

Grooming policies: Establish limits, not discrimination

Frank's boss asked him to quit wearing his earring to work. Frank refused, arguing that women in the office were allowed to wear earrings. He was fired and then sued for sex discrimination. (Kleinsorge v. Eyeland Corp., No. 99-5025, E.D. Pa., 2000)

Brian and his buddies at work protested Blockbuster's new grooming policy that prohibited men, but not women, from having long hair. They refused to cut their locks, so Blockbuster cut 'em loose. They also sued. (Harper v. Blockbuster, No. 97-4364, 11th Cir., 1998)

The result of both cases: wins for the employer. That's because courts have set a clear rule on grooming policies: You can establish different grooming and dress requirements for men and women as long as your rules are enforced evenly.

As the 8th U.S. Circuit Court of Appeals has noted, "minor differences in personal appearance regulations that reflect customary modes of grooming do not constitute sex discrimination."

Key point: You must equally enforce your policy. If you forbid all workers to wear earrings but discipline only men who violate the rule, then you're discriminating. Likewise, your policy would be on shaky ground if it required women but not men in the same jobs to wear uniforms.

One employer landed in court for objecting to the hairstyles worn by an African-American woman, although the hairdos met the standards in a written grooming policy.

Put safety first

You can also set grooming and dress policies based on safety reasons. You should, for example, ban employees who work around machinery from wearing certain jewelry and loose-fitting clothes.

Don't jump to conclusions about the impact of someone's appearance. One company argued that a beard would prevent a safety mask from fitting a worker's face securely. But the court ruled that the mask actually fit better with the beard.

Some rules that appear neutral could be discriminatory, such as a policy barring beards. Many black men suffer from a skin disorder that is irritated by shaving.

You're on solid legal ground if you want to prohibit appearances that would disrupt your business. For example, a medical center ordered a worker to cover up his tattoo that read "HIV positive" and the court upheld the order. (Baldetta v. Harborview,

116 F. 3d 482)

When to make exceptions

Courts generally give employers great leeway to set dress and grooming policies, including allowing different rules among departments. But there are exceptions, the biggest being allowing for religious beliefs and practices.

Title VII says you have to reasonably accommodate a worker's religious attire as long as it doesn't pose an "undue hardship" on your business. Courts, however, have been all over the map on what constitutes a hardship, so make sure your grooming policy offers plenty of flexibility.

If an employee complains that your policy runs against her religious teachings, check with the religious authority to ensure the employee's interpretation is correct. This has been a problem in several cases with Islamic women who wear head scarves, or hijabs. The Council on American-Islamic Relations, (202) 488-8787, offers a booklet, Employer's Guide to Islamic Religious Practices.

Note: Workers don't have to belong to an established religion to be protected from religious discrimination, they only need to have a sincerely held belief.

Finally, determine how you will enforce your grooming policy. For example, will you send workers home for the day without pay or let them change clothing if they don't meet the standards?

Sample dress code

Following are excerpts from one insurance company's dress code:

XYZ employees are expected to wear appropriate business attire. Employees are expected to dress neatly and to exercise common sense in selecting clothing and footwear appropriate for a business environment. Hair should be neatly groomed and businesslike.

Women should wear suits, dresses, skirts with blouses or sweaters, or tailored slacks with professional blouses. Men should wear suits, sports coats or collared dress shirts with a tie and dress slacks.

Management in XYZ offices may declare certain days to be casual dress days ... Employees should wear appropriate clothing that is neat, clean and not overly revealing. Participation in casual dress days is a personal decision. Employees are expected to use good judgment to ensure that their attire is appropriate for all activities (including meetings and client contact) that they will be involved in that day ...

Shorts (except knee-length shorts), tank tops, mesh shirts, cutoff shirts, thongs, sweat pants, jogging suits, caps, ripped jeans and T-shirts with controversial slogans are not appropriate. Jeans and athletic footwear are acceptable so long as they are in presentable condition.

Source: The Book of Company Policies (Publication N278), \$59.95. Order at www.nibm.net or call (800)543-2055.