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Dear HR Knowledge: Can we still enforce a dress code policy?

As of late, development and enforcement of employer policies has become more and more time consuming, requiring a lot more research to determine what you can and cannot do as an employer. What employers could mandate through employee handbooks and policies a few years ago may land them in hot water today. This is a common reason our clients reach out and ask us, "Can I have a policy that says...?"

When looking at dress code and personal grooming policies, our answer is "It depends...." We need to review our client's particular policy on a case-by-case basis. Is the policy driven by safety or business necessity or was it based simply on the personal preference of the management team? In some instances, personal preference for a policy can be acceptable, but when it comes to personal expression such as hairstyles, tattoos, beards, and piercings, it's best to remove personal preference and be more specific about business needs such as "safety first."

When developing and enforcing your dress code and personal grooming policies, gone are the days of telling women they must wear "hosiery" in the office. Today, you must be gender and race neutral. In the absence of federal law, the New York City Commission of Human Rights (NYCCHR) has developed legislation that bans employment discrimination based on race traits that have been historically associated with hair texture and style. The New York Human Rights Law now define "race" to include "traits historically associated with race, including hair texture and protective hairstyles." The term "protective hairstyles" includes, but is not limited to, braids, locks, twists, cornrows, Afros, and Bantu knots.

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Increasingly, state-specific legislation is addressing new, expanded definitions of “race” and “gender”. In light of recent legislation passing in New York City, California, and other states and cities, we need to raise awareness of how a policy may be viewed as discriminatory by the Equal Employment Opportunity Commission (EEOC).

It's important for employers to communicate appropriately their business reasons regarding their dress code policy. An employer's dress code policy begins with screening job applicants and continues throughout the employee's life cycle as it pertains to promoting, transferring, and terminating employees. Just as you verify that an employee is able to work the times/days you need, so should you verify that the employee adheres to job requirements and the job description. If safety mandates no head scarfs or that an employee wear a specific article of clothing, this requirement should be shared in advance, stating the reason (safety, etc.), and allowing the employee to inquire about an accommodation based on a cultural or religious reason.

Keep in mind that once you've decided to hire a job applicant, you don't want to turn around and tell them, “By the way, you can't look like you anymore.” Your employees make a first impression with their clothing and grooming. You, too, need to make a good first impression by helping them understand why the dress code is important and ultimately beneficial to the organization, such as a uniform promoting a team environment — so long as you are adhering to the laws of the states you are doing business in and the requirements of the EEOC.

So yes, you can certainly enforce your dress code and personal grooming policies, as long as you keep up with the evolving laws and trends. Ensure your policies are race neutral and don't put a stricter burden on one gender over another. Take a hard look at your policies and determine whether the restriction or requirement is truly based on safety and business necessity or is inadvertently discriminating against an individual based upon a religious belief or a race-based trait.



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