

TATTOO U: WHAT CAN EMPLOYERS DO ABOUT OFFENSIVE BODY ART?

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The Philadelphia Police Department is now enforcing its first-ever tattoo policy forbidding on-duty officers from having “offensive, extremist, indecent, racist, or sexist” tattoos. The policy, titled Directive 6.7, forbids head, face, neck, and scalp tattoos, effective March 1, 2017.

Officers who already have tattoos on the aforementioned areas must cover them with cosmetics or clothing. While tattooed eyebrows will not be banned, the policy also forbids “extreme” body art such as “tongue-splitting or bifurcation,” unnaturally colored contact lenses, branding, and “abnormal filing of teeth.” The new policy follows a controversy regarding a police officer who was harshly criticized for displaying tattoos that resemble Nazi symbols. If an officer violates the policy, they will be sent to the Records and Identification Unit to have the images photographed, and the matter will be passed on to a departmental Tattoo/Body Art Review Board.

Despite the fact that the number of inked Americans has grown over the years, such policies regarding tattoos are not uncommon and are often covered by dress and grooming policies or appearance standards. In most states, provided there is consistent enforcement and reasonable accommodations provided where necessary because of an employee’s religion, employers have the right to refuse

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to extend a hiring opportunity to someone with tattoos and require their employees to cover visible tattoos while at work.

While it may make sense for some employers to have policies prohibiting visible tattoos, you should be aware of a number of issues should you choose to adopt such a policy at your workplace. Here are some best practices you should consider.

IMPLEMENT REASONABLE WRITTEN DRESS AND GROOMING POLICIES

Work with your human resources department or consult an attorney to develop written dress code and appearance policies that are based on sound judgment, in the best interest of the business, and can be enforced consistently. State laws tend to support these policies in general and give employers deference to retain some flexibility when creating rules consistent with your image. Be certain all employees read and sign these policies so none can claim lack of knowledge.

ENSURE YOUR DISCIPLINARY POLICIES APPLY

Employees must know in advance that there are consequences for violating your dress and grooming policies. The key is to have in place disciplinary policies, up to and including termination, for violating the company's dress and grooming policies and to issue discipline appropriately.

Remember, however, that discipline should be issued on a case-by-case basis. For example, if an employee requests an accommodation to wear a tattoo for religious purposes (such as Kemetism), it would be unwise to immediately terminate that employee for violating the company policy. Instead, you may need to first engage in what is commonly called an "interactive process" to determine if a reasonable accommodation is appropriate for the individual's religious beliefs.

APPLY COMPANY RULES EVENHANDEDLY

Although discipline should be issued on a case-by-case basis, always apply company rules, policies, and penalties evenhandedly and without any appearance of unlawful discrimination. For example, if you allow a former U.S. naval seaman to wear a non-offensive tattoo, you cannot discipline a woman in the same or similar position for wearing a tattoo that is also non-offensive.

Additionally, if you have been lax in enforcing your rules and policies in the past but decide to apply them rigorously going forward, inform your employees beforehand of your intent to enforce the rules as written, and then follow through with the plan. That way, employees are not able to claim the policy was applied differently to them.

REMEMBER YOUR NON-HARASSMENT POLICIES

Problems with tattoos can also arise from the subject matter depicted, as tattoos can express political messages, make sexual suggestions, depict violence, or reflect affiliation with a particular offensive group. Past lawsuits have included allegations that a coworker's offensive, extremist, indecent, racist, or sexist tattoos created a hostile work environment. Therefore, you might find your company is running afoul of your own non-harassment policies if you do not require employees to cover certain tattoos.

Even if you do not prohibit all tattoos, you should require coverage of tattoos that could create a hostile work environment and discipline workers for violating this rule. For instance, it may not be necessary to terminate an employee if she gets a flower tattoo on her arm, as she could cover it with a long-sleeve shirt. However, it may be acceptable to terminate her if she gets a tattoo of the Parteiadler, the national emblem depicting an open-winged eagle adopted by the Nazis in 1935, on the same arm.

CONCLUSION

Hopefully these simple practices will go a long way toward avoiding workplace legal problems in today's litigious environment. Due to the rising number of legal claims filed across the country, employers have an increased responsibility to take employee complaints seriously and provide a work environment that welcomes employees from different backgrounds.

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