



Tattoos, Haircuts and Head Coverings

How Far Can You Go?

Presented by:

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The Numbers

- 36% of 18-25 year olds have at least one tattoo and 30% have a piercing somewhere other than their ears.
- 40% of 26-40 year olds have at least one tattoo and 22% have a piercing somewhere other than their ears.

The Issues

- Growing popularity of “body art” provides challenges for employees in every industry and profession.
- How do employers enforce dress/appearance policies without violating the law?

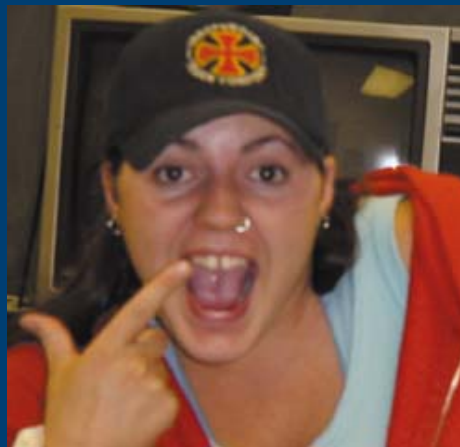


Protecting Employers' Legitimate Interests

- Too stringent grooming and dress code requirements risk:
 - hurting employee morale
 - driving off talented employees
- Employers have legitimate concerns that an employee's mode of self expression may alienate, offend, or intimidate clients or customers.

Question

Can employers strictly enforce dress and appearance policies without violating the law?



General Guidelines

- Based on Business Needs
- Applied Uniformly
- Consideration of State and Local Law



Gender



Gender – Grooming



Grooming policies should regulate men and women to *the same degree* – even if the exact requirements differ



Gender – Grooming

- Can employers require men to keep a “short” haircut but allow women to wear long hair?
- Can employers require women to wear make-up and prohibit men from doing so?
- Can employers prohibit men from wearing a moustache or beard?

Gender – Dress

- No particular federal employment law regulates the right to wear certain clothing.
- Policies addressing a person's dress should be neutral.



Gender – Dress

- Can employers require women to wear uniforms and men to dress in “business attire”?
- Can employers prohibit women from wearing pants?

Gender – Dress

- Potential harassment issues
- Be alert for the “too sexy” employee who violates the dress code and address the situation before you get a complaint of harassment.



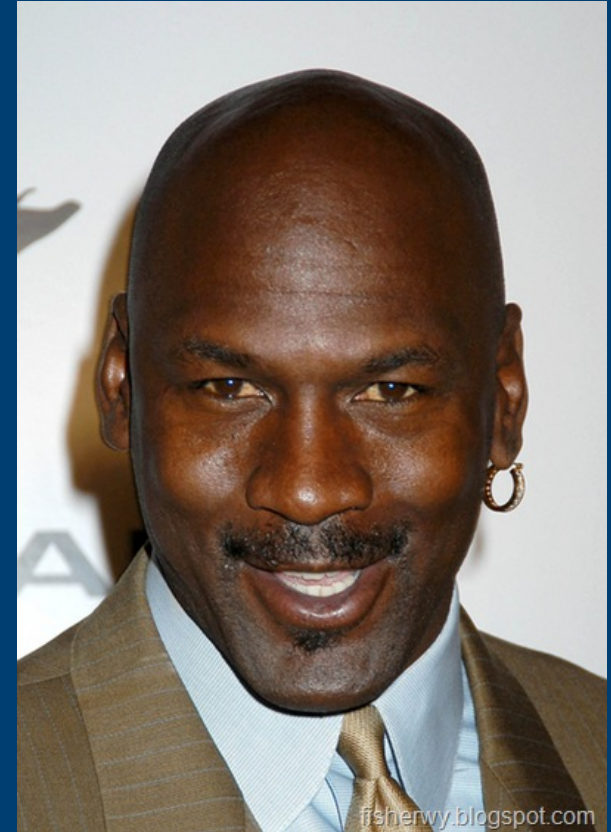
Gender – Jewelry



Policies must be based on societal norms or business needs

Gender – Jewelry

Can employers prohibit men from wearing earrings?



Gender – Other Issues

- Can I follow either gender dress code?
- Beware of policies that reinforce gender stereotypes.
- “Hire one that looks like that!”

Race and National Origin



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Race and National Origin – Appearance

- Preferring a “certain look” may be unlawful
- Race is never a bona fide occupational quality

Race and National Origin – Grooming

- Beards?
- Hair styles?
- Hair color?



Religion



Religion – Definition

- **Title VII:** “All aspects of religious observance and practice as well as belief.”
- **United States Supreme Court:** “A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption....”
- **EEOC:** “Moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”

Religion – Discrimination



Legal Issues:

- Disparate Treatment
- Harassment
- Reasonable Accommodation

Religion – Reasonable Accommodation

Generally, an employer must provide reasonable accommodation unless it would cause an undue hardship.



Church of Body Modification

“The Church of Body Modification represents a collection of members practicing ancient and modern body modification rites. *We believe these rights are **essential** to our spirituality.* Practicing body manipulation rituals strengthens the bond between mind, body, and soul. By doing so, we ensure that we live as spiritually complete and healthy individuals.”



Religion – Reasonable Accommodation

What is Reasonable?

- Investigate
- Provide *any* reasonable accommodation
- Address all religious conflicts
- Not necessarily the *most* reasonable accommodation
- Must be timely

Religion – Reasonable Accommodation



Whether an accommodation is appropriate may depend upon the justification for the policy

Religion – Reasonable Accommodation

- Policies based on safety
- Policies based on the maintenance of order and decorum
- Policies based on Company image



Possible Accommodations



- Beards
- Yamaka
- Burka



Disability – Reasonable Accommodation

- Definition of “Disability” is broad:

“a physical or mental impairment that interferes with a major life activity”



Disability – Reasonable Accommodation

- Must reasonably accommodate an applicant's or employee's disability unless
 - Undue hardship
 - Direct threat
- Modification to or exemption from appearance policy may be a reasonable accommodation

National Labor Relations Act



National Labor Relations Act

“Employees shall have the right to...form, join or assist labor organizations... and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”

- NLRA, Sec. 7



National Labor Relations Act

“Special circumstances” may permit an employer to prohibit union buttons and/or insignia

- Disruptive
- Public image (limited)
- Safety
- Company-Supplied uniforms (Sixth & Ninth Circuits only)
- Healthcare facilities

National Labor Relations Act

- Created and implemented before any union threat
- Collective bargaining agreement
- Non-discriminatory enforcement
- Carefully drafted (not vague or overbroad)

Employer Best Practices

Carefully Create a Dress/Appearance Policy

- Legitimate business reasons
- Maintain some flexibility and discretion
- Consider impact on gender, race, national origin, religion, and other protected categories
- Protect employee rights to engage in concerted activity
- Follow state and local laws

Employer Best Practices

Some Tips

- Consider whether relaxed or more conservative dress standards best fit your overall corporate culture
- Consider industry and area dress practice
- Consider a departmental approach as opposed to “one-size-fits-all”
- Consider employee expectations

Employer Best Practices

What Not To Do

- Set strict guidelines regarding the color, style, and manner of clothing worn
- Require employees to adapt to a “certain look” that may suggest race, national origin, or religious discrimination
- Continually revise the policy to reflect seasonal changes

Employer Best Practices

Communicate to Employees

- All employees
- In writing
- State business reasons for policy
- Consider the need for reasonable accommodations
- Inform employees how to request accommodations

Employer Best Practices

Train Supervisors

- All supervisors should know the policy
- How to properly enforce it
- Discipline/enforce consistently
- How to respond to request for reasonable accommodation

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Questions?

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