HR and Dress Codes: An Interview with Attorney Cedric Lamarche



One of the most perplexing issues for HR professionals is employee dress codes. Although HR may not want to get too specific about employee workplace attire and personal appearance, being too vague can create problems. And then there are the legal issues. What is and is not acceptable when establishing criteria? HR Insider asked Cédric Lamarche, Senior Associate at Whitten & Lublin, Employment Lawyers, for insight. Here's what he told us.

HRI: What is the biggest mistake companies make with regard to dress code policies?

CL: The biggest mistake made is the failure to implement clear guidelines, or any guidelines for that matter, regarding appropriate attire in the workplace. This creates uncertainty among the workforce, which can lead to employees having far too much leeway. Consequently, if the employer raises issues with an employee's attire which it deems inappropriate because it is too casual, too "sexy", or too distracting, it could face backlash and be accused of favoritism, sexism, or even sexual harassment. Moreover, an employee's attire could be viewed as offensive to a colleague, customer, or members of the public. An offensive logo on a T-shirt, for example, could result in irreparable harm to the image of the company and impact staff morale.

HRI: To some extent, industry determines what employees wear; mining, for example, vs. food services. Yet, within industries there are very different dress codes. Starbucks, for example, doesn't allow nail polish, where other restaurants do. It raises the question, how specific can – and should – a company get when outlining workplace appearance requirements?

CL: There are no limits to the specificity with which an employer can dictate working attire. For example, an employer can control all clothing worn by its staff by requiring that uniforms be worn. There are seldom issues with uniforms, unless of course they put an individual in an embarrassing, humiliating or demeaning position (e.g. the scanty uniforms that are often on display in sports bars). The more specificity, the less room for interpretation will be left to the employees, and consequently the fewer interventions that will be required. For example, rather than merely state that employees are required to wear dress shoes at work, a policy should indicate that dress shoes are required, but that open toe shoes are not permitted, if this is in fact desired by the employer. I always encourage providing very specific guidelines as it typically reduces the amount of time that the employer needs to

spend to deal with dress code issues.

While specific instructions and guidelines are encouraged, they must be reasonable. The rights of the employer and the rights of the employees must be balanced. Employers have the right to require that an employee's attire not present any safety risks to employees and to others. They also have the right to protect their image. On the other hand, employees have the right not to have dress codes interfere with their personal lives. For example, rules regarding facial hair, jewelry, and tattoos could be viewed as unreasonable if they intrude on a person's personal life, unless of course there is a bona fide occupational requirement for the rule.

HRI: Can management's preference be the sole reason for a specific aspect of a dress code policy?

CL: Dress code policies are very often guided by management's preference. There is nothing improper with this as long as there is a sensible basis for the preference. Members of management are often best positioned to determine the image that best serves a company's business interest. This determination can be very subjective in nature, and there is nothing wrong with this as long as management's discretion is exercised reasonably. However, if the rule is merely a result of a fashion preference, this would certainly not be viewed as reasonable and an employer would be remiss to accuse a worker of insubordination for refusing to comply with it.

HRI: Is it advisable to share your dress code policy with potential new hires during the interview process?

CL: It is a very good idea to share a company's dress code with prospective candidates near the final stages of the recruitment process. Assessing whether or not an individual is an organizational fit is often central to the final hiring decision. If a candidate raises an issue with or reacts poorly to a dress code policy, this can be a good indication that the person will not be a good fit within the organizational culture.

HRI: Many organizations allow a more relaxed dress code during the summer months. Would you recommend that an organization have a separate summer dress code policy?

CL: More employers are implementing relaxed dress codes, particularly during summer months. Some employers have recognized that comfort can have a direct impact on productivity, as well as overall employee morale. However, to help avoid having to deal with employees attending work in flip flops, mesh shirts, spandex body suits, or low cut shirts, it is always best to set clear parameters regarding what is acceptable, and what is not.

HRI: Similarly, casual Fridays seem to raise issues, and a few eyebrows, at various organizations. Should "casual" be clearly defined?

CL: Absolutely. Some employees see casual Fridays as a "carte blanche" to express themselves by pushing the limits of reasonableness and good taste. While self-expression should not be discouraged, clear limits should be set. In order to avoid taking the fun out of casual Fridays, employers should avoid making the dress code punitive or negative. Rather, it can be presented in a neutral way, or better yet in a humouristic way if this is in-line with the company's culture.

HRI: Do you recommend establishing guidelines for business travel attire?

CL: A separate business travel attire policy should be implemented especially in workplaces that otherwise do not have a dress code policy, or have a very lenient or

casual policy. The nature of a business activity can properly influence or determine a dress requirement. An employee used to dressing in a particular way may not be independently aware of the need to adjust his/her attire as a result of specific circumstances. Having a separate policy ensures that employees understand clearly that while they are afforded flexibility behind closed doors, there is a different expectation regarding their attire if they engage in particular business-related activities.

HRI: When should an organization make exceptions with regard to a dress code policy?

CL: The most obvious instance where an employer is required to make exceptions to dress code policies is to accommodate an employee. Employers have a legal duty to accommodate persons with disabilities up to a point of undue hardship. Accordingly, if an employee is unable to comply with a dress code policy due to an illness or disability, unless there is a bona fide occupational requirement for the policy, the employer will be expected to provide the necessary adjustments to the policy in order to properly and reasonably accommodate the individual. Failure to accommodate can lead to a finding of discrimination. Conversely, the duty to accommodate could actually require an employer to implement a certain dress code policy. For instance, if an employee suffers from a disability that is exacerbated by scented fragrances (e.g. chronic obstructive pulmonary disease, and severe allergies), the employer may be required to implement a scent-free workplace policy to ensure that the individual is properly accommodated in the workplace, failing which the company could be exposed to a discrimination claim.

HRI: Implementing a policy is one thing; ensuring that employees adhere to it is another. Can you offer any tips on how to best enforce a dress code policy?

CL: The following tips should be followed:

- Have clear and concise rules on workplace attire;
- The rules should be communicated in writing at the onset of the employment relationship;
- Employees should be required to acknowledge in writing that they have read and understand the rules;
- Repercussions for breaking the rules should be set out clearly;
- Steps should be taken to ensure that those individuals tasked with enforcing the rules know them well;
- The rules should be enforced consistently; and
- Repeat offenders should be appropriately disciplined.