

TATTOOS, HAIRCUTS, AND HEAD COVERINGS – WE’RE NOT IN KANSAS ANYMORE

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As our society has evolved and changed, standards for acceptable dress and appearance have also been transformed. For example, tattoos, once seen mostly on bikers and those who had served in the military, are now mainstream. An estimated 40% of Americans have at least one tattoo and women are just as likely as men to have one.

Similarly, about 80% of Americans are estimated to have at least one piercing. Purple hair, mohawks, dreads, and “man buns” are all the rage. Low cut and revealing clothing that would seem to many to be more appropriate for a night of clubbing are worn in all settings without hesitation. Spandex and yoga clothes have replaced sweatpants. These changes in attitudes about appearance impact the workplace and create challenges for employers.

Dealerships Can Set Appearance Standards

Dealerships, like other employers, have the right to adopt and enforce dress or appearance policies that help create and maintain a certain image. Except for situations discussed below, you can generally dictate requirements related to your employees’ appearance (clothing, hair, tattoos, piercings, shoes, etc.) and expect them to have and maintain a certain “look.”

You can even set different standards depending upon an individual’s job position within the dealership. For example, a policy may prohibit visible tattoos, piercings, and “colorful” hairstyles for those employees who have regular, in-person interaction with customers (such as salespersons), but have a more relaxed standard for those without customer contact (like technicians).

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While each dealership should create a unique appearance policy that matches your culture, it is inadvisable to have no established and written appearance guidelines at all. Even those dealerships that are concerned about encroaching on employees' freedom of expression should create expectations.

Having an enforced policy in place *before* a tattoo, haircut, or head covering issue arises can help protect your public image, promote a productive environment, comply with health and safety standards, and even prevent claims of discrimination and harassment.

Policies Should Cover Everything ...

An appearance policy should require that all employees present a professional and well-groomed appearance, while addressing good hygiene, uniforms, and safety-related attire. You can set limits on tattoos, piercings, gauges, and extremes in dress, jewelry, and hairstyles, but many employers have found a zero-tolerance policy too strict.

Many employers permit body piercings or tattoos with limits on the number, size, placement, content, or visibility. In the final analysis, your policy should articulate what is permitted and prohibited and include language that permits management to determine what is and is not appropriate. Once you have disseminated the policy to your employees, enforce it consistently.

...But You Must Allow Some Exceptions To Peek Through

While you generally may require all workers to follow a uniform dress code, you may also be legally required to make exceptions to your policies. For example, an employer must not treat some employees less favorably because of their national origin. If your dress code prohibits certain kinds of ethnic dress, such as traditional African attire, but otherwise permits other casual dress, you may face a legal challenge for discrimination.

Likewise, if your appearance code conflicts with an employee's religious practices, you must consider requests for accommodation and determine if allowing the accommodation would result in undue hardship. If it would not, you must permit the accommodation.

For example, if an employee's religion required the wearing of a head covering or required a male employee to wear a beard, your dealership likely would have to permit these

accommodations, even if your policy strictly prohibited them. (Alert: your customers' or other employees' dislike for the requested accommodation does not qualify as an undue hardship.)

Similarly, if an employee requests an accommodation because of a disability, you must modify or permit an exception to the dress code unless doing so would result in undue hardship. For example, you may have to grant an exception to an appearance policy that prohibits facial hair for an employee with certain skin conditions.

True Stories From Recent Court Cases

The courts are regularly addressing these issues. In a recent high-profile case, a retailer settled a series of cases involving Muslim female employees who were either not hired for or were terminated from sales positions because they wore a headscarf. The retailer required its employees to comply with its "Look Policy" that prohibited "caps" to be worn, but did not mention other headgear.

In another case, a female employee alleged that her employer discharged her because her religion did not allow her to wear slacks as required by the dress code policy. The employee alleged that when she told her employer that she had to wear a skirt, the employer refused the accommodation.

In yet another case, an employer settled a case brought by a former employee fired for having visible tattoos, paying \$150,000. The employee's religious sect believed that tattoos symbolized its devotion to its creator, but the employer believed (incorrectly) that its desire to promote an "All-American" look trumped the religious belief.

Dealerships must address requests for accommodation to appearance policies, ensure consistent enforcement, and train supervisors not to make knee-jerk decisions about such requests. Remember, the need to maintain a certain look is generally not enough hardship to justify blanket refusals for such requests. Seeking legal guidance when these issues arise is never a bad idea.

Buttoning It All Up

While employers still retain wide latitude when it comes to appearance policies, practical, social, and legal factors require you to create them carefully. Also, you must consider

requests for accommodation that might have been readily (and safely) dismissed several years ago.

With the changes in society and the need to attract and retain new employees into the industry, as well as attracting like-minded customers, you may be wise to revisit and update your policies. Remember, you're not in Kansas anymore.

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