



# Don't Let A Tattoo Or Haircut Become A Liability

Publication

6.11.14

There is no legal requirement that an employer adopt a dress or appearance policy, but many restaurant and hospitality employers are looking to create (or maintain) a certain image. For good business reasons, hospitality employers adopt policies regulating dress and appearance in their workplaces. Employers may not only dictate uniform requirements, but they may expect a certain style and presentation, which goes beyond wearing uniforms.

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 you 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.

## **Policies Should Cover Everything ...**

A policy should address all aspects of employee dress and appearance and explain that the employer's professional atmosphere is maintained, in part, by the image it presents to the public and its guests. The policy should require that all employees present a professional, neat and well-groomed appearance. The policy should address good hygiene, uniform requirements and proper safety-related attire (such as closed-toe shoes).

Tattoos, body piercings, gauges and other forms of self-expression have become commonplace and society seems to have become more accepting of individuals' choices for self-expression. However, some of these forms of self-expression may not be appropriate for a customer-service industry such as the hospitality industry.

Although some are hesitant to do so, employers can legally set limits on self-expression in the form of tattoos, piercings, and extremes in dress, jewelry and hairstyles. Some employers have found a zero-tolerance policy too strict and have adopted less stringent policies.

Many employers now permit body piercings or tattoos within certain limits, such as limits on the number, size, placement or visibility of the tattoos, or limits that prohibit the display of any racially offensive, sexually explicit, violent, or otherwise offensive tattoos. In the final analysis, your policy should clearly articulate what is permitted and what is prohibited in your workplace. Once you have articulated your policy, enforce it consistently.

### **... But Allow Some Exceptions to Peek Through**

The Equal Employment Opportunity Commission has weighed in on this issue. In general, the agency says an employer may establish a dress code that applies to all employees or employees in certain positions. There are a few possible exceptions.

While an employer may require all workers to follow a uniform dress code — even if the dress code conflicts with some workers' ethnic beliefs or practices — a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

Moreover, if the appearance code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the appearance code or permit an exception, unless doing so would result in undue hardship.

Similarly, if an employee requests an accommodation to the dress code because of his or her disability, you must modify or permit an exception to the dress code, unless doing so would result in undue hardship. For example, an employer may have to consider granting an exception to an appearance policy that prohibits facial hair for an employee with certain skin conditions. And remember, "undue hardship" is defined differently if the accommodation requested is for religious versus disability reasons.

The courts are addressing these and other issues. In a recent high-profile case, a retailer settled several 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 earlier cases against the same retailer, a federal district court found that an employee acted on her belief that the Quran requires women to wear headwear, and that the fact that she wore the scarf to the interview was sufficient for the store to enter into an interactive process regarding religious accommodation. The court held that the retailer, which marketed its "look" could not claim that permitting Muslim employees to wear their hijabs is an undue hardship based on its "Look Policy."

In another case, a restaurant discharged a cashier because her religion, Christian Pentecostal, forbids her from wearing slacks. The applicant allegedly informed the restaurant of her need for religious accommodation and offered to wear a skirt instead of the uniform pants. In finding against the employer, a court accepted the EEOC's claims that allowing the applicant to wear a skirt would not have cost anything and thus was not an undue hardship.

Additionally, a restaurant chain paid a server \$150,000 after terminating him for having visible tattoos. The employee stated that his sect believed that tattoos symbolized its devotion to its creator. The restaurant's objection that it wanted a consistent, all-American look did not trump the religious objection.

objection.

A federal court recently found in favor of an African-American housekeeper who proved that her employer did not consistently enforce its appearance policy. In her race discrimination case, she demonstrated that the employer did not consistently enforce its policy related to braided hair styles.

Hospitality employers must be prepared to discuss and address requests for accommodation to appearance policies, ensure consistent enforcement and train supervisors to never make knee-jerk decisions when it comes to requests for accommodation. Employers have a duty to reasonably accommodate an employee's and applicant's sincerely held religious beliefs and employees and applicants with disabilities.

Train supervisors to seek help from human resources or legal when accommodations are requested. When evaluating those requests, keep in mind that the need to maintain a certain look is generally not enough hardship to justify blanket refusals.

### **The Biology Of Dress Codes**

There are physical and style differences between sexes, and dress-code policies will reflect this fact. The key is to impose the same level of duty on both sexes, even if individual requirements differ. The obligations should not impose a greater burden on one sex or differ markedly from social norms.

A bartender 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. While obesity is not automatically a disability under the Americans with Disabilities Act, the EEOC and state agencies are increasingly making such claims, arguing in some cases that obesity due to medical reasons is a disability, or the employee is covered under the law because the employer wrongly perceived the employee as a person with a disability.

### **Buttoning It All Up**

No matter how hospitality 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 require 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.

This article appeared in Law 360 on June 11, 2014

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