

What legal issues affect workplace dress codes?

Q. We have been contemplating developing a dress code. What kinds of legal issues do we need to consider?

A. When drafting your dress code policy, you should be able to answer each of these three questions:

1. Are there safety concerns that must be addressed? Courts, almost without exception, give strong credence to maintaining workplace safety, even at the expense of an individual's religious preferences.

So, a prohibition against wearing loose clothing or dresses around heavy machinery or a requirement to wear steel-toed shoes in a factory or hairnets in restaurant settings all will be deemed appropriate for employees who work in certain positions.

2. Are there business concerns that must be addressed? This is more industry-specific and is more likely to rest on general societal norms.

Do you work in a law office or an accounting firm? Chances are you can mandate business attire for men and women alike. Do you work for a clothing retailer? You can probably require salespeople to wear clothes that you sell.

But what about the folks in the stockroom who never interact with the general public? Requiring them to wear clothes sold by your company may be a bit harder to justify, particularly if doing so pushes up against religious or disability-related limitations. Proceed with caution here.

3. Do your policies discriminate or harass a protected class based on a stereotype? Even a neutrally applied policy—say, one that requires all women in a Japanese restaurant to dress up as geishas, regardless of race—can lead to discrimination and harassment claims. Racial, ethnic and even environmental stereotyping is a hot-button topic these days and is often very hard to defend.

If you walk through the answers to these questions as you draft your policy, you should be well on your way to defending your dress code and protecting your company from any subsequent claims of discrimination.