



When Strict Dress Codes Went Out Of Style: The Modernization Of Workwear

Insights

8.31.18

“Every day is a fashion show, and the world is your runway.” – Unknown

This modern-day old adage gives one permission to own their own personal style with the utmost confidence—but how does this fit into your work culture? In years past, getting dressed for work was simple. But as time progressed, employers have implemented dress-code policies that make the concept of workwear less straightforward. From business professional to business casual to smart or casual attire—the confusion is understandable.

“Yes, we have a dress code. You have to dress.” – Scott McNealy, Sun Microsystems co-founder

As you know, federal laws prohibit employers from discriminating against employees on the basis of race, color, national origin, sex (including pregnancy), religion, disability, genetic information, or age (if the employee is over the age of 40). State laws may prohibit discrimination based on additional characteristics. These laws prohibit discrimination in many aspects of employment—which includes policies that regulate employee appearance—including dress code, grooming, or uniform policies.

Why do employers have dress code policies? The most common reasons include ensuring a professional image when interacting with third parties, increasing the brand image of the organization, and safety reasons. Some companies also establish dress code policies because they feel that it will enhance professionalism in the office.

However, the balance of power as it pertains to these policies and workwear is beginning to gravitate more towards employees. Some traditional dress-code prohibitions (i.e. the length of a woman’s skirt or a man’s hair, etc.) are quickly becoming outdated or even illegal.

“Style is a way to say who you are without speaking.” – Rachel Zoe, fashion designer

Nowadays, employees are gaining the freedom to express their personal style and fashion sense with respect to workwear. No, it is not because employers are interested in trading in their cubicles for a catwalk. But the law is reforming dress code policies, and employers must take heed.

For example, the New York City Human Rights Law prohibits employers from enforcing “gender-specific” dress codes. In other words, an employer can require female employees to wear dresses

and heels, but would have to require the same of male employees. Additionally, mandatory uniforms are permitted so long as there are no restrictions on what men and women wear.

Susan Scafidi, founder of the Fashion Law Institute, recently described how several fashion corporations changed their dress codes to comply with the modern legal requirements. Other organizations continue to follow suit, including ones that are not in the fashion world. For instance, Mary Barra, CEO of General Motors, famously revolutionized the foundation of her company's culture when she recently revised GM's 10-page dress code to two words: "Dress appropriately." Needless to say, the manner in which companies approach dress code is rapidly changing.

"Life is too short to wear boring clothes." – Unknown

Yes, employers are lifting the veil on stringent dress codes, and work clothes no longer include just suits and blazers, but don't dust off your favorite baseball cap or dusty Converse Chucks just yet. Conservative industries such as finance and law are loosening up, but haven't quite gotten to the simple "dress appropriately" side of the spectrum. In practice, companies can still implement dress codes so long as the rules avoid discrimination, allow for reasonable accommodations, or involve a bona fide job-related qualification.

However, you may want to revisit your dress code policies to ensure they are staying up-to-date and not in conflict with any federal or state laws. Here are a few considerations in drafting or revising these policies:

1. **Craft a gender-neutral policy.** While a majority of the jurisdictions allow for reasonable distinctions, the law appears to be moving towards prohibiting these distinctions and requiring more neutral policies.
2. **Accept the fact that there may be exceptions.** You may implement such policies for the sake of uniformity, but be wary of violating federal law. For example, consider disability and religious issues. If you enforce a uniform policy, be prepared to accommodate employee needs (i.e., replacing uniform buttons with Velcro) and provide religious accommodations. The EEOC has stated that employers must provide employees a religious accommodation as to grooming and dress code policies.
3. **Consistency is key.** Employees should be held to equal standards; employers should be cautious if their dress code or grooming policies impose more of a burden on one sex than the other (i.e., requiring female employees to wear makeup).

Drafting a dress code policy or revising an existing dress code is not an easy task. The possibility of running afoul of various workplace laws is great, and the consequences could be significant. If you need assistance with your dress code policy, contact your Fisher Phillips attorney.

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