

Building eQuality in the workplace

Dress and appearance in the workplace

What the law says

It is against the law to discriminate against an employee because of their dress or appearance. In Victoria, employers are also liable (legally responsible) for the behaviour of their staff. This means that complaints can be made against the employer, as owner of the organisation, for the discriminatory conduct of employees.

However, an employer can create and maintain an image for their organisation that best suits their industry and their clients' needs by setting reasonable standards of dress, appearance and behaviour.

Discrimination against workers for their dress or appearance includes:

- sacking or demotion
- denying or limiting access to promotion, transfer, performance bonus pay, training or any other benefits
- unreasonable workplace policies, practices and procedures that they cannot comply with compared with other employees.

In employment equal opportunity laws apply to:

- all stages of employment, including recruitment, dismissal and retrenchment
- full-time, part-time, casual, temporary workers, probationary workers, contract workers, those on commission, or job applicants

Tips for setting a reasonable dress code

Consider:

- The industry. Different dress standards apply to people working in a bank compared to a construction site.
- The nature of the job. A position that has a high degree of customer contact may require a different dress standard to someone involved in research.
- Health and safety issues. Will jewellery or cultural dress, such as a flowing sari, pose a safety risk when operating machinery?
- Competitive positioning. A five star hotel will have more rigorous appearance code than a backpacker inn.
- The impact on the employee. Asking a Sikh to remove a turban has a greater impact than asking someone to remove a fashion accessory.

Common concerns

Collars and ties for men, or skirts for women

Asking men to wear a collar and tie, or women to wear skirts and dresses, may discriminate on the basis of sex. Instead, ask all employees to wear 'standard business attire'.

Hair

Insisting on a clean shaven look or a particular hairstyle may discriminate on the basis of physical features or religious beliefs. Workers can be told to tie their hair back or cover it up for health and safety reasons if involved in food preparation or operating machinery.



Height and weight

It is against the law to discriminate against employees on the basis of height or weight, unless such physical features are needed for a job.

Tattoos

Some workers may have tattoos for religious or cultural reasons.

Earrings

Rules on earrings and other jewellery should apply equally to both sexes. Restrictions can be imposed for health and safety reasons. For example, long earrings can be banned if they may get caught in machinery or pulled out by patients.

Tips for developing a non-discriminatory dress and appearance code

Consult with staff and ensure the code:

- ✓ relates to the job and has reasonable requirements
- ✓ does not differentiate between the sexes
- ✓ allows workers to comply with religious and cultural beliefs
- ✓ treats people fairly on the basis of physical features such as hair, facial hair and tattoos
- ✓ is fair to people with disabilities.

Case Study

A poker dealer at a casino is dismissed for breaching the casino's grooming policy by refusing to remove a tongue stud. The Australian Industrial Relations Commission finds it is reasonable for the appearance policy to ban tongue studs in line with the casino's five-star competitive positioning and the job requirement of clear speech.

Case Study

A petrol station owner is found to have unlawfully discriminated against an employee by dismissing him for refusing to remove a nose stud. The Tribunal determines the nose stud is not a safety hazard and does not interfere with the employee's role as a console operator. It finds the employer has discriminated on the basis of sex because women are not subjected to the same requirement.



For more information on employers' general rights and obligations, case studies and tips on avoiding discrimination in the workplace visit our website www.humanrightscommission.vic.gov.au

More Information

The Victorian Equal Opportunity & Human Rights Commission offers training and education consultancy services in equal opportunity policies and practices. Training can be delivered onsite throughout Victoria or at our training centre in Melbourne. Please telephone **(03) 9281 7168** for more information.

The Commission also offers a free telephone advice service.

Disclaimer This information is intended as a guide only. It is not a substitute for legal advice.



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Printed by Printmode 125-123 Thistlethwaite Street, South Melbourne, Vic 3205. June 2008