



If Your Baristas Can Show Off Their Tattoos, Will Your Employees Be Next?

Insights

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Coffee giant Starbucks recently announced a major change to its dress and appearance policy, allowing baristas to visibly display tattoos for the first time in the company's 44-year history. The company decided that employee retention and satisfaction outweighed the strictness and consistency of its prior "clean-cut" appearance policy.

This decision continues a trend across the country where more retail and food establishments are relaxing their personal appearance standards for their employees; the question is, will your company be next?

Arguing For Ink

Last August, Starbucks barista Kristie Williams started a Coworker.org petition to change the company's tattoo policy, which prohibited any kind of visible tattoo whatsoever. Besides stifling individual expression, she and other baristas complained that having to wear long sleeves to cover tattoos was outdated and uncomfortable (imagine sporting long sleeves while making piping hot coffee drinks in the summer). The petition was very popular – over 25,000 people signed up to support the suggested change.

The corporate office heard their message loud and clear; in fact, it announced that it had long been considering changing the policy even before the petition was started. "We want to build a company where self-expression, empowerment and inclusion are nurtured," said Chief Operating Officer Troy Alstead.

So what exactly will change? Starbucks' new policy says: "Tattoos are allowed, but not on your face or throat. Treat tattoos as you treat speech – you can't swear, make hateful comments or lewd jokes in the workplace, neither can your tattoos." The policy also relaxed piercing standards, allowing two piercings per ear (small or moderately-sized), a small nose stud (no rings), and small ear gauges (no more than 10 mm).

Still prohibited at Starbucks: other visible pierced jewelry (such as eyebrow piercings), bright or unnaturally colored hair (purple, pink, blue, or green), and nail polish of any color. These requirements are designed to protect the Starbucks brand, present a neat and attractive appearance among workers, and minimize food-safety concerns.

Set The Limits That *You* Want

This policy change is a good reminder that private employers are allowed to set whatever dress, grooming, and appearance standards that they think are appropriate for their businesses. Employees at these companies have no First Amendment rights at work, and you can dictate how you want your employees to look and what they (and their body art) can say.

There are really just two legal rules you need to follow when setting appearance standards: apply them uniformly to all employees or run the risk of a discrimination claim (with natural variances allowable between the genders, such as short hair required for men, longer hair allowed for women), and allow religious accommodations (think: head scarves, ashes on Ash Wednesday, Jewish side curls).

Employees can't successfully argue that a tattoo needs to be allowed simply because it's a religious symbol such as a cross or a Muslim crescent moon; instead, the only time a tattoo would need to be accommodated is when covering it would be a violation of a certain religious belief. The EEOC cites to the Kemetic religion, an ancient Egyptian faith which calls for the worship of the sun god Ra and requires its adherents to get a small tattoo encircling the wrist written in the Coptic language. Practitioners can't cover their tattoos or it would be rejection of Ra and considered a sin.

Therefore, EEOC guidance states that any company that employs workers practicing the Kemetic religion needs to accommodate workers by allowing the display of their tattoos, regardless of company policy. However, unless you have true sun-worshippers in your workforce (and not just those who like to soak up rays on vacation), you probably can prohibit any and all tattoos in your policy.

“Trending Now”

But do you want to? Starbucks is just the latest example of a large, national employer which now allows tattoos. PetSmart recently started allowing employees to show off their tattoos at work, joining the ranks of Peet's Coffee & Tea, Walgreens, Target, Home Depot, IKEA, Trader Joe's, Dunkin Donuts, and dozens of other retail and food chains (not to mention local and regional employers, who generally have much more relaxed rules anyway).

One of the primary reasons a company would want to be a little more flexible in this regard is worker retention. If employees can accept another job down the street because that company lets them show off tattoos, you might not get the best applicants and might start losing employees. While it might not seem like a big deal to you, it's important to remember that the new generation of worker sees individual expression as a priority in their lives. The bottom line is that you may want to consider revising your policy to match what Starbucks – and countless other employers – are now doing.

A version of this article originally appeared in the Daily Journal of Commerce. For more information, contact the author at PMeneghella@laborlawyers.com or 502.205.9044.

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