

# How careful must we be about discrimination when hiring our Santa?

**Q: "We are hiring a Santa Claus to work at our independent retail store. We want our Santa to look as close as possible to the legend that children are used to seeing. Is it illegal to lean toward a white candidate with a white beard as opposed to a black candidate?" - Calvin, Minnesota**

**A:** Oh boy, Calvin, I wish I had *the* answer for you on that, because the question of race and Santa Claus has been debated for many decades in this country and I do not think there is anything like a clear one.

When I was young, my parents kindly explained to me that the Santa we visited at the store was one of Santa's helpers, and this helped me understand how Santa could be sitting in a chair in that store while another Santa might be ringing a bell on the street corner. This made sense to me, because I knew well how busy Santa would be in the weeks leading up to the holiday, and I was glad that he could delegate some of that responsibility while still checking his lists and supervising the loading of the sleigh, spending time with the reindeer, and all of the other important Santa duties.

Raising my children today in Virginia, I can tell you that we've come across quite a few Santa's helpers with brown or black skin. My children have commented only as to the quality of Santa's beard. And there's the Grinch, who is clearly green, and possibly (probably?) not human—but the little Who children thought that he was Santa. My point is that the legend that children are used to seeing (and imagining) may actually be fairly flexible, as long as the suit and beard are correct.

Now from a legal perspective, your idea of what the person you are hiring to play Santa should look like might be a bona fide occupational qualification, because you are doing the hiring, and it is your vision of the role the lucky person selected will fill. At the same time, since it is not clear that everyone shares your view of what Santa should look like, and because so much of Santa's traditional appearance is part of a costume, that legal position might be hard to defend, and my guess is you wouldn't want to be called upon to defend it. Unfortunately, we don't have any definitive court rulings to guide us on this question, either, setting aside the decision rendered in *Miracle on 34th Street*, possibly for the same reason that the judge in that case didn't want to render a decision in that movie...

My suggestion is to consider any and all qualified applicants that you have, and make a decision on the person's overall qualifications without deciding whether Santa must appear Caucasian in advance. Someone approachable, warm, with a good belly laugh and a nice manner with children—who also looks spectacular in a Santa suit—is your goal. That person will be your winning candidate, regardless of skin tone.

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*Answer provided by Nancy Delogu, Esq., Littler Mendelson*