



## **TAX-EXEMPT ORGANIZATION ALERT**

### **Personal Appearance Policies: What Nonprofits Need to Know**

#### **I. Introduction**

The enforcement of personal appearance policies presents challenges to not-for-profit and for-profit entities alike. While personal appearance policies are generally designed to promote professionalism or safety in the workplace, such codes often communicate to employees messages far beyond what the employer deems appropriate office attire - including how conservative an office might be, how rules-based management might be, and how management feels about certain styles of dress or types of people.

Federal and state laws generally allow employers to regulate employee appearance. However, a policy will not protect employers against claims that the policy infringes on other rights protected by law. Personal appearance is critically important to company image. It is also an emotional and personal topic for many employees, so employers must be careful in drafting and enforcing policies.

This legal alert outlines some of the key areas where employers must be mindful about staying within the bounds of the law.

#### **II. Personal Appearance Codes and Federal Discrimination Laws**

Personal appearance codes have generated a host of employment discrimination complaints. Plaintiffs have alleged discrimination based on employer restrictions on hair styles, body piercings, tattoos, jewelry and clothing.

Most of these claims involve gender discrimination (including sexual orientation and gender identity), as well as religious and disability discrimination. In 2010, Debrahlee Lorenzana made national news when she sued her employer, Citibank, for telling her not to wear clothes that were acceptable and worn by other women in the office. Flight attendants have brought claims for rules about weight and dress that were not applied equally to men, while men have brought discrimination claims for policies prohibiting ponytails and earrings that were not applied equally to women.

Personal appearance policies are permitted by the law as long as they are facially neutral (meaning they do not distinguish between men and women, young and old, or any other group protected under federal or DC civil rights laws) and enforced even-handedly. In addition, federal law requires employers to

offer a reasonable accommodation to employees unable to comply with personal appearance codes because of their religious belief or because they have a disability.

For example, in *Cloutier v. Costco Wholesale Corp.*, a federal appeals court ruled against an employee's claim that Costco failed to accommodate her religious practice as a member of the "Church of Body Modification" when it did not excuse her from the "no facial jewelry" provision of its dress code policy.

The court found that Costco had a legitimate interest in presenting a reasonably professional workforce to the public, and that Costco had met its legal requirement by offering two alternate accommodations, both of which Cloutier had rejected. The court stated that Costco was not required to grant the employee's preferred accommodation only a reasonable one.

### **III. District of Columbia Law and Personal Appearance Policies**

In DC, an employer's personal appearance policies must also comply with the Human Rights Act, which prohibits employment discrimination on the basis of personal appearance.

However, similar to federal law, DC makes an exception for employers that have a written dress code which requires "cleanliness, uniforms, or prescribed standards" of dress provided the policy is uniformly applied to a class of employees for a reasonable business purpose.

For example, in *Turcios v. U.S. Services Industries*, the court held that a building cleaning firm had a reasonable business purpose when it prohibited its male employees from wearing ponytails, since the

firm's contract with the building owner required that custodians "look sharp at all times."

### **IV. The National Labor Relations Act and Insignia**

Many employers forget that the National Labor Relations Act (the "NLRA") applies to both unionized and nonunionized employers, and thus that the NLRA's rules with respect to dress codes apply to all employees. If a personal appearance policy restricts an employee's right to wear union insignia, the policy may be interpreted to interfere with the exercise of an employee's rights under the NLRA.

Many employers believe that a broad prohibition on all insignia will resolve this issue, but the National Labor Relations Board (the "NLRB") takes the position that if a policy impresses upon an employee that all insignia is prohibited, the employee could interpret that prohibition to include union insignia, and the policy would thus be considered overly broad and impermissible.

A restriction on wearing insignia is permitted under limited circumstances, including an employer's demonstrated need to maintain decorum or discipline, legitimate safety concerns, preventing attacks on employer's products or services, or preventing unreasonable interference with the employer's public image. Although federal courts tend to interpret these special circumstances more broadly than the NLRB, employers should be aware that the NLRB will generally find these policies to be overbroad.

### **V. Workplace Safety and Health**

Employers must carefully consider requests for an exception to a personal appearance

policy as a reasonable accommodation for religious beliefs or a disability. However, it is generally permissible under federal law to deny such accommodation requests if such a request would jeopardize the health or safety of the workforce. This analysis should be one component of determining whether the accommodation request constitutes an undue hardship to the employer.

For example, many workplaces require employees to wear hairnets, long pants or protective clothing for specific safety and health reasons. Courts have generally found that employers can deny accommodation requests if a policy containing neutral language that applies equally to all employees is a “reasonable safety measure.”

In *EEOC v. Oak-Rite Manufacturing Corp.*, Oak-Rite refused to hire an applicant because she claimed her religious belief prohibited her from wearing pants, which the firm required of all employees in its metal-working factory for safety reasons. A court ruled that the employer’s limited duty of accommodation does not require the employer to choose between potentially violating the Civil Rights Act on the one hand and potentially increasing the risk of workplace injuries on the other.

Similarly, under DC law, an employer may require that an employee adhere to a dress code if an employee’s bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual. However, the employer must be careful to ensure that any such policy is uniformly applied to all employees.

## **VI. Drafting Personal Appearance Policies**

Employers should take special care to tailor personal appearance policies to their workplace’s specific business environment

and culture. However, given the dynamic nature of the law in this area, employers should also review personal appearance policies annually to ensure compliance with federal and local laws. The following are some tips to help you get started:

- Ensure the policy is facially neutral and does not distinguish between men and women, young and old, or any other group protected under federal and DC civil rights laws.
- When drafting and enforcing the policy, confirm that the policy does not impact one protected group more than another.
- Be careful when using the terms “business casual” or “business,” as they may have different interpretations for different organizations.
- Stay away from policies that are overly restrictive, unless there is a particular organizational objective in doing so. Sometimes simple is really better.
- Balance the objectives of the organization with employee morale.
- Treat violations of the policy just like any other policy violation, and do so consistently.
- When enforcing the policy, be discreet and tactful in your approach, as it may be that the person just needs a little additional guidance.

### **Additional Resources**

- [D.C. Human Rights Act](#)
- [U.S. Equal Employment Opportunity Commission: Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#)

- [U.S. Equal Employment Opportunity Commission: Religious Garb and Grooming in the Workplace: Rights and Responsibilities](#)

About the Author: Nichole Atallah, an attorney with PilieroMazza PLLC, primarily practices in the areas of labor and employment and general litigation. She may be reached at [natallah@pilieromazza.com](mailto:natallah@pilieromazza.com).

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