



Creating a Look Can Cost You

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While there is no legal requirement that an employer adopt a dress or appearance policy, many restaurant and hospitality employers are looking to create a certain image. Let's face it, customer service and appearance are what restaurant brands sell (in addition to good food). Restaurant employers may not only dictate uniforms, but they may expect a certain style and presentation, which goes beyond wearing uniforms and the company polo shirt.

Some employers are hesitant to impose strict guidelines for fear of encroaching on employees' freedom to express themselves. But having no guidelines is often not an option either. Having an appearance and dress policy in place *before* a tattoo, haircut, or head covering becomes an issue allows a concept to clearly set forth expectations. In addition, a well-written policy can help protect a company's public image, promote a productive work environment, comply with health and safety standards, and even prevent claims of discrimination and harassment.

A bartender once sued her casino employer because its policies required women to wear makeup and prohibited men from doing so. The court concluded that the dress code did not place a heavier burden on women than men or stereotype women, as the dress code required both men and women to maintain a similar professional appearance. Courts also have found that policies requiring men, but not women, to wear ties or allowing women, but not men, to wear earrings do not violate Title VII.

Another area of developing discrimination claims involves claims that the employee was not stylish, fit, or skinny enough. Obesity is not automatically a disability under the Americans with Disabilities Act, but the EEOC and state agencies are increasingly making such claims, arguing in some cases that obesity was due to health issues or that the employer wrongly perceived the employee as a person with a disability.

No matter how restaurant employers choose to deal with the dress-code issue, expectations should be clearly stated in writing and readily available to employees. While employers still retain wide latitude, practical, social and legal factors are requiring careful preparation of policies related to dress and appearance, as well as consideration of such requests for accommodation that might have been readily (and safely) dismissed several years ago.

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