

“But It's My Body Art, and I Like It!”

Are you seeing more and more tattoos lately? Tongue studs? Rows of rings "ringing" ears? As an employer, are you concerned about how such decorations on your workers will strike your customers? You're not alone, and Scott Fisher has some advice for you.

Fisher is an attorney in the Tampa office of Florida law firm Fowler White Boggs Banker, and he's guided many clients through the thorny thicket of appearance codes as they relate to piercings and tattoos. Fisher concedes that if your organization is a manufacturing plant, distribution center, or construction site, worrying about your workers' body art may not be necessary. But if your employees are--for your customers--the face of the organization, you'll be more sensitive about appearances.

Fortunately, says Fisher, many tattoos and some piercings are hidden by normal workplace apparel and so aren't a problem. But let's talk about the decorations that are obvious. Can you object?

The answer is yes. Fisher suggests the following language for your employee handbook: "Your personal appearance is your first chance to make an impression on your customer. The Company wants to be known for our excellent customer service and professionalism. All associates are expected to be neat, well-groomed, and appropriately dressed while working. Employees are not allowed to wear any visible body piercings while at work with the exception of one earring in each ear. Any body art, tattoos, or other piercings should be concealed by clothing."

Such a policy is addressed to existing employees, and Fisher tells clients that they are free to refuse to hire a candidate whose tattoos or piercings are visible at a job interview. (He asserts there's reason to question such a candidate's business judgment.)

Notice that his suggested policy doesn't refer to gender, so it permits men to wear an earring on one or both ears if they choose. Some policies, which courts have found acceptable, allow women's hair to be long but require that men cut theirs above collar-length. So if you object to earrings on men, you can include language to that effect.

Are there any exceptions? Fisher acknowledges that the occasional situation can present more of a problem. The rare employee may cite his or her religion as a reason for visible decorations. Courts have wrestled with a few such cases, since it's difficult to assess the validity of alleged religious beliefs. The outcome of these cases has hinged on the employee's willingness to comply with the employer's wishes. Most employees claim instead their freedom of speech rights under the Constitution. Are those rights more available to public than to private employees? "Not really," says Fisher. "Wearing a nose ring isn't exactly taking a stand on a matter of public concern."

Compliance Checklist: Appearance Codes

If yours is a retail, hospitality, restaurant, or other service business, you want your workers to look professional. Fisher discussed the essential components of an appearance code that your organization may establish if your employees have face-to-face interaction with customers.

- Explain the reasons for the policy. You might even go so far as to say that some customers find visible tattoos and body piercings offensive and/or believe they're unsanitary.
- Be very specific about what is and isn't permitted. You may want to bar certain kinds of footwear, skirts shorter than a particular length, naked midriffs, T-shirts with any kind of slogan, or jeans, as well as visible tattoos and piercings.
- It's safer to require all tattoos and piercings to be covered by clothing than to forbid employees to have them at all. (In fact, tattoos are now so prevalent that you may miss out on valuable Generation X talent if you prohibit them.)
- Suggest that employees take specific religious or other concerns about the policy to their supervisors or to HR.
- Enforce your policy as consistently as possible, being especially cautious where requirements for the genders differ. If you've barred earrings for men, you can't hire a talented male sporting a small, tasteful earring unless he's willing to take it off for work.