

To hire individuals who express themselves by piercings, tattoos, extreme colored hair or not to hire?? Could be a costly question for employers.

While tattoos and body piercings are becoming more and more popular, opinions on the subject still differ in the workplace. Ultimately, a company must take into consideration its customer base and determine what will be more appealing to its customer base, a more conservative or less conservative employee appearance policy.

Chase Bank's dress code states "Appropriate dress and appearance increase the perception that Chase employees are professional, knowledgeable and capable of serving customer needs and maintaining responsible relationships." With the exception of having them for religious and certain health reasons, visible tattoos and piercings other than in the earlobes are not permitted." (Michele Poacelli's SHRM July 12, 2017 article: 'Is Hiding Body Art During Interviews, Then Revealing It on the Job, Deceptive').

Are employees considered part of your organization's brand? If your corporate culture is built around its workers like Starbucks- it may be decided that unnatural hair coloring, tattoos, and face piercings are not as much of a concern to its patrons. It is not advisable for organizations confuse the brand message of their company.

As the multi-generational workforce begins to lean more toward millennials and the upcoming generations, policies prohibiting 'body art' may be removed from the employee handbook. For now, Attorney Tamara Devitt (Silicon Valley office of Haynes and Boone) recommends a company dress code policy to include:

- Specific guidelines so all employees know and understand the organization's expectations
- Allowing the company have discretion to determine what is appropriate and what is not
- Permitting the employer to take disciplinary action where appropriate
- Offering accommodation for employee's religion or disability

"Without a clear policy, an employer's decisions may be viewed as ad hoc and, thus, the employer may be more vulnerable to claims that it was acting unfairly or discriminating," Devitt said. (SHRM article written by Dana Wilkie July 29, 2016, 'Blue Hair Topped by a Beanie? Both Now OK at Starbucks'.)

It is recommended organizations be up front from the beginning so applicants interested in employment know and understand the company's expectations. It is advised the dress and appearance expectations be communicated in the job posting.

It is wise to consider if your company will allow body piercings and tattoos for some job positions and not for others. If a candidate is hired to work "behind the scenes" and have less direct contact with customers or clients, what happens if/when this person is transferred to a position within your organization that does, or is held back from a promotional opportunity?

It would appear demographic litigation looms... whether it is urban versus rural; conservative clients' versus liberal; even potential age discrimination with catering to "younger clientele" in retail.

If an employee has a visible tattoo of a cross...is that considered a practice of religious expression or proselytizing? What is the potential discrimination allegation if you ask your employee to conceal the tattoo? (In some cases, body art may be considered a practice of religious expression.) Thus could result in a discrimination claim.

To comply with the Missouri Human Rights Act, employers are reminded if they have six or more employees they must "reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer". Managers and supervisors are highly encouraged to be familiar with the Civil Rights Act of 1964 Title VII cases and be aware of the possibility of discrimination claims.

Because opinions and outlooks differ, some candidates may hide tattoos and remove piercings during the interviewing process. If body art (or lack of) is critical to your organization's success, it is advised to have a written policy to communicate your company's appearance expectations, and require signature of the employee as a condition for employment.