



Ask the Ellis Whittam Experts

DRESS CODE

Peter Schofield, Director of Legal Services at Ellis Whittam, considers the sensitive issue of what not to wear in the workplace.



Given the recent furore regarding standards of dress at work, now is a good time to consider some of the issues which may arise from dress codes.

Can I set different standards for men and women?

It is unlawful to treat a worker less favourably because of their sex - this is known as 'direct discrimination'.

In the context of dress codes, this could be an issue if an employer insists on different rules about clothing for men and women. However, since there are differing ideas as to what is conventional dress for men and women, differences between the requirements may not necessarily amount to sex discrimination. For example, a requirement for men to wear a shirt and tie and for women to "dress appropriately and to a similar standard" would not be discriminatory, since a common standard would be set with neither sex being treated less favourably than the other.

The case of *Schmidt v Austicks Bookshops Ltd* stated that any clothing rules should be considered as a whole in order to decide whether there had been differential treatment. As long as any restrictions are applied even-handedly, even if there are differences in the requirements, it may be difficult for a worker to show that there has been less favourable treatment.

Can I stipulate what staff can wear at work?

As long as any requirements are not discriminatory, there is significant amount of leeway in terms of what an employer can require employees to wear for work. It may be that health and safety requirements mean employees need to wear protective clothing. It could be that you want staff to maintain a professional image, so that smart clothing is required. And perhaps in warmer weather you would like to preserve that professional image by not allowing employees to attend work in sandals, short skirts, shorts or without a tie. Different dress codes will suit different businesses.

However, it may be unfair to dismiss an employee for not following the dress code if any requirement is deemed to be unreasonable. Therefore, it is always best to have a think about the reason why a particular code is being implemented.

Do I have to take into account someone's religious belief when setting a dress code?

This is a slightly more complicated issue.

As with sex discrimination, it is unlawful to treat someone less favourably because of their religion or belief. However, given that any dress code is going to be applied to everyone equally, it may be difficult for a worker to show that there has been less favourable treatment.

The more likely issue is that a provision, criterion or practice (PCP), in this case a dress code, is applied which places individuals with particular religious beliefs at a disadvantage compared with those who do not hold those beliefs. This is known as 'indirect discrimination'. For example, requiring women to wear skirts may impact unfairly upon some religious groups, where legs have to remain covered. Likewise, requiring workers not to wear jewellery may affect those with Christian beliefs, where wearing a crucifix is often an outward display of the wearer's faith.

Whilst employers are advised, wherever possible, to be tolerant of religious dress, there will of course be occasions where freedom needs to be curtailed. In such circumstances, the guiding principle is to analyse the impact of wearing a specific dress or the item in question on an employee's ability to do their job effectively. If the work cannot be done as effectively because of the dress or item, it is likely that there will be a fair justification for limiting freedom of dress. As a multi-cultural society, it is unsurprising that at times restrictions need to be imposed that will unfortunately be disputed by some individuals.



Rachel,
Senior Employment Law Adviser

Is there anything else I need to consider?

If you are satisfied that your dress code is non-discriminatory, that is not necessarily the end of the matter, as illustrated by the widely reported case of Nicola Thorp, who was sent home for refusing to wear high heels.

Even if your dress code is lawful, if an individual decides to take to the internet to complain about it, you are then in the hands of the public to pass judgment on whether such a policy is reasonable. Nicola Thorp managed to obtain over 100,000 signatures on a petition seeking to outlaw a requirement to wear high heels. Whether this ultimately results in legislation being passed or not, the adverse press led to the agency she was assigned to changing their policies – it would appear that the justification of “industry standard practice”, as put forward by the agency, may not cut it. It would be wise, therefore, to think carefully about why you are requiring a particular dress code.

“Not only do we get things right legally, we can also be sure we are doing things in a way that has a positive impact on the bottom line.”

Gavin Tennant
Braehead Foods