commission’s Rules of Procedure, codified at 29 C.F.R. § 2200 *et. seq.*, state that “[i]t shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay.”⁵ Judges are empowered to regulate the course of each proceeding. Witnesses are examined orally and subject to cross-examination. The process of Commission adjudication is structured to assure that Judges exercise independent judgment on the evidence before the Court,

³ The PS/LAP is not intended to limit any Commissioner’s authority or discretion to review OSHRC cases handled by Judges.

⁴ The CALJ may choose to serve as the PS/LAP Administrator.

⁵ *See* 29 C.F.R. § 2200.67.

free from pressures from other Agency officials.⁶ The role of Commission ALJs is similar to that of an Article III judge presiding at a federal district court.⁷ The trial judge is in the best position to assess a party's or witness's language usage, comfort level and intelligibility. Within the limits of funding available for LEP services, the appointment and use of an interpreter or the translation of a document in a proceeding is committed to the sound discretion of the trial judge.⁸ Federal Rule of Evidence ("Fed. R. Evid.") 604, made applicable to OSHRC proceedings through 29 C.F.R. § 2200.71, states that "[a]n interpreter must be qualified and must give an oath or affirmation to make a true translation." A sample interpreter's oath is attached as Appendix 1.

The Commission's goal is to ameliorate LEP as a barrier to accessing its programs and activities; consequently, the Agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with, and without unduly burdening, its fundamental mission and existing law. In accordance with Executive Order 13166 and the AG Memo, the Commission will satisfy the Eight Steps identified above by which LEP persons can meaningfully access its programs and activities to the extent that Agency resources are available and will permit, and without precluding a Judge from exercising independent judgment in a pending proceeding as it relates to LEP matters in accordance with the Act, APA, Commission Rules of

⁶ See the Act; Administrative Procedure Act, 5 U.S.C. § 554 ("APA"); *Butz v. Economou*, 438 U.S. 478, 513 (1978).

⁷ See, e.g. *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 758 (2002) ("the role of the ALJ ... is similar to that of an Article III judge").

⁸ See Fed. R. Civ. P. 43(d) (applicable to OSHRC proceedings through 29 C.F.R. § 2200.2(b)). This is the case even though proceedings brought under the Act before the Commission are not criminal proceedings. See also, e.g., *Perovich v. United States*, 205 U. S. 86, 91 (1907) (appointment of an interpreter is a "matter largely resting in the discretion of the trial court"); *United States v. Osuna*, 189 F.3d 1289, 1296 (10th Cir. 1999) (Brorby, J., dissenting) ("Because the Trial Judge is in the best position to assess a ... witness' language usage, comfort level and intelligibility, the appointment of an interpreter under § 1827 [Court Interpreters Act] is committed to the sound discretion of the Trial Judge."), *aff'd*, 3 Fed. App'x 739 (10th Cir. 2001) (unpublished); *United States v. Arthurs*, 73 F.3d 444, 447 (1st Cir. 1996) (Trial Judge had considerable discretion to determine if defendant's English testimony was intelligible); *United States v. Yee Soon Shin*, 953 F.2d 559, 561 (9th Cir. 1992) (as a constitutional matter, the appointment of interpreters is within the court's discretion), *aff'd sub nom. Jung v. United States*, 988 F.2d 120 (9th Cir. 1993) (unpublished); *Valladares v. United States*, 871 F.2d 1564, 1566 (11th Cir. 1989) (use of interpreter under § 1827 is committed to the sound discretion of the Trial Judge); *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980) (The use of courtroom interpreters is committed to the sound discretion of the Trial Judge), *cert. denied* 450 U.S. 994 (1981).

Procedure, Fed. R. Civ. P., Fed. R. Evid., Executive Order 13166, and the AG Memo (together “applicable authority”).⁹

B. Purpose and Authority

Because the largest number of interactions within the Agency is between the LEP population and Judges and Judges’ support staff, the Commission has delegated primary responsibility for administering the PS/LAP to the OCALJ, specifically to the PS/LAP Administrator.

The purpose of the PS/LAP is to establish guidelines for improving access to Commission services for persons with LEP in accordance with applicable authority. It is intended only to improve the internal management of OSHRC’s Language Access program and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, Judges, Commissioners, officers or employees, or any person. Administration of the cases, programs, and activities discussed herein is within the sole discretion of the Agency.

III. PS/LAP

The PS/LAP is designed to enhance the ability of individuals with limited proficiency in speaking, reading, or understanding English to participate in the Commission programs and activities.

A. Definitions

Some terms used in the PS/LAP are defined in the Act, specifically in § 3 of the Act, and Commission Rules, specifically 29 C.F.R. § 2200.1. Those definitions will control for the purpose of the PS/LAP. Other terms are set forth below.

1. Commissioner. A member of the Commission appointed by the President by and with the advice and consent of the Senate.

⁹ The Agency is also aware that it may reach out to the Civil Rights Division, DOJ, anytime for suggestions and technical assistance on available language access options.

2. Court. A tribunal within the Commission's adjudicatory system where decisions are made by a Judge.
3. Direct "In-Language" Communication. Monolingual communication in a language other than English between a multilingual staff person and an LEP person (*e.g.*, Spanish to Spanish).
4. Effectively Communicates. Communication sufficient to provide a LEP individual with substantially the same level of services received by individuals who are not LEP.
5. Interpretation. The act of listening to a communication in one language (source language) and orally converting it to another language (target language), including sign language for the hearing impaired, while retaining the same meaning.
6. Interpreter. A person who is fluent in both English and another language, who listens to a communication in one language and orally, or by using sign language, converts it into another language while retaining the same meaning.
7. Judge [or ALJ]. *See* 29 C.F.R. § 2200.1(f).
8. Language Access. The provision of the necessary services to Persons with LEP to access the service or program in a language they can understand, and to substantially the same extent as those with English proficiency.
9. Language Access Services. Oral, sign and written language services needed to assist LEP individuals to communicate effectively usually in a Commission proceeding, as determined by the Judge.
10. Individuals with LEP. Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English; or individuals who do not hear any language. Individuals with limited English proficiency may be competent in English for certain types of communication (*e.g.*, speaking or understanding), but still be LEP for other purposes (*e.g.*, reading or writing).¹⁰
11. Meaningful Access. For LEP individuals, meaningful access denotes access that is not unduly restricted, delayed, or inferior as compared to Commission services provided to English proficient individuals.

¹⁰ The DOJ has determined that EO 13166 applies only to persons who are located within the United States and its territories and does not apply extraterritorially.

12. Policy Statement and Language Access Plan. The written plan used by the Commission to implement its language access services consistent with applicable authority. This plan may also be referred to as the “PS/LAP”

13. Primary language. An individual’s primary language is the language in which an individual most effectively communicates.

14. PS/LAP Administrator. The OSHRC Judge responsible for implementing and administering the PS/LAP.

15. Program(s) or Activity(ies). Commission programs or activities, including conferences conducted by a Judge, hearings, trials, and associated significant services usually in matters where a Commission Judge is presiding in the context of a proceeding brought under the Act. At the Judge’s discretion, it may or may not include matters that arise in discovery, *e.g.*, depositions. It also includes proceedings on review before the Commission.

16. Qualified Translator or Interpreter. A government or contracted translator or interpreter who has demonstrated his or her competence to interpret, translate, or use sign language through court certification and/or by a finding made by a Commission Judge.¹¹

17. Sight translation. Oral rendering of written text or a document into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.

18. Source Language. The language of the original speaker, which the interpreter interprets into a second language.

19. Target Language. The language of the listener, into which the interpreter renders the interpretation from the source language.

20. Translation. The replacement of written text from one language (source language) into an equivalent written text in another language (target language). The source of the text being converted is always a written language.

¹¹ See Chp. 10, Model Court Interpreter Act in Court Interpretation: Model Guides for Policy and Practice in the State Courts (National Center for State Courts, 1995) (“Model Interpreter Act”) for a discussion of the Model Interpreter Act’s intention to provide for certification, appointment, and use of interpreters to help secure any rights of non-English speaking persons in state legal and administrative proceedings. See also the National Association of Judiciary Interpreters and Translators, Code of Ethics and Professional Responsibility.

21. Trial. A proceeding (commonly referred to as a “hearing”) conducted under the Act that is presided over by a judge, where evidence is presented, such as documents and testimony, that serves as the basis for the Judge’s final decision in the case before the Court.

22. Vital document. Paper or electronic written material that contains information that is critical for accessing or participating in Commission proceedings, usually presided over by a Commission Judge.

B. Implementation and Administration of the Commission’s PS/LAP

1. Responsibilities and Roles¹²

a. Assistant Language Access Coordinators (“ALAC”) for the OCALJ.¹³ ALACs shall: 1) assist the Language Access Coordinator (“LAC”) for the OCALJ and PS/LAP Administrator in administering the PS/LAP; 2) coordinate the issuance of contracts and/or purchase orders for LEP services under the PS/LAP with the agency contracting officer (“CO”); 3) serve as the Contracting Officer’s Technical Representative (“COTR”) when designated by the agency’s CO on all contracts or purchase orders issued by the Agency for LEP services in cases being handled by Judges assigned to their office, with the authority to direct the day-to-day performance of any interpreter or translator while working at the direction of a Judge who ordered the LEP services; and 4) prepare the Notice of, or Request to Arrange for Approved, LEP Services form at Appendix 2 and submit the completed form to the LAC for the OCALJ and CO, when appropriate. ALACs shall continue to be supervised by on-site management personnel.

b. CALJ. The CALJ shall designate the LAC for the OCALJ from within the Agency’s national office. All Judges’ legal assistants, excluding the LAC for the OCALJ, serving in the Agency’s national, Denver, and Atlanta offices are designated ALACs.

c. Contracting Officer. Upon receipt of notice of a need for LEP services from a Judge, office head, LAC, or ALAC; the CO shall promptly: 1) negotiate, enter into, administer, modify and/or terminate contracts and/or purchase orders for LEP services

¹² Agency stakeholders were consulted and input from stakeholders was considered in the drafting of this PS/LAP.

¹³ Assistant LACs shall continue to be supervised by on-site management personnel.

under the PS/LAP, consistent with available Language Access Services funding and in consultation with the Executive Director, and taking into consideration the specific needs and/or statement of work of the Judge or office head who approved the LEP services; and 2) appoint LACs and/or ALACs to act as COTRs for any such contracts and/or purchase orders. The Commission shall maintain a contract with a company that provides interpretation services at Commission expense for telephone conference calls conducted by Judges where a LEP person participates.¹⁴

d. COTR. When acting as a COTR, ALACs do not have the authority to: 1) cause an increase or decrease in the price; or 2) otherwise change any provision(s), of any contract or purchase order.

e. Executive Director. The Office of the Executive Director (“OEXD”) shall: 1) manage funding allotted to implement and administer the PS/LAP; 2) at the start of each fiscal year or funding cycle in the event of congressional continuing resolutions, promptly inform the PS/LAP Administrator of the amount of Agency funds that are available and allotted to the PS/LAP Administrator for that fiscal year or funding cycle to provide the LEP services called for by the PS/LAP; 3) keep the PS/LAP Administrator apprised of the amount of funds remaining and provide notification when funds have been exhausted; and 4) designate the LAC for the Commission staff.

f. Executive Secretary. The Office of Executive Secretary (“OEXS”) shall: 1) generally handle LEP matters that arise in cases that have not yet been docketed by the Commission or are pending before the Commission where a review has been directed; 2) promptly inform the LAC for the Commission staff of the circumstances of any instances where the Executive Secretary has provided LEP services; and 3) arrange for LEP services that require specific funding through the LAC for the Commission staff.

g. General Counsel. The Office of General Counsel (“OGC”) shall: 1) handle LEP matters concerning Freedom of Information Act (“FOIA”) requests in cases; 2) promptly inform the LAC for the Commission staff of the circumstances of any instances where the OGC has provided LEP services; and 3) arrange for LEP services that require specific funding through the LAC for the Commission staff. In instances where a Judge is handling a case that relates to a FOIA request, the OGC shall coordinate the production of any LEP materials relating to the case with the assigned Judge, as appropriate.

¹⁴ To access these interpretation services, Agency personnel need to call (800) 481-3293 and enter the OSHRC Account and PIN numbers, which may be obtained from the LAC. These services are also available for use throughout the Agency.

h. Hiring Officials at Commission. All Commission hiring officials shall assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill the Commission's mission when considering hiring criteria for Agency personnel. There is no requirement for the provision of any LEP services to LEP individuals where English is a necessary qualification for an Agency job.

i. Judge. The Judge assigned to the case shall be responsible for the handling of all matters relating to interpretation and/or translation services during the course of a proceeding pending before the Court and, in so doing, should consider EO 13166, the AG Memo, and all applicable authority.¹⁵ The Judge shall decide any issue regarding the competency of an interpreter or translator in matters pending before the Court. A non-binding example of a script for a Judge to consider using at a trial where an interpreter is being used for witness testimony is attached as Appendix 1. Judges should consider making inquiries to the parties no later than the conduct of a final pre-hearing conference concerning any need for interpreters at a trial.

j. LAC for the Commission staff. The LAC for the Commission staff shall: 1) coordinate with the PS/LAP Administrator in LEP matters and assist the PS/LAP Administrator and the LAWG in fulfilling their PS/LAP responsibilities; 2) coordinate the issuance of contracts and/or purchase orders for LEP services under the PS/LAP with the agency CO and serve as the COTR when designated by the agency's CO on all contracts or purchase orders issued by the Agency for LEP services for matters being handled by the OEXS or the OGC, with the authority to direct the day-to-day performance of any interpreter or translator while working at the direction of the office head who ordered the LEP services; and 3) collect data on the nature and frequency of the need for LEP services being provided by the Commission staff; including the identification of: a) the languages most frequently encountered; b) the primary channels of contact with LEP persons (*e.g.*, whether telephonic, in person, or by correspondence); c) the type of language assistance services provided; and d) the cost to the Agency for the provision of language assistance services.

¹⁵ In making determinations about whether an individual's request for LEP services should be paid for by the Commission or apportioned among the parties, a Judge will consider the intent of Executive Order 13166 to provide meaningful access. Additionally, a Judge will be guided by the Federal Rules of Civil Procedure applicable to such requests. Determinations are at the sound discretion of the Judge and services paid for by the Commission are limited by available funds. *See* Anti-Deficiency Act, 31 U.S.C. §§ 1341(a), 1342, and 1572 (prohibition against incurring Agency obligation to pay for services when Agency funds not legally available).

k. LAC for the OCALJ. The LAC for the OCALJ shall: 1) operate under the technical direction of the PS/LAP Administrator in LEP matters and assist the PS/LAP Administrator and the LAWG in fulfilling their PS/LAP responsibilities; 2) coordinate the issuance of contracts and/or purchase orders for LEP services under the PS/LAP with the agency CO and serve as the COTR when designated by the agency's CO on contracts or purchase orders issued by the Agency for LEP services for cases, with the authority to direct the day-to-day performance of any interpreter or translator while working at the direction of the Judge who ordered the LEP services; and 3) collect data on the nature and frequency of the need for LEP services for cases; including the identification of: a) the languages most frequently encountered; b) the primary channels of contact with LEP persons (*e.g.*, whether telephonic, in person, or by correspondence); c) the type of language assistance services provided; and d) the cost to the Agency for the provision of language assistance services.

l. LAWG. A LAWG, chaired by the PS/LAP Administrator and comprised of the General Counsel, Executive Director, Executive Secretary, CALJ, First Judges, and the PS/LAP Administrator, shall be responsible for: 1) advising the PS/LAP Administrator on the implementation of EO 13166 and the AG Memo consistent with applicable authority, as well as this document, within the Agency and without limiting a Judge's discretion to adjudicate all issues in a pending proceeding; and 2) conducting an evaluation of the PS/LAP, policies, and protocols, as well as LEP services, and recommending the updating of any of these as necessary every two years. When conducting its evaluation, the LAWG shall: 1) review agency data regarding LEP services; 2) identify any critical insufficiencies; 3) recommend to the PS/LAP Administrator the need to seek any additional LEP funding; and 4) evaluate and prioritize any suggested improvements. Improvements found to be of merit by the PS/LAP Administrator shall be incorporated into updates of this PS/LAP.

m. PS/LAP Administrator. The PS/LAP Administrator shall: 1) be responsible for implementing and administering the PS/LAP; and 2) promptly advise Judges, OEXS, and OGC whenever no funds are available to administer the PS/LAP.

n. U.S. Department of Labor, Office of the Solicitor ("DOL"). Generally, Judges should operate with the understanding that the provision of interpreters for government witnesses providing testimony at Commission proceedings and the translation of documentary materials being used by the Secretary of Labor's representatives during

Commission proceedings are litigation expenses that have historically been borne by DOL.¹⁶

2. Identification of LEP Contact Situations

The Commission is unique among Federal agencies in that it provides independent administrative trial and appellate review of citations or penalties resulting from OSHA inspections of American work places. The Commission's primary contact with the public is with: 1) individuals or persons representing their business or their employer's business after having contested an OSHA citation, thus initiating a Commission proceeding; 2) other parties to a Commission proceeding including an employer, authorized employee representative, or affected employee(s) that may, or may not, be represented by legal counsel; and 3) individual non-party employees who may be witnesses in Commission proceedings. In sum, the Commission serves two major groups of individuals that may require language assistance; parties and non-party witnesses.

The LEP population served by the Commission is generally comprised of employers and employees. Overall, the number of LEP individuals served by the Commission is limited. However, potential employee witnesses and, occasionally, small business owners, may have LEP, particularly in certain industries and geographic regions. Judges have the most contact with LEP individuals through the cases over which they preside.¹⁷ The frequency of contact varies among ALJs. Several judges have never presided over a case involving an LEP individual. On average, ALJs have cases that involve LEP individuals less than twice a year.

¹⁶ See 28 U.S.C. § 1827(c)(2), Interpreters in Courts of the United States (effective October 19, 1996) (the court is responsible for securing the services of certified interpreters for proceedings initiated by the United States, "except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses"). This statute is not applicable to OSHRC proceedings initiated by the United States, but it may be useful as a guide as to how federal district courts handle securing interpreters at trials. The selection of any interpreters or translators secured by DOL for use at trial shall be subject to the Court's approval.

¹⁷ The Commission has rarely conducted an oral argument when reviewing a case on appeal. Only two oral arguments before the Commission have occurred in the last sixteen years. Witnesses do not testify when the Commission hears oral arguments from counsel.

All LEP matters concerning a docketed case pending before the Agency prior to any review directed by the Commission shall be referred by Agency staff to and handled by the Commission Judge with cognizance of the case.¹⁸ LEP matters concerning a case that has been docketed at the Commission but has not yet been assigned to a Judge shall be referred to the CALJ for consideration and disposition. LEP matters shall generally be referred to the OEXS for consideration and disposition for cases that have not yet been docketed by the Commission or that are pending before the Commission where a review has been directed.¹⁹

Agency personnel shall promptly submit to the appropriate LAC a Notice of, or Request for LAC to Arrange for Approved, LEP Services Form attached at Appendix 2 to report the provision of any LEP services and/or to request for the appropriate LAC to arrange for approved LEP services.²⁰

The predominant language spoken by the Commission's LEP contacts is reported as Spanish.

3. Translation of any Vital Documents

a. Vital Documents in a proceeding pending before a Judge. In the event an individual with LEP raises before the Court in a pending matter a need for vital documents to be translated at the expense of another, the Judge shall decide what, if any, documents need to be translated and at whose expense and how. Examples of case-related documents that a Judge may consider "vital" include:

- 1) Pleadings
- 2) Settlement agreements
- 3) Orders to Show Cause
- 4) Dispositive motions and related orders

¹⁸ The Commission's OGC and OEXS have traditionally fielded very few phone calls from LEP persons.

¹⁹ The Commission has no further obligation to provide case-related LEP services once it has issued its final order in a case.

²⁰ Completed forms may be submitted to languageaccess@oshrc.gov.

- 5) Scheduling Orders; Notices of Prehearing Conference Call
- 6) Trial Exhibits
- 7) Decisions²¹

b. Agency-wide translations of Vital Documents for the General Public. The LAWG shall identify any agency-wide vital documents that are not case-specific that should be translated, and the PS/LAP Administrator shall arrange for their translation by the Commission. The translation of any such document for official Agency-wide use will be subjected to a two-tier process of initial translation and independent review. Translated documents will be subject to the quality control measures of ASTM F2575-06, Standard Guide for Quality Assurance in Translation.²² The LAWG will classify an agency-wide document as “vital” based on the importance of the information or service involved, and the consequences to LEP persons if the information in question is not provided accurately or in a timely manner. Agency-wide vital documents are documents primarily geared towards the general public, and are not case-specific. Examples of public documents that may be considered “vital” include:

- 1) Forms or written material related to individual rights
- 2) Procedural guides

Subject to the availability of resources, the Commission will take reasonable steps to translate additional public website content and electronic documents that contain vital information about Agency programs and language assistance services.²³ Translation of

²¹ Under most circumstances, materials primarily directed to incorporated entities, attorneys, advocates, architects, police, or other professionals will not be considered “vital” under this Plan. When documents related to litigation matters are translated, Judges may wish to consider options for ensuring that the English-language version of the document controls the obligations of the parties.

²² ASTM International, formerly known as the American Society for Testing and Materials (ASTM), is an organization that develops international voluntary consensus standards. The *ASTM F2575-06 Standard Guide for Quality Assurance in Translation* is the American translation-services standard. It provides a framework for customers and translation-service providers to develop the specific requirements of a translation project. It does *not* provide specific criteria for translation or project quality, as these requirements may be highly individual, but states parameters that should be considered before beginning a translation project. As the document's name suggests, it is a *guideline*, informing stakeholders about what basic quality requirements are in need of compliance, rather than a prescriptive set of detailed instructions for the translator.

²³ See ¶9B (Maintain Accessibility): Office of Management and Budget; Executive Office of the President, Memorandum for the Heads of Executive Departments and Agencies: Policies for Federal Agency Public Website (Dec. 17, 2004), available at www.whitehouse.gov/omb/memoranda/fy2005/m05-04.pdf.

web content may include web pages that contain important information intended for the general public, such as information about the Commission's mission, information about how to contact Judges, and the Office of the Executive Secretary, and information designed to educate individuals about their rights under the law.²⁴ Since written translations intended for mass distribution concerning the Commission are specific to the Commission there is no reason to collaborate with other federal agencies.

4. Outreach and Notice to Agency Personnel and General Public.

A copy of the Notice of Policy Statement and Language Access Plan at Appendix 4 will be posted in prominent locations throughout the Agency and made available to all Commission personnel through the Agency's intranet site and to the general public via the Commission's internet site.

5. Language Access Guidance and Training

a. Judges. The PS/LAP shall be a topic of discussion at all Annual Judges' Conferences.²⁵

b. Agency Staff Training on Language Assistance. Agency staff personnel whose duties include significant contact with members of the public or who provide administrative support to Judges will be provided information and training annually on the implementation of the PS/LAP, the scope of available language assistance services, and the procedures through which such language services resources may be accessed.

Appendix 3. The Agency shall also consider using the National Virtual Translation Center to translate documents in instances where any such translation is not expected to cause a need for the translator to testify at a trial. A complete list of Agency documents and that are translated into Spanish is also available at www.oshrc.gov/publications/spanish/.

²⁴ Decisions regarding the translation of the website and electronic documents will consider the General Services Administration's guidance on multilingual websites available at www.HowTo.gov [[Web Content, Multilingual Websites](#)].

²⁵ In the event a judges' conference is not held, the PS/LAP Administrator will conduct a conference call with all of the judges.

IV. APPROVAL

This directive sets forth the policies and procedures for the implementation and administration of the U.S. Occupational Safety and Health Review Commission's Language Access Policy Directive.

OFFICIAL SEAL:



A handwritten signature in cursive script that reads "Covette Rooney". The signature is written in black ink and is positioned above a horizontal line.

COVETTE ROONEY
CHIEF JUDGE

V. APPENDICES

Appendix 1 - Sample Trial Script when using an interpreter

Appendix 2 - Sample Notice of, or Request to Arrange for Approved, LEP Services Form

Appendix 3 - List of Translated Agency Documents

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**SAMPLE HEARING SCRIPT WHEN USING AN INTERPRETER
AND OATH¹**

[JUDGE] We have an interpreter to assist us in these proceedings. At this time, I will administer an oath to the interpreter.

In accordance with Rule 604, Federal Rules of Evidence, do you solemnly swear that you will make a true and impartial translation in this proceeding using your best skills and judgment in accordance with the standards and ethics of the interpreter profession?

[Interpreter response]

Do you also agree that you will not disclose to the public any confidential testimony or material that you become aware of during the course of performing your duties as an interpreter in this case that are ordered sealed by the judge, or that are the subject of a judge's protective order, unless otherwise ordered by the Court?

[Interpreter response]

Mr./Ms. X, please state your name and business address.

[Interpreter response]

Please state your qualifications and experience to serve as an interpreter.

[Interpreter response]

I will now provide each side with an opportunity to *voir dire* the interpreter as to his/her qualifications and neutrality.

[*Voir Dire* of Interpreter by counsel]

Any objection to using Mr./Ms. X as an interpreter in this case?

¹ This is Appendix 1 to the Policy Statement and Language Access Plan of the Occupational Safety and Health Review Commission for Improving Access to Services for Persons with Limited English Proficiency.

[Counsel response]

Without objection, the Court finds Mr./Ms. X qualified to serve as an interpreter in this case.

[After witness is seated]:

We have an interpreter to assist us through your testimony in these proceedings and you should be aware of what the interpreter can and cannot do. The interpreter is here to help us communicate during your testimony. He/she is not a party in the case, has no interest in the case, and will be completely neutral. The interpreter is not working for either party, his/her sole responsibility is to enable us to communicate with each other. The interpreter is not an attorney, a social worker, or an advocate; his/her only job is to interpret what is said during your testimony. If you do not understand the interpreter at any time, please let me know.

NOTICE OF, OR REQUEST TO ARRANGE FOR APPROVED, LEP SERVICES FORM (Internal Use Only)¹

Date of [Notice of] or [Request for Approved] LEP Services:

NAME/DOCKET NUMBER OF CASE:

Name of Judge or Office Head Approving LEP Services:

LEP Individual's Primary Language:

LEP Services [Provided] or [Required]:

Time, Place, and Duration of Services [provided] or [required]:

Special Accommodation Requirements (if any) [provided] or [required]:

Notice/Request Submitted on behalf of : Judge OEXS OGC Other _____

Proceeding Type: Trial Settlement Conference Other _____

Notifier's or Requestor's Name, telephone number and email address:

Signature of Notifier or Requestor

¹ Form to be completed and submitted to LAC and/or Contracting Officer only by OSHRC personnel.

Internal Use Only

Date Notice/Request Received by LAC or Contracting Officer: _____

Action Taken by LAC or Contracting Officer: _____

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

List of Translated Agency Documents

The following documents are translated into Spanish and available electronically at: http://www.oshrc.gov/publications/publications_spanish.html.

1. [Guide to Review Commission Procedures](#)
2. [Rules of Procedure](#)
3. [Employee Guide to Review Commission Procedures: Supplement to the Guide to Review Commission Procedures](#)
4. [Guide to Simplified Procedures](#)
5. [OSHRC Instructions for Electronic Filing](#)

FOIA information is available at: http://www.oshrc.gov/foia/foia_request_form.html.

1. [Freedom of Information Act \(FOIA\) Request Form Instructions](#)
2. [FOIA Request Form](#)

Electronic fillable subpoena to appear and testify (ad testificandum) is available at: <http://intranet.oshrc.gov/judges/default.aspx>

Notice of Policy Statement and Language Access Plan

The Occupational Safety and Health Review Commission (Commission or Agency) is responsible for the adjudication of workplace safety and health disputes under the Occupational Safety and Health Act of 1970 (the Act). Executive Order 13166, 65 Fed. Reg. 50, 119 (Aug. 16, 2000), directs all Federal agencies to “examine the services it provides and develop and implement a system by which persons with limited English proficiency (LEP) can meaningfully access those services consistent with, and without unduly burdening the fundamental mission of the agency.” On February 17, 2011, the United States Attorney General issued a Memorandum For Heads of Federal Agencies, among others, subject: Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166 (AG Memo). The AG Memo requested each agency join the Department of Justice in recommitting to the implementation of Executive Order 13166 by: 1) establishing a Language Access Working Group to be responsible for implementing the executive order; 2) evaluating and/or updating its Language Access Plan; 3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans and protocols; 4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; 5) notify the public of its LEP policies, plans, and procedures; 6) assess non-English language proficiency when considering hiring criteria; 7) collaborating with other agencies for written translations intended for mass distribution; and 8) including a statement that it does not provide federal financial assistance when transmitting its language access plan (together “Eight Steps”).

The Commission, which serves as an administrative court at the trial and appellate levels, acknowledges English proficiency is required for meaningful participation in Agency proceedings due to the use of legal terms, principles and procedures involved in adjudicating the rights and responsibilities of employers and the rights of employees under the Act. The Commission’s goal is to ameliorate LEP as a barrier to accessing its programs or activities; consequently, the Agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with, and without unduly burdening, its fundamental mission and existing law. In accordance with Executive Order 13166 and the AG Memo, the Commission will satisfy the Eight Steps identified above by which LEP persons can meaningfully access its programs and activities to the extent that Agency resources are available and will permit, and without precluding a judge from exercising independent judgment in a pending proceeding as it relates to LEP matters in accordance with the Act, Administrative Procedure Act, Commission Rules of Procedure, Federal Rules of Civil Procedure, Federal Rules of Evidence, Executive Order 13166, and the AG Memo.

Responsibility for implementing and administering the Agency’s Policy Statement and Language Access Plan (PS/LAP) has been delegated to the Office of Chief Administrative Law Judge (OCALJ); specifically to the PS/LAP Administrator, since the largest number of interactions with LEP persons and the Commission occur in the context of a proceeding conducted by one of the Commission’s judges. A copy of the PS/LAP is to be posted in all Commission offices and made available to Agency personnel via the intranet and the general public via the internet.

Questions concerning language access for cases pending before a judge should be directed to Tia Dillard, OCALJ Language Access Coordinator (LAC), at (202) 606-5405, or via email at languageaccess@oshrc.gov. Questions concerning language access for other matters should be directed to Executive Director, Debra A. Hall, LAC for the Commission staff at (202) 606-5397, or via email at languageaccess@oshrc.gov.

PS/LAP Administrator: Judge Keith E. Bell
August 28, 2014