



(7) Dress and Appearance Codes

Are dress codes unlawful?

It is unlawful under the existing anti-discrimination ordinances in Hong Kong to discriminate a person on grounds of sex, pregnancy, marital status, disability, family status or race (protected attributes). While nothing in the anti-discrimination ordinances explicitly states that dress and appearance codes are unlawful, the Equal Opportunities Commission advises employers to avoid imposing unnecessary dress and appearance codes as provisions in specific dress codes may inadvertently discriminate directly or indirectly.

Dress and appearance codes can be defined as covering both body adornment (clothes, hats and jewellery) as well as requirements on the body itself (hair, beard and tattoos).

Where employers deem it necessary to impose restrictions on their staff's dress and appearance, they should ensure that the requirements specified in the codes are not discriminatory.

What should employers consider in setting dress and appearance codes?

In developing and implementing dress and appearance codes for their staff, an employer should strike a balance between the requirements of the particular industry, client base, business needs, as well as the employees' personal freedom to present their own appearances, e.g. freedom to express religious, cultural, racial and ethnic identity. Consideration should also be given to the physical environment and weather conditions. Impact of the dress and appearance codes on employees because of their particular attributes should also be considered.

Developing non-discriminatory dress and appearance codes

Dress and appearance requirements which cannot be justified as necessary for the need of the job should not be imposed. If employers want to introduce or implement dress and appearance

codes, it is in their interest to include only those requirements which relate directly to the duties of the job and the nature and circumstances of the employment. For example, a requirement that staff should not wear certain types of clothing or jewellery for the sake of safety when operating machinery.

It is a good management practice to consult employees in the development of any dress and appearance codes or changing existing ones. Dress and appearance requirements which are not applied equally to both sexes, between persons with and without a disability, persons from different racial groups etc, may be discriminatory. As a result, work morale, efficiency, job satisfaction and productivity may suffer. That is why dress and appearance codes, if necessary, should be carefully imposed in order to avoid discrimination.

How dress and appearance codes can be discriminatory?

Under the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Race Discrimination Ordinance, it is unlawful to directly or indirectly discriminate against employees on grounds of sex, pregnancy, marital status, disability or race. For example, it may be discriminatory to require male staff to have short hair without imposing any hairstyle restrictions on female staff. Similarly, a requirement on clothing that only applies to female staff may amount to sex discrimination if there are no restrictions on clothing for male staff. A requirement that women wear skirts only may also indirectly discriminate against a disabled female staff member who wants to avoid exposing her prosthesis by wearing trousers. A person with skin disease on his forearm may find it embarrassing to wear a uniform with short sleeves. If an employer imposes a blanket ban on beards for all employees without justifiable reasons, it may indirectly discriminate against ethnic groups such as the Sikhs, who by their custom have to keep a beard.

Points to note in developing and implementing dress and appearance codes

- If dress and appearance codes are to be adopted, they should be applied to both sexes in an even-handed manner. Although separate rules may be



applied to the sexes, a common standard should be adopted in enforcing the rule and neither sex should be treated less favourably in enforcing the principle.

- In designing dress and appearance codes, employers should ensure that they are not biased by preconceptions and stereotypes of the kinds of dress and appearance of a particular group of persons. In particular, dress and appearance codes which confine a particular sex and race to a stereotyped look should be avoided.
- Requirements should be based on the duties of the job and the nature and circumstances of the employment. For example, if formal dress is a commonly adopted style to portray the desired image of the job-holders of a particular business, a requirement that staff of both sexes should wear "professional and presentable clothing" would be more appropriate than one which prescribes the particular types of clothing for the two sexes, such as "skirts" for women and "suits and ties" for men.
- The code should only prescribe a particular form of grooming if it qualifies as a necessary and reasonable requirement of the job and is justified by sound business reasons. For example, policies may differentiate between employees who have to deal regularly with the public in person and those who do not.
- The code should not discriminate between sexes when giving cash allowances. Employers should also be wary of appearing to be sexist by specifying that allowances given to female employees are for the purchase of cosmetics.
- The code should not subject persons of a particular protected attribute to any unfavourable treatment or detrimental effect.
- When employees' cultural or religious practices, such as those expressed in dress codes, conflict with an employer's policies or workplace requirements, it is recommended that the employer considers whether it is practicable to vary or adapt these requirements. Employers and employees should respect each others' culture and customs. There should be flexibility in the implementation of the dress and appearance codes to address factors such as climatic and

environmental changes as well as specific needs of employees.

- Employees should be advised that they could seek advice from designated officers in the organisation if they have difficulty in complying with the codes.
- The codes should be reviewed periodically to take into account changes in the trends of appropriate dress and appearance codes at work for men and women.