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It's No Longer a Pinstripe World: Navigating Workplace Dress Codes

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Tattoos. Piercings. Bare midriffs. Messages on clothing that are political or tasteless, or that endorse competitors. Hair that is too long or too messy.

With the acceptance of more casual dress in the workplace, some standards have become too casual. Past economic downturns have led to more conservative workplace dress (sober dress for sober times), but there is little evidence of this trend in the recent downturn. The era of the man in the gray pinstripe suit or the woman in the power suit may not have passed totally, but workplace dress has become far more diverse, and more challenging for employers to police.

Why Enforce a Dress Code?

What are you — the employer — permitted to do to enforce dress and grooming codes in the modern office or plant? The answer is that you may enforce reasonable dress and grooming standards, as long as you do so uniformly, and as long as you accommodate the needs of specific protected groups where the accommodation does not cause undue hardship.

In good times and bad, employers have legitimate interests in establishing and enforcing dress and grooming codes. These interests include:

- **Safety:** Neat, clean, protective clothing, with little or no jewelry and hair that is secured, all help to establish a safe, clean workplace for workers and customers alike. Clothing and hair can get caught in machinery — the recent death of a Yale student whose long hair got caught in lab machinery serves to warn us of the hazards of long hair or loose clothing. Limiting jewelry is important for safety because jewelry can carry germs — a good reason for the many rules prohibiting food service workers from wearing jewelry.
- **Professionalism:** Workplaces are where people work, after all. Aside from beach communities or the fashion or entertainment industry, work is not the place to show off the latest bold or revealing styles. Every employer has an important interest in having employees dress professionally so as not to distract from the work environment. This is particularly true on casual days and during the summer.
- **Branding:** Branding takes many forms, from the type of clothing (think of the proverbial IBM white shirt) to specific uniforms or colors or logos — or even wearing the employer's product in the retail clothing trade. Dress that fits a particular employer's identity or brand is important to reinforcing customer expectations, as well as the

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employer's public image. The proper type of dress for bankers, college professors and information technology consultants may differ, but banks, colleges and IT firms will probably expect their employees to dress consistently with the public's perception for each profession.

- **Consideration and tact:** This rationale for dress codes is similar to branding but deals more with sensitivity to the feelings of clients, customers and co-workers. A ban on logos (except for the employer's) makes good sense — why risk alienating customers by allowing employees to wear shirts with Coke logos if your customers work for the local Pepsi bottler, or vice versa? Some symbols (e.g., the Confederate flag) may be offensive to some co-workers and customers. In an increasingly global marketplace, it is important to know which colors may carry negative meanings in other cultures.

Avoiding Problems

So there are plenty of good reasons for adopting and enforcing dress and grooming codes. The difficulty is that employers have to establish codes without discriminating against employees and without causing any unnecessarily hurt feelings within the workforce. Dress codes can run afoul of federal and state anti-discrimination laws, particularly as to religion, disability, race or gender. Certain cities (e.g., Washington, D.C., and Madison, Wis.) have also enacted ordinances prohibiting "appearance discrimination," and special care is necessary in enforcing dress or grooming standards there.

Religious discrimination is a frequent basis for challenges to employer dress and grooming codes. Religious issues are also hard to analyze because of their lack of predictability. Employees with strong religious beliefs have attacked dress codes for prohibiting modest dress that covers the head or face, while others have challenged bans on dress that seems avant-garde or bold, claiming a religious basis for visible tattoos or body piercings.

In regulating dress, employers have to accommodate employees' religious beliefs unless the accommodation imposes an undue burden on the employer. There is a tension between the need to respect an employee's freedom to observe a particular religion and the need for safety and uniformity — and the need to avoid aggressive religious messages or unusual religious symbols that may offend the public.

One example of a successful policy was a manufacturer's safety-based requirement that all assembly workers wear long pants around machinery, which the EEOC and a female employee challenged because the employee's religion required her to wear "modest skirts." An additional layer of concern arises for government employers, who may not impinge upon employees' First Amendment rights to freedom of speech and religion.

Reasonable accommodation is also necessary for employees with disabilities, but here the accommodation stems from the employee's need for access, mobility or comfort, rather than the need to practice a set of beliefs. Again, however, the employer need not

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suffer an undue burden in accommodating an employee's needs, and the interactive process may call for both the employer and employee to give a little.

In the same manner, an employer may not discriminate against an employee on the basis of an immutable characteristic of the employee's race.

Different requirements are permissible for males and females, as long as the regulations are reasonable and do not impose an unequal burden on just one gender, and as long as enforcement is even-handed. For example, an employer may prohibit male employees from wearing earrings or makeup and may permit differing hair lengths for males and females.

Drafting a Policy

Given these goals and restraints, what types of policies should an employer draft? The best option may be to blend general and specific policies. An employer can establish general rules — for example, requiring dress that is both professional and respectful toward the employer and its clients or customers. When all else fails, the employer can fall back on these general rules to enforce dress requirements on the recalcitrant employee.

The rules can then proceed from the general to the specific. Specific requirements can and should be explicit, either by prohibiting objectionable items (no visible tattoos) and requiring certain dress (collared shirts). Some employees may treat the absence of an explicit rule as the absence of any rule, and so the employer should not be reluctant to be very specific. For example, don't just say that a coat and tie must be worn: say a coat, tie and long pants of dark or khaki colors must be worn, if that is the employer's intent.

It is not necessary to impose expensive standards in requiring tasteful and professional dress. When establishing dress codes, employers will do well to remember that many employees may have limited budgets.

Spreading the Word

Once the employer decides on a dress code, the next step is to announce the code publicly and to include the code within an employee handbook. The employer can and should obtain a signed acknowledgement from each employee for receipt of the dress rules.

Then comes the hard part: enforcement of the code! Here it is essential to enforce the code consistently, across all protected classes. One of the quickest tickets to a discrimination charge is the selective enforcement of a workplace dress code. A ban on tight clothing needs to be enforced equally against the muscular 25-year-old and the plumper 55-year-old, at the risk of exposure to an age discrimination claim. A Muslim employee who is told not to wear all-covering dress will be quick to point out lax enforcement of the rules against non-Muslims whose dress may be overly revealing.

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In disciplining employees, a wise employer will use two managers to counsel each employee who poses dress and grooming problems. Double-teaming the counseling session allows one manager to deliver the message and the other to observe and take notes. Double-teaming also protects the employer and managers against harassment or discrimination charges. An employee who is hurt at criticism of his or her dress may choose to misinterpret an employer's concerns. Employees can and will attack employer comment about dress or grooming as religious, racial or (particularly) sexual harassment. Therefore, when enforcing your dress code, it is important to take special care in commenting about the employee's appearance.

Of course, discipline should be progressive, and each dress or grooming violation should be documented. For the first violation, the proper action is a write-up for the employee, along with a return home to change clothes. For repeat violators, increasing discipline will be necessary.

If an employee ultimately refuses to adapt his or her dress to the employer's wishes, then termination is a legitimate and proper remedy. In this situation, the employee has shown that the job is really a poor fit, and he or she should be encouraged to find another workplace with different or less demanding standards.

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