

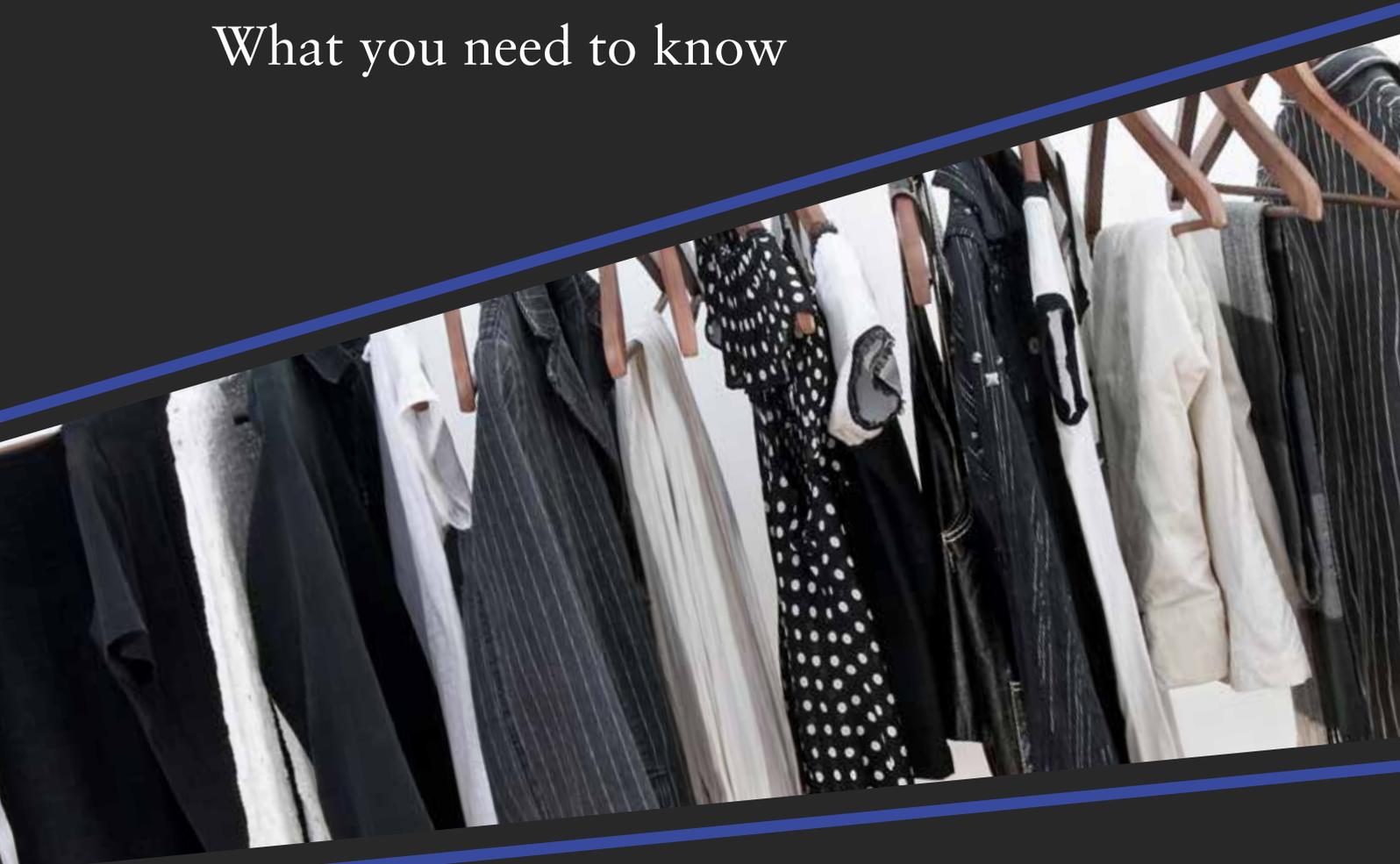
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Dress Codes at Work

What you need to know



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Dress Codes at Work

Employers today rarely go out of their way to discriminate against employees but, in an age where ‘looks’ can also be important, how can employers ensure that they can maintain appropriate standards, without inadvertently discriminating and potentially finding themselves in the eye of the media?

The first question is whether you need a dress code and, if so, how prescriptive does it need to be?

If your employees are not dealing with parents and pupils then you may not need any dress code at all. For those who are dealing with parents and pupils at all times, it may be appropriate to dictate their appearance to ensure that it adheres to the image and impression that the school wishes to portray.

If you decide that you do need to implement some form of dress code, where do you draw the line and what are the pitfalls you can avoid?

The big issue is discrimination. Employees who have certain characteristics are protected from discrimination of various forms. The list of ‘protected characteristics’ covers age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Before you implement any dress code, we would recommend that you review these protected characteristics to see if they may be directly or indirectly impacted by the proposed rules. For example:

- Will you require employees to wear a uniform? If so, what about employees who become pregnant?
- Will you require people not to wear jewellery? If so, what about employees who want to wear wedding rings or religious items?
- Will you require women to wear skirts? If so, what about women who want to wear trousers (perhaps for modesty reasons)?
- Will you put in place a ban on head coverings? If so, what about employees who want to wear head coverings for religious reasons (for example, a turban)?

In the first instance, we recommend that you look at the reasons why you would prefer to put in place these measures; maybe it is for health and safety or to promote a certain image; then examine whether you can make an exception to the rules. For example, you may be able to permit the wearing of head coverings, as long as they are professional in appearance (or even tie in with the colours of any uniform), a single wedding ring or other plain jewellery, may be acceptable to you and you may be able to permit women to wear trousers.

If you reach the decision that you must move forward with that particular policy, you may still be able to lawfully implement it, if it is a proportionate means of achieving a legitimate aim.

Establishing a legitimate aim is usually the easier half of the test. The scope of legitimate aims is potentially unlimited, although they must correspond to a 'real business need'. This means that there must be evidence that the employer's actions actually contribute to the pursuit of the legitimate aim and so it is always sensible to routinely evaluate a particular measure to ensure that it is achieving the desired objective.

The second half of the test is that the measure is a proportionate means of achieving that aim. To show that actions are proportionate, you must demonstrate that the measures taken are 'reasonably necessary' in order to achieve the legitimate aim(s). The actions will not be considered reasonably necessary if you could have used less discriminatory means to achieve the same objective. The Tribunal will carry out a balancing act between the business needs of the employer and the effect on the claimant/group sharing the claimant's characteristic. The question of proportionality will always be a fact-sensitive issue for Tribunals.

The following are examples of where employers have attempted to impose dress codes and the approach taken by the Tribunals:

- When a Sikh Trainee Prison Officer wanted to wear a ceremonial dagger whilst going about his duties, his employer was justified in refusing this. The Tribunals took into account the fact that the overall discriminatory aspect was small to the Sikh population and those who worked in the prison service. Knife crime in prisons is not uncommon and an assault with such a dagger could be fatal. The employer did not apply the policy 'blindly', but researched alternatives and tried to find other solutions such as temporarily redeploying the employee.
- British Airways required uniformed staff not to wear visible jewellery. A Christian employee objected as she wanted to wear a visible cross as a symbol of her faith. The Courts found that whilst BA's desire to protect its corporate image was legitimate, it needed to be weighed against the fact that the employee's cross was discrete, it would not have detracted from her professional appearance and it did not encroach on others. Furthermore, other visible religious items could be worn (such as a turban or hijab) and there was no evidence that these items detracted from BA's corporate image. This policy was, therefore, discriminatory.

- In contrast to the British Airways case, the NHS was justified in preventing a nurse from wearing a cross necklace as they had a legitimate aim of protecting the health and safety of staff and patients and had taken steps to try to find a compromise, which was acceptable to the employee.
 - A council who required a Teaching Assistant to remove a veil which covered her face whilst undertaking her duties as a bilingual support worker was justified, as the requirement was a proportionate means of achieving a legitimate aim, namely providing the best quality education.
 - A job applicant was not discriminated against when, at an interview for a role in a nursery, she was told that the uniform policy meant clothing should not present a tripping hazard. The nursery was not discriminating against Muslim women who wore jilbabs (an item of clothing covering the body from neck to ankle) as ankle length jilbabs were permitted as long as they did not present a tripping hazard.
 - Former supermarket giant, Safeway, did not discriminate against men when they required men to have hair “not below shirt-collar length”, as the courts found having different requirements for men and women will not be sex discrimination where the dress code applies conventional standards of appearance and, looking at the requirements as a whole, neither gender is treated less favourably. However, whether that would extend to requiring women to wear high heels (which can have an impact on health – and certainly has an impact on comfort) is a different matter.
 - Perhaps unsurprisingly, however, it was sex discrimination to require a waitress to wear a low cut top, when a man would not have been required to wear an equivalent uniform.
- As can be seen, the issue of dress codes can be a sensitive one for employees, as they can impact on religious and cultural expectations and requirements.
- If you need any advice on this issue or any others, please contact a member of the Education Team.

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- Intellectual Property
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- Terms & Conditions

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- Alternative Dispute Resolution (ADR)
- Appointment Documents for Professional Consultants
- Arbitration
- Building Contracts
- Dispute Management
- Litigation
- Security Documentation

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- Development Agreements
- Joint Ventures (*as part of a wider team construction & public procurement*)
- Land Acquisition & Disposals (*including options*)
- Leases
- Planning / Section Agreements
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- Insurance Disputes
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