

Dress Codes Must Be Applied in Nondiscriminatory Manner



Can I have a separate dress code for men and women? For years our company has had a separate dress code for men and women. Recently, someone questioned whether we should be making a distinction between men and women. Is this an acceptable practice?

Treating men and women differently on the basis of gender may be viewed as sex discrimination and also may violate transgender identity and expression protections in California.

Gender-Based Dress Code

Historically, a dress code for a professional man might have included a jacket, shirt and tie. For women, there often were more defined policies that dictated how women should look and what they should wear. Often women were restricted from wearing pants and had to conform to specific policies that dictated makeup, hair styles, and jewelry. Some policies went so far as to define the length of a skirt or dress and required women to wear proper undergarments, stockings and heels.

In 1994, California passed a law that gave women the right to wear pants in the workplace. This law became part of the Fair Employment and Housing Act and can be found at Government Code Section 12947.5. What evolved from this was a change in professional attire for women, allowing women to wear pants to work regardless of company policy.

Since that time, dress codes have continued to evolve to a more unisex standard applicable equally to both men and women. An example of a unisex dress code might include the following: employees are required to wear conservative business attire in the office, wear a suit or jacket when meeting with clients, and not wear jeans, casual pants, shorts, sweats or flip flops.

Gender Identity

Fast forward to the present day. California law now protects against discrimination based upon gender identity and expression. Employers may not single out or discriminate against a particular group of persons on the basis of sex, gender, gender identity and gender expression in regard to appearance or behavior.

Included in this protection are transgender employees and employees in transition wherein the law allows an employee the right to dress in a manner that reflects that employee's gender identity, not the sex assigned at birth.

Additionally, in early 2016, the California Department of Fair Employment and Housing issued guidance for employers of transgender employees on how to comply with the Fair Employment and Housing Act.

Accordingly, an employer should not ask questions about an employee's sexual orientation, gender identity, marital status, or questions about a person's body or whether the employee intends to have sex reassignment surgery or other procedures.

If an employer has a dress code, it must be applied in a nondiscriminatory manner. For example, a transgender employee who identifies as a woman must be allowed to dress in the same manner as a nontransgender woman.

If you have a dress code that applies only to one sex, is more burdensome to one sex, restricts men or women from wearing certain clothing, or dictates different grooming standards, you should consult with your attorney as the issue of gender identity and expression is a protected right in California enforced by the Department of Fair Employment and Housing.