Dress Codes & Personal Grooming Policies- How Far Can They Go?



QUESTION:

Can we establish a dress code? How far is too far? And should we even care about what our employees wear?

TODAY'S EXPERT

Glenn Demby *is a lawyer and the editor-in-chief of HR Insider.*

ANSWER:

Employers *are* allowed to implement a dress code or personal appearance policy under 7 conditions:

1. It serves a legitimate and important purpose;
2. The policy is necessary to accomplish the purpose;
3. There are no less restrictive alternatives that will accomplish the purpose;
4. The policy is clear and unambiguous about what's allowed;
5. The policy doesn't violate the collective agreement (in a union workplace);
6. The policy doesn't discriminate on the basis of gender, race, religion, etc.; and
7. You enforce the policy consistently.

Of course, like any other HR law, dress code rules are simple to state but hard to apply in real life situations. Rather than review the cases, I'll show you how to do this by posing them as scenarios and ask *you* to make the call on whether the dress code is legal:

1. Nurses Can't Wear False Fingernails

Situation: Nursing home infection control policy bans staff that treats patients from having "colored nail polish, false fingernails or sculpted fingernails."

Outcome: Policy is valid because it serves a compelling health interest.

Reason: Key to case: Employer's evidence that fungi, bacteria and viruses from artificial nails pose an infection risk that couldn't be controlled by making employees wear gloves [*Stocking Grievance, [2008] A.G.A.A. No. 67, Dec. 4, 2008*] (Click on the link to find out more about the case).

2. Kitchen Staff Can't Wear Facial Jewelry

Situation: Hospital disciplines kitchen workers for wearing nose studs under dress code policy banning dietary staff from wearing facial jewelry.

Outcome: Policy struck down because there's no proof it's necessary for sanitation.

Reason: The employer lost because it couldn't show that nose piercings and wearing nose studs increased the risks of transmitting disease [*Russell Grievance,* [2004] O.L.A.A. No. 141, April 5, 2004].

3. Resort Staff Can't Wear Shoes with Curved Platform Soles

Situation: After a fall incident, a resort adopts a Joint Health and Safety Committee recommendation and adopts a safety policy banning shoes with curved platform soles.

Outcome: The policy is invalid because it limits employees' personal choices in comfortable footwear without promoting safety.

Reason: Although well intentioned, the spa and JHSC adopted the policy hastily based on speculation and anecdotal internet reports suggesting that curved platform sole shoes posed a fall hazard without conducting a thorough hazard assessment of their own [*Footwear Grievance,* [2012] B.C.C.A.A.A. No. 68, May 16, 2012].

4. Store Staff Must Be Clean Shaven

Situation: Supermarket disciplines clerk with neatly clipped goatee for violating its no beards rule.

Outcome: Policy is valid because it serves an important business purpose.

Reason: Employer used customer surveys showing that having clean shaven employees was important to customers and sales to justify no beard rule in its personal appearance and grooming policy [*Morgan Grievance,* [1998] A.G.A.A. No. 94, Nov. 10, 1998].

5. Respirator Users Can't Have Beards

Situation: Pulp mill employee's religion forbids men from shaving. So he claims that a policy requiring users of tight-fitting respirators to be clean shaven is religious discrimination.

Outcome: Policy is justified because it's necessary to accomplish an overriding safety purpose.

Reason: Facial hair interferes with the tight seal required to keep out poisonous gases. So letting him use a respirator without shaving would endanger not only the employee's life but those of any co-workers who rely on him for their own safety [*Pannu v. Skeena Cellulose Inc.,* [2000] B.C.H.R.T.D. No. 56].

6. Store Staff Must Tuck In Shirts

Situation: Food store requires all employees to tuck in their uniform shirts at the waist.

Outcome: Policy is unreasonable because its real harm outweighs its speculative benefits.

Reason: The store used marketing surveys to show that staff neatness and professional appearance was important to customers; but it couldn't prove that a tucked in shirt promoted the desired image. What was *not* speculative was the embarrassment and humiliation employees with particular physical characteristics—beer bellies, large bust lines and general portliness—would experience by having to wear their shirts tucked tightly into their waistline [*Calgary Co-Operative Ltd. v. Union of Calgary Co-op Employees,* [2006] A.G.A.A. No. 1, Jan. 2, 2006].

7. Teachers Can't Wear Jeans

Situation: Public school bans teachers from wearing blue jeans and sweat pants.

Outcome: Policy is more restrictive than it has to be.

Reason: All sides agreed that the dress code served a compelling purpose—ensuring that teachers' dress was professional and reflective of their role model status. But would wearing blue jeans and sweat pants really make a teacher any less of a role model? No it wouldn't, reasoned the arbitrator, citing occasions like outdoor activities and field trips to casual settings like sporting events where nobody would bat an eye at a teacher for dressing casually. So, in *categorically* banning jeans and sweats, the dress code went too far [*Dress Code Grievance,* [2012] O.L.A.A. No. 205, April 4, 2012].

8. Waitresses Must Wear Bikini Tops, Waiters Must Wear Hawaiian Shirts

Situation: Night club requires cocktail waitresses to wear bikini tops and waiters to wear Hawaiian shirts for a fundraiser with a beach theme.

Outcome: Nightclub is liable for sex discrimination.

Reason: Although men and women dress differently, dress codes must provide equivalent treatment to each gender. Bikini tops accentuate gender; Hawaiian shirts are gender-neutral. So the club's "dress code" discriminated against female employees on the basis of gender [*Mottu v. MacLeod,* [2004] B.C.H.R.T.D. No. 68, Aug. 9, 2004].

9. Men Can't Wear Earrings

Situation: Dress code of historical park trying to recreate early 20th century trading post bans jewelry not worn during the period, including earrings for men and lip, eyebrow and nose rings for both sexes.

Outcome: Dress code doesn't discriminate on the basis of gender.

Reason: Recapturing the early 20th century as accurately as possible was a legitimate and compelling interest and the park used historical research to show that people didn't wear facial jewelry back then [*Callahan v. Capilano Suspension Bridge,* 2009 BCHRT 127 (CanLII), April 7, 2009].

10. Elder Care Staff Can't Show Cleavage

Situation: A senior care administrator disciplined and ultimately fired for wearing tight clothing accentuating her cleavage sues for gender discrimination.

Outcome: The Tribunal rules she has no chance of proving her claim and throws out the case.

Reason: The administrator wasn't fired because of what she looked like. She was fired for repeatedly violating the dress code. Coupled with ongoing performance problems, this was just cause for termination [*Jones v. Well-Being Senior Services Ltd.,* [2010] B.C.H.R.T.D. No. 109, March 30, 2010].

Conclusion

Although the situations are all different, each of these cases illustrates how courts and arbitrators try to weigh the employer's interest in regulating workplace dress against the employee's right of self-expression. But keep in mind that regulation of dress and personal appearance in the workplace isn't just a legal issue; it's also matter of morale, productivity and employee relations. It's a road you only want to go down when you have a compelling need for employees to dress a certain way and the evidence to demonstrate that implementing the dress code is the only way to accomplish it. As the cases above demonstrate, this is a tough burden for an employer to meet.

For More Help with Dress Codes & Personal Appearance Policies

- **Model Dress Code Policy**
- **Model Summer Dress Code Policy**

GOT A QUESTION FOR OUR EXPERTS?

Submit it to glennd@bongarde.com