

Dress Code & Personal Appearance Compliance Game Plan



The company [dress code and personal appearance policy](#) (which we'll refer to collectively as "dress code") is a tricky issue fraught with legal nuance. Employers have a legitimate and pressing interest in regulating workplace conduct, including how employees dress when they're at work. By the same token, dress and personal appearance are forms of individual self-expression that the Charter protects. The challenge is to establish and enforce rules that strike an appropriate balance between these competing rights. Here's a 9-step Dress Code Compliance Game Plan to help you achieve that objective.

The Law of Workplace Dress Codes

Dress code law comes not from legislation or regulation but decades of caselaw. **The basic rule:** Employers may implement [fair and reasonable dress codes subject to certain restrictions](#). Here are 9 steps to take to ensure that your own rules meet the standards that courts and arbitrators use to judge the legality of a dress code.

Step 1. Ensure Dress Code Is Necessary to Accomplish a Legitimate Business Purpose

To be deemed reasonable, a dress code must serve a legitimate business purpose such as health, safety, hygiene, company reputation, or sales. In a legal proceeding, employers have the burden of proving that the dress code really is necessary to promote the purpose. Examples of cases in which proof of a legitimate purpose was decisive in determining the legality of a dress code:

- **Employer loses** due to lack of proof that no-earring policy is necessary to protect security guards [*Sisterson Grievance*, [1995] C.L.A.D. No. 1202];
- **Employer loses** due to lack of proof that making hospital kitchen staff remove nose studs is essential to hygiene [[West Lincoln Memorial Hospital and C.L.A.C., Loc. 302 \(Re\)](#), 2004 CanLII 94638 (ON LA)]; and
- **Employer wins** thanks to customer surveys and other evidence proving that no-facial hair policy is essential to customers and sales [*Morgan Grievance*, [1998] A.G.A.A. No. 94].

Takeaway: Understand that dress codes can't be dictated by the employer's sense of style and personal taste. Employers have "no absolute right to create an employee in

their own image,” according to a leading case [(4) Scarborough]. You need objective proof that the dress code is necessary to accomplish the goal—like the customer surveys in Safeway.

Step 2. Be Especially Sensitive in Implementing Personal Appearance Policies

In the eyes of arbitrators, there’s a big difference between a dress code and a personal appearance policy—long hair, jewelry, body piercing, tattoos, etc. These policies intrude more on individual freedoms than do dress codes—after all, employees can always change out of their uniform after work; what’s more, personal appearance policies tend to be driven more by aesthetics and taste. So, it’s harder to show that a personal appearance policy is reasonable. Still, it can be done.

Example: Courts have consistently ruled that companies can adopt no-facial hair policies for workers who use tight-fitting respirators since beards compromise the seal necessary for the device to protect against breathing in hazardous substances.

Example: A BC arbitrator ruled that a no-earring policy for men wasn’t arbitrary for a BC park trying to recreate the look and feel of a historic period in which men didn’t wear earrings [[Callahan v. Capilano Suspension Bridge](#), 2009 BCHRT 127 (CanLII)].

Step 3. Ensure Dress Code Is No More Restrictive than Necessary

Dress code restrictions may serve a legitimate purpose but still be illegal to the extent it goes too far. To defend against a legal challenge, the employer must show that there are no less restrictive alternatives available for accomplishing the purpose. **Example:** An Alberta arbitrator ruled that a nursing home’s ban on “colored nail polish, false fingernails, or sculpted fingernails” was a valid infection control policy. Reasons:

- The evidence showed that fungi, bacteria, and viruses from artificial nails pose an infection risk;
- The risk couldn’t be controlled by making employees wear gloves; and
- The ban applied only to staff that performed functions that could directly infect patients [[Alberta Union of Provincial Employees v Aspen Regional Health Authority](#), 2008 CanLII 88106 (AB GAA)].

Step 4. Don’t Have Dress Codes for One Sex but Not the Other

One of the biggest problems with dress codes is the risk of liability for discrimination on the basis of sex, race, religion, age, nationality, and other personal characteristics protected by human rights laws. One common form of discrimination is singling out a protected group for different and adverse treatment, such as having dress code rules for women but not men who do the same job, or vice versa.

Takeaway: Ensure that your dress code affords equivalent treatment to men and women. Equivalent treatment doesn’t necessarily mean requiring every person to dress exactly the same. [Separate dress codes](#) for men and women may be okay. But you must be prepared to prove that any sex-based differences in the dress code are legitimately

linked to the requirements of the job.