

Does Your Dress Code Discriminate? What Employers Need to Know

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In the ever-evolving landscape of workplace discrimination laws, savvy employers are reexamining longstanding policies—including those that may not seem controversial at first glance. One of the most commonly overlooked (yet frequently litigated) areas? The company dress code.

What was once a straightforward requirement—“business casual” or “jeans on Fridays”—has become a complex legal issue, especially as courts and administrative agencies scrutinize how dress and grooming policies intersect with anti-discrimination laws. From hairstyle protections to gender identity accommodations, the modern workplace dress code carries more legal weight than many employers realize.

Here’s what you need to know to ensure your company’s dress code reflects both current legal standards and best practices.

The Legal Foundation: Employers May Set Reasonable Standards

As a general matter, employers are permitted to impose reasonable restrictions on workplace appearance. Courts have long recognized a company’s legitimate interest in maintaining a professional image—especially for employees who interact with clients, vendors, or the public—or in enforcing safety-based attire requirements depending on the nature of the work.

However, dress codes must be implemented in a way that does not discriminate directly or indirectly. Your workplace dress code should not:

- Impose unequal burdens on certain groups
- Reinforce outdated gender stereotypes
- Fail to provide religious or medical accommodations
- Be applied inconsistently or selectively

Gender-Specific Policies: Proceed with Caution

Historically, some courts have permitted different grooming or dress requirements for male and female employees—as long as the policy is applied evenly and doesn’t impose a greater burden on one gender. However, employers relying on these traditional standards may be exposing themselves to risk.

Courts have increasingly accepted Title VII claims based on gender stereotyping, where policies require employees to present in ways that conform to traditional gender roles—for instance, requiring women to wear skirts or prohibiting men from growing

long hair. These requirements can give rise to claims when they compel employees to dress in a manner inconsistent with their gender identity or personal expression.

Several states and municipalities have taken a more explicit approach. In California, for example, it is unlawful to require women to wear skirts. In Washington, DC, the law prohibits discrimination based on appearance, which includes dress and grooming. Employers operating in multiple jurisdictions should review policies with a careful eye toward state and local requirements, which may be more protective than federal law.

Gender Identity and Expression: Aligning with Bostock and Beyond

In the wake of the U.S. Supreme Court's 2020 decision in *Bostock v. Clayton County*, employers must recognize that Title VII prohibits discrimination based on gender identity and sexual orientation. As a result, enforcing gender-specific dress codes or grooming policies that conflict with an employee's gender identity may constitute unlawful discrimination.

Many jurisdictions have adopted laws that go even further, requiring employers to affirmatively allow employees to dress in accordance with their gender identity or expression. Employers should carefully assess whether their appearance standards respect these legal obligations and provide sufficient flexibility.

The Rise of Hairstyle Discrimination Laws

A growing number of states have passed legislation recognizing that grooming policies can serve as proxies for racial discrimination. Laws in Maryland, Virginia, California, New York, and others prohibit workplace restrictions that ban natural hairstyles or protective styles such as afros, braids, locks, and twists. These laws are often framed as extensions of race discrimination protections under Title VII.

Employers should avoid policies that prohibit or limit hairstyles unless there is a demonstrable, legitimate business justification—such as a safety concern in an industrial setting—and even then, the policy must be narrowly tailored.

Accommodations for Religious Beliefs and Medical Conditions

Under Title VII, employers must reasonably accommodate sincerely held religious beliefs, including those that conflict with dress or grooming policies. This may include permitting head coverings, religious jewelry, or exceptions to attire norms due to modesty practices.

Similarly, under the Americans with Disabilities Act, employers must accommodate qualified employees with disabilities. For instance, a blanket ban on facial hair may need to yield to an employee with a medical condition that makes shaving painful or harmful.

Failure to consider these accommodations not only exposes employers to liability—it also undermines inclusivity and employee morale.

Union Activity and Protected Expression

Dress codes must also respect employees' rights under the National Labor Relations Act (NLRA), which protects their ability to engage in concerted activity, including the right to wear union insignia or clothing expressing workplace concerns. A policy that broadly bans "derogatory" or "inappropriate" attire without a clear connection to legitimate business interests—like safety or security—may be deemed unlawfully overbroad by the National Labor Relations Board.

Best Practices for Employers

To ensure that dress codes meet legal standards and reflect modern workplace norms, employers should consider the following:

- **Use Neutral Language:** Policies should be gender-neutral, avoiding references to attire “expected” of men or women.
- **Avoid Over-Specification:** Instead of listing every acceptable or unacceptable item of clothing, opt for broader, flexible guidelines (e.g., “employees must present a clean and professional appearance appropriate to their role”).
- **Be Consistent:** Apply the policy uniformly across departments and roles, unless a legitimate business reason supports a distinction.
- **Build in Flexibility:** Include language acknowledging the need to accommodate religious practices, cultural expression, or medical conditions.
- **Review Regularly:** Revisit your dress code periodically in light of new legal developments and cultural trends.

Final Thoughts

While office dress codes may seem like a minor issue, they often sit at the intersection of major employment law concerns. A policy that is too rigid—or worse, discriminatory in application—can lead to reputational harm and costly litigation.

The good news is that most companies can maintain professionalism without micromanaging wardrobe choices. A thoughtful, updated policy can reinforce your company’s values while keeping you compliant with the law.

If you have questions about your company’s dress code or need assistance revising your policies, consult employment counsel familiar with the latest developments in federal, state, and local law. A well-drafted dress code can do more than keep the office looking sharp—it can help your company avoid some very real legal pitfalls.