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The Do's and Do Not's of Workplace Dress Codes

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Employers have dress code policies in place for many reasons – uniformity, safety and health, to name a few. To be compliant with the law, there are a few boundaries to which workplace dress code policies must adhere: the dress code requirements must not be discriminatory on the basis of any protected class and the dress code must be applied and enforced consistently.

For example, employers cannot maintain and enforce gender-specific dress codes that discriminate based on religious practices, gender identity or expression, or other protected characteristics. Rather, dress code policies must be gender-neutral and not disproportionately impact any protected class.

As it relates to the hospitality industry specifically, any dress code in place for patrons and/or employees must be gender-neutral. Recently, the Division of Civil Rights (DCR) challenged a restaurant policy that included a gender-specific dress code for employees and patrons. The restaurant denied a non-binary patron service because of their sleeveless shirt, which was prohibited for men but not women. Despite the patron advising of their non-binary status, the restaurant required them to adhere to the men's dress code. The matter resulted in the Attorney General's Office and the restaurant entering into a consent decree that included both a gender-neutral dress code, training for staff, \$5,000 to the complainant patron denied service and an additional \$5,000 civil penalty.

Relatedly, while employers may establish grooming policies for employees, they too must be compliant with discrimination laws and the CROWN Act, which explicitly prohibits discrimination based on natural hairstyles associated with race, such as dreadlocks.

Takeaway

If your workplace has a dress code policy, it is important to review it and ensure its compliance with the law as written, as well as how it is implemented and enforced. The Employment Law Team at Wilentz is available to assist with review of policies.

Attorney

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