

HR Clinic  
April 30<sup>th</sup> 2019

## Personal Appearance Policies in the Workplace What You Must Know

When considering implementing a company policy of any kind, it is wise to really think about what you are actually looking to accomplish by doing so. That way, it is easier to stay in scope. For instance, many organizations will name their policy as “dress code,” but really, they wish to regulate various aspects of appearance such as facial hair, hair length, attire, tattoo coverage, etc. In such circumstance, something like “Workplace Personal Appearance Policy” would be better, to cover everything.

Beyond the policy name, it is important to let employees know why the policy itself is being adopted – clearly stating the requirements. Be it uniforms, casual or business casual, the policy must specifically describe the details of what it is intending to convey. Are jeans allowed? Does casual still mean that men should wear collared shirts? Being specific with explanations such as (jeans are permitted but in good condition, without holes or fraying) is imperative.

What’s more, clearly outlining the organization’s purpose in adopting a policy with some foundational reasoning, will ultimately allow the company the discretion it needs (as no policy can effectively articulate or even predict anything or everything). For example, to point out that inappropriate attire can disrupt other such policies like anti-harassment or workplace violence tend to resonate with employees and thereby get adopted more quickly.

In more recent times, t-shirts and slogans, particularly those that are politically charged or those considered in poor taste can create a stir. And while the First Amendment protects free speech, it does not apply to private-sector employees. As a result, the burden of employees feeling free of harassment and violence falls upon the shoulders of the employer. That said, be mindful of Title VII which makes it imperative to accommodate religious views and practices. So, for example, a no hat policy should fully accommodate a female employee who chooses to wear a hijab.

At the end of the day, an appearance policy cannot be ambiguous if it could cause a reasonable person from believing it restricts participation in any protected concerted

activity. On the plus side, most personal appearance violation discussions may be (and should be) handled discretely. A quiet conversation with the employee is always recommended as a good place to begin.

However, as it is with HR, sometimes we caught by surprise. This is a story back from the early days in the HR Advisory. We got a call from a client who had hired a young lady to work the front of house at their very posh, soon-to-open NY eatery. They had the right chef, the right press and were cruising into grand opening weekend guns a-blazin' – everything was lined up perfectly. It was walkthrough night and their lead hostess/maître-d arrived in appropriate attire but ... also donned a newly-inked tribal face tattoo akin to Mike Tyson's. She did not have it at the time of the interview and "didn't really think it was a big deal because the restaurant was in the city."

The chef knew this was not the right look for his front-of-house lead, but the personal appearance policy had made no mention of anything regarding visible/permanent face art. Ultimately, the young woman was re-assigned to back-of-the-house duties. But, the story illustrates how important a personal appearance policy can be. If a comprehensive one was in place, in time, she would have been informed after hiring, but prior to adding the tattoo if she wanted to work there in the capacity for which she was hired. Moreover, the restaurant would have been in much better position to, perhaps, graciously withdraw their employment offer.

Needless to say, even a well-drafted policy will not protect a company if it is disparately enforced or enforced too rigidly, without regard to the laws that deal with employer's rights to regulate appearance. Because there are so many moving parts, we recommend speaking to a qualified, experienced professional prior to crafting and executing any such appearance policy. As always, HRWS is here to help.