

# Casual dress codes: Legal pointers, sample policy



While a relaxed or casual dress policy may be a great way to boost morale during the warm days, tank tops and flip-flops are more appropriate attire for the beach than they are for the office.

The key is to strike a balance between implementing less-stringent dress policies and getting employees to dress appropriately. You must also be aware of the potential legal problems that can arise from enforcing your dress code policy.

## Sex discrimination issues

When the hot weather arrives and employees wear less clothing and reveal more skin, employers may face a legal concern: accusations of sex discrimination.

Female employees who are accused of wearing clothing that is too revealing may complain of sexism. Male employees prohibited from wearing shorts, for example, may argue that a double standard exists because females are permitted to wear skirts. But don't let employees' complaints prevent you from upholding your company's appearance standards. Employers have the right to define appropriate attire in their workplaces.

Dispel claims of sexism by emphasizing that men, as well as women, are prohibited from wearing revealing attire, such as tank tops, shirts unbuttoned too low, shorts, tight-fitting t-shirts, and the like. Make sure your company's dress code doesn't focus on one gender and not the other. It should use gender-neutral language (e.g., no revealing clothing; no beachwear), but include specific examples for both men and women.

Also, explain to employees that employers may establish different appearance standards for men and women without violating discrimination laws, as long as the standards are applied equally. You may not, however, adopt standards that impose a greater burden on one sex than the other. In other words, if your standards place added cost or time restraints on women that they do not place on men, or vice versa, you could be liable for sex discrimination.

## Dressing for legal success

Test your casual dress code policy against these questions to see if you are on safe ground.

1. Is your policy directly related to business needs?
2. Does your policy avoid any offensive or demeaning stereotypes?

3. Is your policy communicated to all employees?
4. Does your policy take into consideration the level of employees' contact with the public, if any, and the normal expectations of outside parties with whom employees will work?
5. Are dress code violations handled in accordance with established discipline policies?
6. Is the policy enforced consistently?
7. Are there safety considerations that may influence your guidelines?
8. Is there evidence that employees' attire has an effect on the business or image of the company?

## Casual dress policy pointers

Casual dress for some companies means increases in employee morale and productivity; for others, it represents ripped jeans, bare midriffs, and other forms of unacceptable dress. The differences between the extremes are usually found in the presence or absence of a clearly defined casual dress policy.

**Rule of thumb:** Don't expect employees to meet your dress standards unless you spell them out clearly. While the dress may be casual, the policy spelling out the requirements must be formal and complete.

If you plan to rewrite your policy to include casual dress, keep these points in mind.

1. Clearly define "casual" dress. If you don't want jeans or tank tops, say so. Put photos of acceptable and unacceptable forms of casual dress in the company newsletter or on bulletin boards.
2. Recognize that some employees are not comfortable in casual dress. They should understand that casual dress is an option, not a mandate.
3. Don't give employees the impression that they must go out and buy a new wardrobe in order to dress casually. Sell them on the concept of working more comfortably, while spending less on dry cleaning.
4. Understand that not all managers will agree with the concept of casual dress. Make sure they don't lower performance ratings of employees simply because they follow the casual dress policy.
5. Casual dress should not mean casual discipline for violators. Here are two suggestions: 1. *First-time offenders*: A verbal warning should be enough. First-time violators may just be confused. 2. *Repeat offenders*: The penalty you select must be consistent with your written progressive discipline policy.
6. Be consistent when disciplining policy violators. However you choose to discipline such employees, make sure that you enforce the policy evenhandedly. And when disciplining, make certain that the employees know the resulting employment action is based on policy, not on the employee's taste in clothes or sense of style.
7. Identify legitimate business purposes. The best way to defend your decision to discipline an employee for a dress code violation is to point to a legitimate business reason. Legitimate reasons include: safety concerns, hygiene concerns, and your company's need to present a certain image to customers. **Note:** There is a fine line between presenting a certain image to customers and bending to customers' bias preferences.
8. Remind employees about your policy. The longer a policy is in existence, the more likely it is that employees will forget exactly what is off limits. An easy way to remind them is to redistribute the policy from time to time, highlighting any changes or additions that might have been made.

## Potential religious accommodation issues

On the one hand, you must be firm and consistent in enforcing your dress code policy so employees don't take advantage and wear inappropriate attire to work. On the other hand, you must be flexible enough to make exceptions to the policy if an employee requests an accommodation.

Refusing to make an exception to a dress code policy for an employee's sincerely held religious beliefs, for example, can expose you to a discrimination lawsuit.

**Case in point:** A Muslim employee requested permission to wear a headscarf to work during the holy month of Ramadan. Her employer refused her request, citing the company's dress code policy, which prohibited employees from wearing a headscarf during working hours. When the employee asked her employer to accommodate her religious beliefs by making an exception to the dress code policy, she was told that she could wear the headscarf as long as she removed it when serving clients. The employee argued that the employer's accommodation was not reasonable since her religion required her to keep her head covered during the holy month and the proposed accommodation made it impossible for her to avoid removing her head covering at work.

When the company refused to offer the employee an alternative accommodation, she refused to remove her headscarf while serving clients and was terminated as a result. Convinced that she had been forced to choose between her religion and her job, the employee filed a charge with the EEOC, which, in turn, filed a religious discrimination lawsuit on her behalf. A federal district court took the unusual step of finding the religious discrimination so egregious based on the pleadings that it did not need to be resolved by a jury. The court found undisputed evidence, including the fact that there was no such dress code policy, that the employer should have approved the employee's request to wear her headscarf as a religious accommodation or proposed a reasonable alternative.

*Said the court:* Requiring the employee to remove her headscarf while serving clients failed to accommodate her religious conflict and was not a reasonable accommodation at all. (*EEOC v. Alamo Rent-A-Car*, 2006)

## Sample: casual dress policy

Here's a casual dress policy that you can use as is, or adapt to your needs.

*The Company requires business wear on a daily basis except on Fridays and other special occasions, which will be announced as they come up. On those days, employees will be allowed to work in casual dress. However, if business needs of the day warrant it, you are required to dress in business wear even if it is a designated casual day, e.g., for a meeting with clients. No matter what dress policy you follow, your clothing should always be neat and clean.*

*Acceptable forms of casual dress may include the following: slacks, casual pants, and jeans in good condition; open neck shirts, vests, cardigans; loafers, sandals. Unacceptable clothing includes: tank tops, bare midriffs, see-through or low-cut blouses, halters, t-shirts; cut-offs, leggings, sweats; gym clothing, beachwear; ripped or worn clothing; beach sandals.*

*We recognize that casual dress encompasses many different looks, and not all of them feel right to our employees. We also understand that not all employees are comfortable in casual dress, so we want you to know that it is an option, not a requirement.*

*Employees who report to work in unacceptable dress may be required to go home and change into acceptable clothing. Repeat offenders will be subject to the progressive discipline system, which includes suspension and termination. The Company reserves the right to change or cancel its casual dress policy at any time, with or without notice.*