Dress Codes Uncovered

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You are an employer and you want to ensure that your staff project an appropriately professional image. Or, you are an employee and you find difficulty with your employer's restrictions about what you wear and how you decorate and express yourself. Both employers and employees have very legitimate issues at stake.

What are the rules?

Issues surrounding dress code and personal appearance policies arise from time to time in labour arbitrations. Arbitrators across Canada have taken a fairly consistent view toward how these issues should be approached in unionized environments. Personal appearance policies have been treated like any other set of employment rules. Key questions that an arbitrator will ask is whether a particular rule is reasonable and whether it is clear and unequivocal.

In order to show reasonableness, an employer will always be required to bring **objective** evidence that without a particular dress code or personal appearance policy, its legitimate business interests would be at risk. Nothing less is required to override an employee's legitimate expressive interests. Where the employer's legitimate business interests involve safety hazards, it is much more likely to be successful in having a personal appearance policy upheld than, for example, where the issue is merely one of image or perception.

A personal appearance rule is also more likely to be found reasonable where it has a minimal impact on the employee and, in particular, on the employee's life outside work. Because of this approach by arbitrators, policies relating to clothing or easily removable jewelry may be easier to support.

What evidence have employers used to support a personal appearance rule? Depending on the context, useful evidence has included:

- customer opinion surveys;
- client or customer complaints;
- contemporary and community standards of dress;
- personal appearance policies of competitors or of like organizations; and,
- (in some cases) an employer's own experience as to what would be "acceptable".

Additionally, a personal appearance rule must also be clear and unequivocal. For example, a vague reference to "*appropriate appearance*" will provide little guidance to an employee and no ability for an employer to direct its staff. In one case, the "*unwritten understanding*" that male employees could not wear a ponytail was not found to be clear enough to support disciplinary action against an employee who violated it. In another case, when an employer was unable to show that any document clearly articulated its policy respecting

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beards, it was unable to rely on the policy.

Of course, if an employer and its employees have agreed on specific dress code rules in their collective agreement or in a policy, these agreed rules will govern.

How have arbitrators handled specific personal appearance issues?

The recent Alberta case of *Re Westfair Foods Ltd.*[1] dealt with facial jewelry and piercings. A grocery store policy that prohibited all facial jewelry was not upheld because the customer survey relied on by the employer, although done by a reputable research firm, was viewed by the arbitrator as not scientifically sound.

For an example of an arbitration in which an employer succeeded, see *Re Canada Safeway Ltd.*[2]. In that case, a very severe policy prohibiting facial jewelry of any kind was upheld. Safeway argued that the policy was necessary to reflect its conservative and business-like image. The company supported this view with a rigorous customer opinion survey that demonstrated not only that customers preferred an absence of facial jewelry but also that many of them would stop shopping at a store that permitted its staff to wear same.

With respect to policies involving hair and beards, in *Waterloo (Regional Municipality) Police Services Board Waterloo*[3] a policy that prohibited beards or goatees on police officers was found to be invalid: the employer's only justification for this prohibition was that it believed a clean-shaven police officer was necessary for its image. An opposite result was reached in *Re Canada Safeway Ltd.*[4] in which the employer had success with its policy, citing survey results that demonstrated that as many as 11% of shoppers would be likely to switch stores if employees were permitted to wear facial jewelry.

The Lessons? Generally, the best course of action for both an employer and its employees will be to reach an agreement on an appropriate dress code and personal appearance policy and either to incorporate this accord into a collective agreement or into an operating policy. Such agreement will avoid the need for an employer to provide potentially expensive evidence to uphold a personal appearance policy, and it will spare employees from having standards imposed upon them without their input.

(Footnotes)

[1] *Westfair Foods Ld. v. United Food and Commercial Workers Union, Local 401 (Mohamed Grievance)* [2005] A.G.A.A. No. 64

[2] *Re Canada Safeway Ltd. and U.F.C.W., Loc. 832 (199), 63 L.A.C. (4th) 256 (Man.)*

[3] *(Regional Municipality) Police Services Board and W.R.P.A. (Re) (1999) 85 L.A.C. (4th) 227 (Ont.)*

[4] *Re Canada Safeway Ltd. and U.F.C.W., Loc. 1518 (1998), 74 L.A.C. (4th) 306 (B.C.)*