

## PIERCING THROUGH THE “BODY ART” ISSUE

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As tattoos, piercings and other forms of body art have become increasingly prevalent, hospitals are grappling with how to deal with this trend. While many younger workers proudly display their body art, older workers have exhibited a variety of responses. Some are offended, some have embraced the fad, while still others seem unfazed. Providing care for an ever-aging population, hospitals must also consider the reactions of patients and their families, many of whom are already frail and/or apprehensive.

Last year, a hospital group in Texas planned to implement a dress code and grooming policy requiring all tattoos to be covered, and piercings to be limited to earlobes and a nose stud only. With its new dress and grooming code, the hospitals planned to join a growing list of healthcare employers, and employers in general, to address the increasing popularity of tattoos and piercings among employees. But the proposed changes sparked vigorous debates among employees and even press coverage. In other words, body art, piercings and grooming standards have become a sensitive subject.

### **The Prevalence Of Tattoos And Piercings Has Exploded**

A recent Pew Research Center poll reported that 36% of 18- to 25-year-olds and 40% of 26- to 40-year olds have at least one tattoo. In those same age groups, 30% and 22% respectively have a piercing somewhere other than their ears. The same survey found that even in the 40 to 60 year old age group, over 10% had tattoos or piercings outside of their ears, with these numbers expected to grow as the

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demand for tattoos and piercings – so-called “body art” – becomes even more mainstream.

The growth in popularity of body art provides challenges for employers in every industry and profession. Many employers have responded by implementing dress and grooming policies seeking to limit or prohibit employees’ open display of tattoos and piercings while at work. In 2006, for example, San Bernardino County, California, began requiring its public employees to cover any tattoos and remove visible facial piercings while at work. Since last year, Los Angeles city firefighters have been required to cover all tattoos while on the job, and for the past five years, the Los Angeles Police Department has had a requirement that all officers cover any visible tattoos.

### **Protecting Employers’ Legitimate Interests**

Although some employers, particularly in traditionally creative fields, may encourage employee displays of body art as a form of self-expression, many others worry that their employees’ visible body piercings and tattoos may be off-putting or even offensive to customers, investors, and the public at large. With the growing popularity of body art, particularly among younger employees, what is a hospital or a clinic to do?

Those with too-stringent grooming and dress code requirements risk driving off talented employees and hurting employee morale, while at the same time, an employer such as a hospital may have legitimate concerns that an employee’s mode of self-expression will alienate or offend patients or patients’ families. As explained below, this issue also raises some potential legal considerations.

Employers have wide latitude to establish dress and grooming policies under the law, but it also makes sense to consider the underlying reasons for appearance requirements before implementing a strict policy. Obviously, not all positions require traditional business dress, and not all positions involve interactions with customers or the public either. This means that strict grooming and dress policies, which prohibit all displays of tattoos and piercings, may be unnecessary and even demoralizing to a growing segment of employees.

### **Developing An Effective Policy**

Even employers that permit piercings or tattoos may still find it necessary to set some limits. A detailed dress code and

grooming policy should clearly spell out what is permitted. For example, if you permit the display of tattoos, you may prohibit the display of sexually graphic, violent, or otherwise offensive tattoos, or may require that employees limit the number of visible tattoos.

To ensure employee support of and compliance with dress and grooming policies, employers will probably want to consider involving workers in the development of dress and grooming policies. They should also be prepared to make a business case for any restrictive policy decisions. At minimum, this will help employees understand the business need for the policies. Having had the opportunity to provide input, employees are more likely to support a dress and grooming policy, even one they do not entirely agree with.

### **Dealing With Religious Issues**

Hospitals must also consider how to respond if an employee asserts a right to a particular tattoo, jewelry or hairstyle on religious grounds. You cannot treat employees or applicants more or less favorably because of religious beliefs or practices. In fact, you must accommodate employees' *sincerely held* religious practices, unless doing so would impose an undue hardship. According to the EEOC, modification of grooming requirements is an accommodation that may be *required*. But you are not required to accommodate religious beliefs or practices if doing so would impose an undue hardship on legitimate business interests.

The standard for demonstrating an undue hardship is not high, but employers must be prepared to show that they, indeed, considered the request for accommodation, as opposed to simply dismissing it out of hand.

As is so often the case, the most important factor may be proving that you have acted consistently. Employers may not place more restrictions on religious expression than on other forms of expression that have comparable effect on the workplace. Some employers have already learned the hard way that if a ball cap or flamboyant hairstyle does not pose an undue hardship, neither does a turban or a head scarf that is based upon sincerely-held religious convictions. The key, as always, is consistent and even-handed treatment of all such requests. This is another situation where supervisory training is critical. Supervisors and managers must be trained to consult with human resources when facing these situations.

Fear that other employees may be upset by or “uncomfortable” with a religious expression is very unlikely to constitute an undue hardship. On the other hand, you can establish an undue hardship by showing that the accommodation diminishes efficiency in other jobs, impairs safety or requires more than ordinary administrative costs.

Finally, no matter how your hospital or clinic deals with these issues, applicable policies should be clearly stated in writing and readily available to all employees.

### **Conclusion**

Like it or not, traditional dress code and appearance standards are being challenged today more than ever. While employers still retain wide latitude, practical, social and legal factors are requiring more careful consideration of requests that might have been readily (and safely) dismissed several years ago. As last year’s experience in Texas demonstrated, it is advisable to seek employee input before making major changes to employee appearance standards. Failure to do so could result in unpleasant surprises.