



Appearance and look policies - how to avoid discrimination

For retail, hospitality and leisure

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Introduction

Retailers have a brand image to express to customers/clients. Generally this is represented through products and through advertising and marketing initiatives. However, many retailers believe another way to express their corporate personality is to employ staff with the desired 'look' who best represent the brand. This inbrief considers the potential legal issues for retailers who only employ those who 'look the part'.

Having the look

Look policies are lawful so long as they do not discriminate against individuals because of a 'protected characteristic'. Protected characteristics include disability, age, sex, race, religion and belief, marriage and civil partnership, pregnancy and maternity, sexual orientation or gender re-assignment. An individual's 'look' may be determined by various factors including their physical form, age, sex or race, meaning that it is not uncommon for such policies to appear discriminatory.

Look out

Having a discriminatory policy could expose employers to Tribunal claims. For example, if a ladies fashion retailer had a policy that staff must be white women aged 18-24, this would amount to direct discrimination. A man could claim that he was not offered the job because he is male and so was treated less favourably because of sex. A non-white job applicant of either sex could bring a claim on the basis of less favourable treatment because of race. Equally, treating an older individual less favourably because of their age could constitute age discrimination.

A policy may also be indirectly discriminatory. For example, a retailer's policy may specify that hair should be kept short and for women worn loose. This could be indirectly discriminatory, even if the policy applies to all staff, because it may disadvantage certain groups. For example, it may have a particular disadvantage for a Sikh employee, whose faith requires him to grow his hair. Similarly, this could indirectly discriminate against a Muslim woman who wears the hijab and has her hair covered. It is possible to justify indirect discrimination, but an employer would need to show that keeping hair short and loose achieves a legitimate business aim and is a proportionate means of achieving that aim.

Some retailers have devised clandestine ways of enforcing look

policies and have had to defend themselves against accusations of discrimination. Several retailers have been accused of screening employees for their looks before employing them. Others have had to justify 'demotional transfers', where employees are moved to less prestigious retail stores or into non-customer facing roles when it is felt that they did not comply or could no longer comply with the policy.

Looking ahead – Practical tips

We recognise that many clients have look policies to embody their brand image. So how can you minimise the risk of your policy being discriminatory?

- > Do not make stereotypical assumptions based on protected characteristics about who fits your brand image.
- > Do not assume customers or clients expect staff to 'look' a certain way. Customers/clients are from diverse backgrounds and will welcome a diverse workforce and representation of your brand.
- > Consider making adjustments to a policy where employees are disadvantaged by a requirement. For example, if employees are not permitted to wear jewellery, this could amount to disability discrimination if an employee wears a medical alert bracelet.
- > If an employee falls below the acceptable standard of appearance discuss this with them - do they have a justifiable reason?
- > Consider consulting staff when implementing a new/amended policy which may highlight difficulties early on.

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