



Can You Judge A Book By Its Cover? Adopting And Enforcing Dress Codes And Appearance Policies

Insights

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Many hospitality employers impose strict guidelines on employee appearance, dress, and grooming – and for legitimate reasons. These rules protect your public image, promote a productive work environment, comply with health and safety standards, and even prevent claims of unlawful harassment. Other businesses are hesitant to establish strict requirements for fear of encroaching on employees' freedom to express themselves.

The good news is that adopting a policy before a hairstyle, tattoo, nose ring, or head covering becomes an issue allows you to clearly set forth expectations and help defend against claims of discrimination. The (sometimes) bad news is that, once adopted, you must ensure consistent enforcement of the policy or run the risk of ending up in court.

Can You Fire Someone For Not Cutting His Hair?

In the recent New York case of *Viscecchia v. Alrose Allegria, d/b/a Allegria Hotel*, the issue was not the validity of the employer's appearance policy, but the employer's enforcement of the policy. A former line cook for the hotel filed a complaint alleging that he was discriminated against on the basis of his gender in violation of discrimination laws and in retaliation for complaining about discrimination.

The cook had long hair in violation of the hotel's appearance policy which stated that men's hair "must be above the shirt collar." He was hired in 2009 and maintained the long hair style throughout his employment. Three years after his hire, in 2012, hotel management directed the employee to cut his hair because it was too long and in violation of the policy.

At that time, he complained that the hotel's hair policy was discriminatory towards men because the hotel did not impose a similar restriction on women. Nearly a year later, on October 1, 2013, he received a written warning to cut his hair within two weeks or face disciplinary action up to and including termination. He refused to comply with the directive, and the hotel terminated his employment on October 16, 2013.

The plaintiff filed a federal lawsuit alleging gender discrimination and retaliation. He complained that the hotel's policy was discriminatory because it was not equally applied to both genders. He also claimed that the hotel selectively enforced the policy, permitting women to have "streaked" hair,

which was also a violation of the policy. His final claim was that he was retaliated against for complaining about discrimination.

Differing Standards Can Be OK...

The hotel asked the court to dismiss all claims, but the federal judge hearing the case decided that the former employee could proceed, in part, with his complaint. The judge dismissed the gender discrimination claims about the policy differences, noting that under Title VII and New York law, it is “well established that employers can prescribe different grooming standards for male and female employees, including those standards concerning hair length.” Differences according to gender are acceptable so long as the requirements do not place a greater burden on one gender.

...But Selective Enforcement Is Not

But the court refused to dismiss the discrimination claims based on selective enforcement of the policy. The court found that the employee presented adequate evidence that the hotel’s hair policy was selectively enforced in a manner that discriminates against male employees.

The court made it clear that appearance policies must be “enforced even-handedly between men and women, even though the specific requirements may differ.” The hotel’s policy stated that “beaded, braided or streaked hair is not permitted. Color should be maintained at neutral tones.” Although the hotel argued that the women who had streaked hair in violation of the policy met the “natural-looking” requirement, the court accepted the employee’s argument that the plain language of the hair policy did not require that streaks be extreme in order to violate the policy.

The court also allowed the employee to proceed with his retaliation claim, ruling that he presented adequate evidence that he was fired after complaining about the alleged discriminatory selective enforcement of the policy.

Lessons To Be Learned

Although you are well within your rights to set limits and restrictions on employee dress and appearance, you should be cautious of some potential pitfalls with such policies, including claims for gender, religion, national origin, race and disability discrimination claims.

In this regard, you should carefully consider and address employee complaints that the policy interferes with their rights, is being more strictly enforced against one gender and not the other, as well as requests for and complaints about accommodations for religious beliefs and disabilities.

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