STRIKING THE BALANCE BETWEEN DRESS CODE AND DISCRIMINATION

Image is crucial for those operating in the retail and consumer sector. From the typeface of the drinks menu in a bar to the colour of the lighting, or the appearance of staff on a shop floor, each detail counts towards creating the overall brand of each establishment. It even affects the clothes employees wear to work.

Trendy craft beer pubs may wish to employ checked-shirt-wearing hipsters, while smart clothing brands might ask their staff to reflect the sophistication in their work wear. But how far can a retailer go when it comes to dress code, and what does the law say on the issue?

In a recent example of how not to approach the matter of dress code in the workplace, a London jazz club posted an online job advertisement looking for *"extremely attractive"* staff to apply and requested that female applicants *"must be comfortable wearing heels"*. The Equality Act 2010 deems it unlawful for an employer to discriminate against someone because of their sex. It's clear that a dress code that makes significantly more demands of female employees than their male colleagues will be unlawful, and this protection extends to the recruitment process.

Insisting on certain dress codes or requiring *"physical attractiveness"* may leave employers exposed to potential discrimination claims. However, there is a distinct absence of cases where discriminatory dress codes have been challenged, leaving the law unclear.

Employers should be aware that, in terms of appearance, making more demands of a person with a protected characteristic like gender, race, disability and age over another person who doesn't share that protected characteristic, is likely to amount to discrimination.

While the law around dress code remains hazy, a recent case showed the consequences of a company which failed to make reasonable adjustments around an employee's disability. Clothes shop Abercrombie and Fitch were taken to an employment tribunal after employee Riam Dean refused to remove a cardigan which covered her prosthetic arm. The shop claimed it went against their *"look policy"*, and suggested she work in the stock room until the winter uniform came in. Ultimately, Dean was awarded over £9000 in compensation from her former employer. This included an award of £7,800 for injury for feelings on the basis that it unlawfully harassed her and failed to make reasonable adjustments to its "look policy" due to her disability.

The Government is in the process of drafting new guidance for employees around the issue, following campaigner Nicola Thorp's petition against women being required to wear high heels at work. The petition gathered 152,420 signatures and prompted an inquiry, which heard evidence from a large number of women who recounted being forced to dye their hair, wear revealing uniforms, and constantly reapply makeup. The inquiry concluded that the Equality Act 2010 was not fully effective in protecting workers from discrimination.

It is hoped that the new guidance will provide clarity to employees and employers and help to clear up some of the confusion.

For retailers, there is a delicate balance to be struck between promoting a strong brand image, while not straying into any discriminatory behaviour. The consequences can be bad publicity and a loss of custom. If in doubt, take legal advice.

Who to contact

HELEN ALMOND
Professional Support Lawyer
+44 (0) 161 934 6243
+44 (0) 7912 395813