

A Hairy Situation: Can You Fire Employees for Their Unkempt Facial Hair?

Do you have employees who look like they just crawled out of a suitcase? Maybe they need a closer shave or to run an iron on their clothes. One court recently addressed this question: If an employee is fired for ignoring his boss' demands to get a shave, does that count as "misconduct" that disqualifies him from unemployment benefits? ...

Case In Point: Craig Berg, a salesman for a Harley Davidson store in Minnesota, was warned by his supervisor at least 10 times about his need to look more professional at work. The boss told Berg, "If you want to grow a beard—grow a beard. If you don't then shave ... I don't want the, 'I'm just not going to shave until every third or fourth day' look."

Berg was apparently as unreliable with his iron as he was with his razor, frequently appearing in rumpled clothes. He was also no slave to the timepiece, often showing up late.

On one occasion, Berg came to work unshaven and not dressed properly. His supervisor warned him that his scruffy look was unacceptable. Berg defended himself and said his razor was dull, despite its infrequent application.

The next day, Berg showed up a half hour late, looking "homeless" and possibly smelling of alcohol. His boss sent him home to shower, shave and report back to work. Berg went home, showered and shaved but he didn't return to work. He later explained that he "would have been crabby" had he returned that day.

When Berg finally did return, he had a clean face ... and a pink slip. The company fired him for misconduct. Berg applied for unemployment benefits but was denied because his fired was due to misconduct. (Employment misconduct is defined in Minnesota as any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment. (*Minn. Stat. § 268.095, subd. 6(a)*).

Showing greater tenacity in the legal system than he had ever done in his grooming, Berg appealed his denial of unemployment all the way to the state's appellate court. (*Berg v. Apol's Harley Davidson, Inc.*, Minn. App. Ct., July 29)

How did the case end and what lessons can be learned?

The appellate court ruled in favor of Harley Davidson, saying that Berg's constant snubbing of his boss's request to shave did count as misconduct. "The general rule is that if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, a refusal will constitute misconduct," the court said.

3 Lessons Learned ... Without Having to Go To Court

1. Establish a professional appearance policy. The best way an organization can shield itself from liability is to set effective and clear policies that spell out expectations. If you want your employees to look and dress in a professional manner, then your policy should spell that out. Don't forget to address seasonal clothing: no flip flops, no tube tops, no belly shirts.

2. Recognize religious/ethnic exceptions. Make sure your professional appearance policy doesn't violate civil rights laws that protect religion, race and ethnicity. For example, employees should be allowed to wear clothing to work that's part of their religious practice. Having a policy that outright prohibits an employee from doing so may be deemed illegal.

In this case, had the employee said he had facial hair because of his religion or other protected reasons, there would have been a very different outcome.

3. Enforce all policies consistently. While men and women have different grooming issues to attend to, the grooming policy itself should be enforced consistently between both sexes.