

THE SIGHTS AND SMELLS OF SUMMER PART II

QUESTION: I own a family-style restaurant, and during the summer we have an area for outdoor seating. Many of our servers have complained about being uncomfortably hot out there while they are waiting on customers, and they have asked if they can wear cooler clothing. I don't have a dress code and I would feel embarrassed telling my employees specifically what they should or shouldn't wear. I have always told them, however, that I don't want them to wear jeans or T-shirts. Therefore, I decided to trust their judgment and told them that during the warmer weather, they could wear what they wanted as long as they looked "professional." However, last week I had a surprise: One of my employees has a very large and colorful pirate tattoo on his arm. He had hidden it before with long sleeves, but no longer felt the need to do that because I had "loosened up" my dress standards. But I am frankly uncomfortable with him having it on display while he is serving food and beverages – especially since the "pirate" is wielding a bloody sword.

Can I tell the owner of the tattoo that he must either resume wearing long shirts or cover the tattoo with make-up?

ANSWER: Probably, as long as you follow the guidelines below. This is a common concern, and it stems from the apparently prevalent belief that employers cannot regulate the clothing and/or accessories of their employees. But the fact is that as long as you have a business-related reason for doing so, you can indeed tell employees what types of clothing and "decorations" they can wear in your workplace. In your case, you definitely have a business-related reason, since your servers are in full view of the public.

Below are some general suggestions for dress codes:

Put your dress code in writing. While this is not legally required, it will help in establishing and clarifying your expectations.

Include examples of the kinds of clothing that you allow and disallow: An example would be, "Clean and pressed slacks and shirts – no jeans, t-shirts or sandals."

You can require different kinds of clothing and accessories for men and women based on fashion norms (example: skirts and earrings are allowable for women but not for men). To avoid discrimination problems, however, you should otherwise avoid treating men and women differently (Example: men can wear jeans in the factory but the female factory workers must wear dress pants).

Thus, you can have a dress code prohibiting visible tattoos, as long as that policy applies to both male and female employees.

Be aware, however, that you may occasionally have to make exceptions to dress codes based on an individual employee's religion or disability. For example, although a "no beards" policy is perfectly legal, you may have an employee whose religion prevents him from shaving, or who has a skin condition that makes it extremely painful to shave. In those situations, as with other scenarios where religion or disability potentially clash with your dress code, you would have to determine whether it would be an "undue hardship" to allow the employee to keep the beard. We suggest that you get legal advice to help you make that judgment call.

For information on this and other topics, join Technical Assistance for Employers at an upcoming seminar. Effective Supervisory Practices in Corvallis on September 16, Advanced Leave Laws in Portland on September 16, Leave Laws in Ontario on September 23, Recordkeeping Requirements in LaGrande on September 24, and Payroll Issues in Pendleton on September 25. Visit our website at www.oregon.gov/BOLI/TA for more information.