



# FP Weekly Checklist: It's Time to Update Your Employee Appearance Policy for 2023

Insights

12.09.22

Each week, FP Weekly members receive a practical and cutting-edge checklist of issues to consider, action steps to take, and goals to accomplish to ensure you remain on the top of your game when it comes to workplace relations and employment law compliance. This week we provide you a checklist of items to consider when revising your employee appearance policy and dress code for 2023 – an especially timely topic given the evolving nature of employer expectations in this area.

## Evolving Workplace Expectations and Standards

**Pandemic prompted changes.** Many workplaces have become more casual in recent years, and the COVID-19 pandemic accelerated this movement. Employers and co-workers alike probably don't mind when a cat, dog, or child occasionally makes an appearance in a Zoom call, and they accept that many employees on those calls are wearing sweatpants with their camera-ready dress shirt. Moreover, many employers that want workers to return to the office have offered a variety of incentives, including a relaxed dress code.

What does this mean for your appearance standards? These changes should motivate you to think about how to strike a balance between employee comfort and the standards of professionalism for your particular company culture and industry. Every workplace is different, but in general, you should consider the following questions:

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Will you create a general policy simply requiring employees to look professional and well-groomed? Or do you want to be more specific?

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Will you require customer-facing employees to dress more professionally or formally than those who only interact with co-workers — whether in person or on camera?

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Will you create a separate policy for Zoom meetings that may be more relaxed than your in-person appearance policy?

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Do you want to be more specific about what attire is unacceptable in the office or on Zoom? For example, are jeans and a t-shirt allowed? What about baseball caps, sleeveless shirts, or hooded sweatshirts? Just be sure to review such policies for compliance with the workplace laws discussed in more detail below.

**Hairstyle equity.** In addition to pandemic-related changes over the last few years, calls for social justice led many jurisdictions to pass laws combating workplace racial bias based on hairstyle. In fact, 19 states and many localities have passed a version of the CROWN Act, which prohibits employers from discriminating against employees and job applicants based on natural or protective hairstyles. **Natural hair** has not been treated with chemicals that alter color or texture — such as bleach or straightener. **Protective hairstyles** — such as braids, locs, twists, or bantu knots — tuck the ends of the hair away to protect from sun, heat, and other damage.

Racial discrimination based on hairstyles is a part of everyday life for many Black adults, according to a study by the CROWN Coalition — which was founded by Dove, National Urban League, Color of Change, and Western Center on Law and Poverty. Moreover, a 2019 Dove CROWN study found that Black women were 1.5 times more likely to be sent home from work because of their hair and 30% more likely to be made aware of a formal workplace appearance policy than their co-workers.

In light of laws banning hairstyle bias and to align with your efforts to be inclusive, you'll want to consider the following about your appearance policy:

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Is the policy fairly and equitably applied to hairstyles regardless of race and ethnicity?

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Are your policies culturally and ethnically inclusive?

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Do you require employees to appear professional and well-groomed without creating hairstyle standards that unfairly restrict natural or protective hairstyles?

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Are your standards based on a bona fide occupational qualification (BFOQ) that is reasonably necessary to the normal operation of your business or enterprise? For example, certain employees who work with food may have to wear hair or beard

coverings or tie their hair back for safety and hygiene reasons.

**Reasonable accommodations and other legal considerations.** While the COVID-19 pandemic and new CROWN Act requirements may prompt you to update your appearance policy and dress code, don't forget to review your standards for compliance with other established workplace laws.

Consider the following questions:

- \_\_\_\_\_ Do you have a process in place to review **accommodation requests**? You may need to explore reasonable accommodations based on an employee's religious practice or medical condition.
- \_\_\_\_\_ For example, does your policy ban hats and other head coverings? If so, you may need to accommodate a Muslim employee who wears a hijab.
- \_\_\_\_\_ Do you have a policy banning facial hair? If so, you may need to accommodate an employee with a skin condition — like Pseudofolliculitis Barbae — or a religious reason for growing a beard.
- \_\_\_\_\_ If an accommodation does not seem right due to your unique business needs, have you discussed with your employment law counsel the possibility of an undue hardship exception for the business?
- \_\_\_\_\_ Is your appearance policy **gender-neutral**? Without identifying a BFOQ, you shouldn't create policies that cause greater burdens for employees of one gender than another.
- \_\_\_\_\_ Further, have you considered refraining from setting different standards based on gender altogether unless there's a BFOQ — particularly in light of the 2020 SCOTUS decision in *Bostock v. Clayton County*? In that case, the Supreme Court held that Title VII of the Civil Rights Act shields workers from discrimination based on gender identity.
- \_\_\_\_\_ Have you considered all applicable state and local laws that may specifically address gender identity and workplace policies?
- \_\_\_\_\_ Does your policy align with the latest guidance from the National Labor Relations Board (NLRB)? Be sure to consistently enforce any rules prohibiting employees from wearing **clothing with logos, political statements, or social justice messages**.

- \_\_\_\_\_ Are you aware of the NLRB's current position on employees wearing **union insignia** — on items such as buttons and t-shirts? An employer needs to show special circumstances that justify its actions when it interferes with its employees' right to display such insignia.
  
- \_\_\_\_\_ Are there any **safety concerns** that should be reflected in your dress code? You may want to relax your appearance policy, but you should still consider whether to continue following some rules for safety reasons — either as a best practice or because it's required by law.
  
- \_\_\_\_\_ For example, will you require certain workers to wear closed-toe shoes? Are there Occupational Safety and Health Administration (OSHA) rules that you need to follow for certain jobs? If so, you'll want to ensure compliance.
  
- \_\_\_\_\_ Did you **review your policies with legal counsel**? Because so many evolving areas of law may impact your employee appearance policy and dress code, it's a good idea to have experienced legal counsel review your standards for compliance before communicating any updates to your employees.

## **Conclusion**

Recent workplace shifts mean that it's time to review your employee appearance standards and dress code to ensure they are fair and inclusive, as well as compliant with the latest legal developments. Keep in mind that consistency is key. We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the authors of this Insight or your Fisher Phillips attorney.

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