

Personal Appearance Policies: *What Employers Need to Know*

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Introduction

- Personal Appearance Policies and Federal Discrimination Laws
- D.C. Law and Personal Appearance Policies
- The National Labor Relations Act and Insignia
- Workplace Safety and Health
- Drafting Personal Appearance Policies
- Further Information



Why Have a Personal Appearance Policy?

- Professionalism
- Safety
- Job requirements
- Office character and image



Challenges

- Emotional and personal topic for employers
- Communicates more than the policy itself
- Difficulty in drafting and enforcing
- Policy will not protect employers against claims



Federal Discrimination Laws

- Personal appearance policies are legal, but they must be facially neutral
- All federal laws apply
- EEO laws come into play frequently
 - Gender
 - Gender identity and sexual orientation
 - Religion
 - Disability



Federal Discrimination Laws

- Personal appearance policies implicate several federal laws prohibiting discrimination
 - Claims of discrimination based on restrictions on facial hair, tattoos, body piercings, clothing, etc.
- Recent examples of complaints:
 - Citibank – allegation that employee was not allowed to wear what other women wore
 - Flight attendants – claim that rules about weight and dress not applied to men
 - Abercrombie & Fitch – rule against hiring women wearing hijabs



Reasonable Accommodations

- Federal law provides accommodation for religious beliefs and disabilities
- Does not have to be the employee's preferred accommodation
- Exceptions:
 - Legitimate business interests
 - *Cloutier v. Costco Wholesale Group* – legitimate interest presenting a professional workforce to the public
 - Not related to a protected class or other federal law



D.C. Law and Personal Appearance Policies

- Employers' policies must comply with the D.C. Human Rights Act
 - Prohibits employment discrimination on the basis of personal appearance
 - Exception: written dress code which requires “cleanliness, uniforms, or prescribed standards”
 - Uniformly applied to a class of employees for a reasonable business purpose
 - *Turicos v. U.S. Services Industries* - rule to “look sharp at all times”



The NLRA and Personal Appearance Policies

- The National Labor Relations Act (“NLRA”) Protects employees who engage in protected activity relating to their terms and conditions of employment
- NLRA applies to both unionized and nonunionized employees
- Personal appearance policy cannot interfere with employees’ rights
 - Broad prohibition on insignia may impermissibly interfere with exercise of employee’s rights under NLRA



The NLRA and Personal Appearance Policies

- Restrictions on insignia permissible under the NLRA when employers need to:
 - Maintain decorum, discipline, and safety
 - Prevent attacks on employer's products or services
 - Prevent unreasonable interference with employer's public image



Workplace Safety and Health

- Employers may deny requests for accommodation if it jeopardizes workforce health or safety.
 - e.g., hairnets, long pants, or protective clothing
- Policies should include neutral language and be applied uniformly to all employees
- *EEOC v. Oak-Rite Manufacturing Corp* – employer does not have to choose between increasing risk of injury and violating federal anti-discrimination laws
- Under D.C. law, employers may require adherence to dress code if there is a danger to health or safety



Drafting Personal Appearance Policies

- Make sure your policy:
 - Is facially neutral
 - Does not impact one protected group more than another
 - Does not use vague terms open to interpretation
 - Avoid overly-restrictive policies
 - Treats violations in a consistent manner
 - Balances objectives of organization with employee morale
 - Is discreet and tactful in its approach



Counseling Employees

- Consistent
- Fair
- Document
- Keep records of all accommodation requests and responses



Further Information

- D.C. Human Rights Act
- U.S. Equal Employment Opportunity Commission:
 - Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disability Act
 - Religious Garb and Grooming in the Workplace: Rights and Responsibilities



Questions?

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