

# Dress Code & Personal Grooming Quiz



## QUESTION

Can an employer tell employees what to wear at work?

## ANSWER

Most employers have rules that apply to everyone in the workplace equally. Your workplace can have a dress code or uniforms for employees.

A workplace might have dress codes that are based on their “culture” or “brand.” For example, a retail employer might ask employees to wear blue jeans and white shirts on the sales floor.

But dress codes need to be fair and flexible for everyone, regardless of their sex, gender identity, gender expression, race, disability, or religious faith. If your employer makes you dress in a way that goes against your human rights, that might be discrimination.

It might also be discrimination if you had to quit your job or you were fired because of the dress code or because you spoke up about your rights.

## WHY IS IT RIGHT

### CHECKLIST FOR EMPLOYERS

#### Removing barriers based on sex and gender

This checklist can help organizations make sure that their dress codes and uniform policies are consistent with Provincial *Human Rights Code* protections relating to sex and gender.

#### Dress codes/uniform policies should:

1. Allow for a range of dress/uniform options, for all staff in all front-of-house positions.
2. Not require any staff to wear sexualized, revealing or gender-stereotypical clothing.
3. Make sure that all staff can choose from clothing options, including pants, that are comparable in terms of style, comfort, practicality and coverage,

regardless of sex or gender.

4. Offer uniform sizes that fit a wide range of body types.
5. Make all dress code options available by default, rather than only offering certain options by request.
6. Not include grooming or appearance rules or expectations for women that are more onerous than those for men, or that are sexualized or based on stereotypical ideas of female attractiveness.
7. Allow for a range of hairstyles, and not require a specific hairstyle unless it is a legitimate requirement of the job (e.g. food preparation).
8. Specify that applicants or interviewees cannot be asked to identify what kind of uniform option they will choose to wear until they have been given an offer of employment.
9. Include processes for handling dress code-related accommodation requests and complaints.
10. Be communicated with and freely available to all staff.

## **WHAT IS OKAY TO WEAR AND WHAT IS NOT**

### **Crop tops, backless tops, halter tops, or strapless tops**

Anything that exposes your midriff or a lot of skin is off limits. Yes, crop tops are really fashionable right now. Yes, if you wear them with high-waisted pants they cover up almost all your skin. But they're still not appropriate for work. Save them for the weekend and opt for a lightweight blouse to stay cool, instead. You may be able to get away with a halter or strapless top if you keep it covered with a cardigan or blazer, but err on the side of caution.

### **Cut-offs or excessively ripped jeans**

Many 21st century dress codes have added jeans to the 'yes' column for appropriate work-wear. However there are limits. Under no circumstances should you ever wear cut-off jeans to work, even if they meet the knee-length requirement. Ripped jeans are a more grey area. Some workplaces are okay with a subtle rip here or there (though everything should still be covered, no giant rips on your behind, please) while others prefer crisp, dark-wash denim only. Exercise caution, and when in doubt, refer to your workplace's dress code.

### **Anything marketed as swimwear**

There's no excuse for wearing beach-wear to work. Swimsuits, sarongs, cover-ups, and anything else along those lines is absolutely off limits. Most swimwear is tight and exposes a lot of skin to make it easier to, well, swim in and dry after you've left the water. Those aren't things you need to worry about at work. Stick with clothing intended for dry land.

### **Flip flops or crocs**

Some dress codes allow sandals if they're on the dressy side. Some workplaces forbid any open-toed shoes. However almost all dress codes rule out flip flops and crocs. They're just a little too informal, and let's face it: crocs, especially, are a well-known fashion faux pas, so why would you wear them to work anyway? Save your crocs for times when you're not within sight of other humans. The world will thank you.

### **Anything marketed as gym-wear**

Athleisure is a hot trend right now. Gym-wear has come a long way from the days where a t-shirt and sweat pants, stretchy black pants or basketball shorts were the epitome of work-out fashion. Today you can find workout gear in all sorts of fun, colourful, and fashionable patterns. And yet, none of them are appropriate for work. Gym gear tends to be too casual, skin-tight or extra baggy, none of which is work-friendly.

### **Anything you'd wear to a club**

This might sound pretty obvious, but we'll repeat it for the sake of thoroughness. Anything that's excessively short, revealing or skin-tight, as club-wear tends to be, is off limits at work. This includes anything that's sheer – a sheer top that exposes your fancy bralette counts, too – as well as most clothing that's lacy, sparkly or sequined.

### **Hats or sunglasses**

As a general rule, any outdoor clothing should be removed when you walk into the office. This includes coats, sunglasses and hats. It's mostly a matter of professionalism. Settle in and look like you want to be there, rather than like you're ready to take off at a second's notice. Some offices have a more lax approach to the hats rule, so check out your employee handbook to be sure. Some workplaces permit hats such as berets or newsboy caps, however almost all workplaces forbid baseball caps.

### **Capris**

Capris are a work-wear staple for many women in the summer months. As a general rule, hems that fall below the knee are appropriate for women. That means that capris are able to sneak by in the 'yes' column. Just keep in mind that work-appropriate capris should be made of the same material as slacks. Capri leggings or jeans are generally not okay. Capris can be one of the more debatable summer dress items, so always double-check with your workplace's dress code.

### **Tops with a cardigan or blazer**

Though tank tops, halters and strapless tops are a no-go when worn alone, you can sometimes sneak them into your summer wardrobe by adding another layer. Throwing a cardigan or blazer over a non-appropriate item may transform it into a work-friendly option. Just keep an eye on plunging necklines and cleavage. Also be mindful that you'll have to keep on your second layer all day, so if you're concerned 2 layers will be too hot, pick something else.

### **Sleeveless tops**

Sleeveless tops are appropriate in most workplaces all summer long. The rule of thumb is sleeveless is okay, but spaghetti straps or exposed bra straps are not. Once again, this rule only applies to women. Men should stick with t-shirt length sleeves, no matter how hot it gets. A sharp polo or a short-sleeved dress shirt are acceptable summer options for men.

### **Fun prints**

Just because you work in an office doesn't mean you have to stick to a neutral palette of black, white, navy and tan, unless of course, that's your personal

style. Feel free to break out some fun patterns, colours and fabrics. Florals and brights are staples of summer work-wear. Just make sure you know the tone of your office. In a more conservative office, it might be best to choose one smaller accent item to pair with an otherwise neutral outfit.

### **Lightweight fabrics**

There are lots of lightweight fabrics out there that are perfect to beat the summer heat. Feel free to wear lightweight cotton, linen, or a flowy sundress to your heart's content. Just make sure your lightweight fabric isn't sheer. Fluorescent office lights can be unforgiving, so make sure to test for opacity before you head to work.

### **White**

We don't subscribe to the don't-wear-white-after-labour day rule. A crisp white button down or a silky white blouse is the perfect way to look pulled together no matter what season it is. Feel free to wear white whenever you want! However white is known to be cooling, because it doesn't absorb heat like dark clothing, so white is a great choice for the steamy summer months.

### **Dressy sandals**

Most offices are okay with dressy sandals for women. Just make sure your feet are well-groomed, if you're showing them off. You don't have to get a pedicure, but use common sense. Sorry men, but this is another area you'll have to sit out. Most offices frown upon men wearing sandals or any footwear that exposes their feet in any circumstances. This includes wearing socks with your sandals. You're not cheating the system by technically covering your feet. Just don't do it.

### **Skip the pantyhose**

Most modern workplaces have evolved past the point where women are expected to wear pantyhose or stockings if their legs are exposed. Feel free to go barelegged, if you prefer. Just ensure your legs are well groomed. If it's your preference not to shave your legs, that's your choice, however you're probably better off sticking with pantyhose or long pants.

### **Unbutton a bit**

You might have noticed that men's summer dress codes tend to be a lot stricter than women's. Other than short sleeves, men don't have too many options to stay cool. However another small way that men can dress down in the summer is to unbutton the top button or two on their shirts. The era where ties were expected in the workplace is mostly gone. Feel free to unbutton the top button or two. Keep the exposed chest hair to a minimum, though.

Keep in mind that these guidelines are just that. Dress code rules vary from workplace to workplace. Though most modern workplaces adhere to a fairly flexible business-casual dress code, there are some offices or industries that require a slightly more buttoned-up look. When in doubt, always refer to your company's handbook or dress code policy.

### **WHY IS EVERYTHING ELSE WRONG**

## **Sexualized and gender-specific dress codes**

You should not be expected to attract clients by wearing sexualized clothing. Female employees should not have a dress code that is significantly different than the dress code for male employees.

For example, when only female employees are expected to wear short skirts, low-cut tops, tight clothing, high heels, or makeup, it can create a work environment that is unsafe, unhealthy, and unfair. This may be discrimination.

## **Dress codes and religion**

Your religion might make it hard to follow the dress code. For example, a workplace might have a rule that no one can wear a head covering. This would create a conflict for a person who wears a head covering as part of their religion.

## **Accommodation**

The law says that your employer must do what they can to make things fair for you. This could mean doing things differently for you so that you're treated equally. Some people call this "removing barriers that cause people to be treated differently because of personal differences that are listed in the Human Rights Code. The legal word for this is accommodation.

Employers may have to change the dress code or excuse someone from following the dress code to accommodate their human rights. Employers may not have to do this if changing the dress code would have very high costs or cause serious health and safety issues.

## **Dress Codes and Grooming**

Many employers require their employees to follow a dress code. Employers regulate clothing, piercings, tattoos, makeup, nails, hair, and more. For the most part these dress codes are legal as long as they are not discriminatory. For example, men and women can have different dress codes if the dress codes do not put an unfair burden on one gender. However, even if a dress code is discriminatory, an employer does not need to make exceptions for certain employees if doing so would place an undue burden on the employer. For example, if someone's religion said they could not wear pants but they worked at a factory that required them to wear pants a court would likely side with the employer as the pants are for the employee's safety.

## **MORE LAW**

**The following case a good insight to the applicability of dress code principles in the workplace.**

A Quebec grievance arbitration tribunal recently affirmed that an employee, just by being in a relationship of subordination to the employer, does not waive the right to his or her image and personal appearance.<sup>1</sup> *A priori*, aspects of an employee's physical appearance benefit from the right to privacy and in certain cases the right to freedom of expression and can be regulated by the employer only for considerations that are substantial and valid and only if the means used to do so are proportional to the underlying objective.

## Facts

The union was challenging the legality of certain directives issued by the employer, a vocational training centre, in relation to the dress code imposed on teaching staff in its healthcare programs. The union contended that the directives were unreasonable and abusive and infringed these employees' fundamental rights and freedoms, and in particular the right to privacy and freedom of expression.

The employer's rules on physical appearance included requirements for the employees to maintain good personal hygiene. Hair had to be a natural colour, long hair had to be tied back and beards had to be covered during practical classes. Nails had to be clean and cut short, without coloured nail polish or artificial nails (clear polish was permitted). Jewellery other than simple jewellery was prohibited at all times and rings and arm jewellery were prohibited during practical classes. Dress code standards provided that instructors were to wear clean uniforms in practical classes and street clothes covered with white lab coats in theoretical classes and in the presence of students. Jeans, miniskirts, shorts and camisoles were not permitted.

While it acknowledged the references made in the rules to concerns about professional image, the need for staff to set an example and perceptions about the teacher's pedagogical role, the union submitted that these considerations cited by the employer were questionable, no directives of this sort having been issued between 1998 and 2009. It went on to note that many private schools where students were asked to wear uniforms did not make such demands of their teaching staff. In short, in the union's view, the rules were based on subjective considerations which could not serve to justify such broad measures.

The evidence before the arbitrator showed that from 1998 to 2009, the employer did not impose any dress code, except in the laboratory and for certain internships. The employer maintained that a dress code had resulted from the recommendations and positions which were adopted in this connection in 2006 by Quebec's nurses' professional corporations, the Ordre des infirmières et infirmiers du Québec (**OIIQ**) and the Ordre des infirmières et infirmiers auxiliaires du Québec (**OIIAQ**). Those recommendations insisted on the importance of dress codes for reasons related to hygiene and professional image.

## Decision

After analysing the applicable principles and reviewing the evidence before her, the arbitrator declared the rules to be invalid. She noted that labour law principles allowed the employer to regulate employees' physical appearance as necessary for the sound administration of its enterprise, to the degree that such regulation was consistent with the collective agreement and the law, and in particular the Quebec *Charter of human rights and freedoms* (**Charter**). Where a measure infringed a right protected by the Charter, not only must the underlying objective be serious and valid, but the means used to achieve the objective also had to be in proportion to it.

In this case, the rules' stated goal was to allow students to acquire skills in an environment designed to mirror the real-life situations they would encounter at work and to sensitize them to the importance of dress in the exercise of their professional duties. The arbitrator pointed out that the measures had to be assessed in relation to the standards generally acknowledged as appropriate

in the teaching environment, not in the work environment, and that the standards applicable in the work environment could not be simply imported in order to justify the impairment of a fundamental right in the teaching environment, as adherence to certain standards did not have the same degree of importance in the two environments (for example, the risk of infection was not present in the teaching environment).

The arbitrator found that the requirement of maintaining good personal hygiene made sense and did not contravene any fundamental Charter rights. As for the natural hair colour rule, it infringed the right to privacy, especially seeing that the restriction extended beyond the employees' working hours. Moreover, the rationale for such a measure had not been demonstrated, as neither the OIIQ nor the OIIAQ had adopted such a requirement. The rule requiring beards to be covered did not infringe any Charter right, corresponding in essence to the OIIQ's and OIIAQ's recommendations on the matter. Indeed, since it flowed from a pedagogical objective that was focused on meeting hygiene standards applicable in the work environment, it could not be considered unreasonable or excessive as long as the employer was prepared to provide the gear necessary for the purpose. The obligation to tie long hair back in practical classes, while it could be considered to impair the right to freedom of expression to some degree, was still legitimate considering that the effects were limited, being confined to a specific period of time. As for the restrictions on nails, the rules were in fact more permissive than the OIIQ and OIIAQ recommendations, which did not allow clear nail polish, the parties having acknowledged that the rules should be consistent with the OIIQ and OIIAQ positions. The restrictions on jewellery constituted an impairment of the right to one's image, privacy and freedom of expression which the arbitrator, referring in particular to the requirement that jewellery be "simple" (in French, "*sobre*"), did not consider justified, finding that choice of jewellery was a matter of taste, not a pedagogical consideration.

As far as dress code was concerned, the requirement that uniforms be worn in practical classes was not illegitimate or disproportionate, in the arbitrator's view, considering that the impairment of the Charter right that it caused was minimal, the scope of its application was well defined and its pedagogical goal was to mirror the work environment. Regarding the requirement of wearing lab coats in theoretical classes, the evidence submitted by the employer had not been sufficient to establish a relationship between wearing a lab coat and the ability to provide quality instruction. As the primary aim of this measure was to protect its public image, the arbitrator noted that the standard of evidence required of the employer in attempting to justify it was especially high, which burden it had failed to discharge. As for the prohibition on wearing jeans, miniskirts, shorts and camisoles, while it impinged on the employees' privacy and freedom of expression, the ban on miniskirts and camisoles could be justified, on the basis of standards of decency in an educational environment and the proportionality of the resulting impairment and the beneficial effects, whereas the prohibition on jeans could not, as jeans were usually considered suitable attire in public academic institutions.

**In short, while some of the requirements were considered legal by the arbitrator, the rules as a whole were found to be invalid.**

## **Conclusion/Overview**

This decision serves as a reminder that when adopting rules relating to its

employees' physical appearance, an employer must be careful to respect the employees' fundamental rights, including in particular their right to privacy and freedom of expression. In addition to being based on considerations that are substantial and valid, such rules must be designed in a way that ensures that measures which impair one or more fundamental rights are rationally connected to the objective sought and that the impairment of the rights is minimal and in proportion to the measures' anticipated beneficial effects. The decision also emphasizes that standards which apply in the work environment cannot be blindly applied to a teaching environment as the justification for impairing a fundamental right, given the differences in the standards appropriate to the two environments.