

Dress Code Policies: How Far is Too Far?

Dress code policies are generally acknowledged to be a standard term or condition of employment. Despite this fact, is there a limit to an employer's ability to control its employee's appearance? What happens when an organization goes too far in doing so?

In a recent labour arbitration decision entitled *Re Ottawa Hospital and CUPE, Local 4000*, the Hospital implemented a Dress Code Policy ("Policy") stating that "large tattoos, if visible, must be covered during working hours". The Policy also prohibited "visible, excessive body piercings". The Union challenged the Policy by giving evidence that there had been no complaints from patients regarding the appearance of Hospital staff prior to the implementation of the Policy and that there was no link between the tattoos and piercings and patient welfare. Finding in favour of the Union, the Arbitrator held that tattoos and piercings had no effect on health care outcomes. The Hospital's own stereotypes and prejudices could not curtail the employee's personal identity rights. Accordingly, the Policy was found to be unenforceable.

Although employers have considerable leeway in implementing policies in the workplace, these policies must be reasonable. In determining the reasonableness of the policy, courts and arbitrators will weigh an employer's interest in regulating workplace dress against an employee's right to self-expression. In addition to the legal implications, organizations should also consider the effect these policies will have on employee relations and morale. Organizations should ensure they have evidence of a compelling need before implementing a restrictive dress code policy.

Please contact e2r Solutions® should you require assistance in creating or implementing your organization's dress code policy.