

# Retailer Dress Codes and the Law: Employee Religion

*Kelly G. Atkins, atkins@etsu.edu*

*Clifford M. Koen, Jr., koencm@etsu.edu*

*Christie M. Hayes, chayas@bakerdonelson.com*

## Abstract

Formal and informal dress codes are used to regulate dress practices in the workplace and in other venues. As such, retailers can legally mandate employee appearance standards but must avoid dress code discrimination. The purpose of this study is to explore dress code disputes in the courts related to religious discrimination, encourage retail educators to inform students about dress codes and the law, and suggest ways for retailers to avoid appearance-based discrimination claims. The information provided can help retailers reduce the potential for costly, time-consuming litigation.

## Introduction

According to a notable study, almost 60% of Americans reported that religion plays a very important role in their lives (Pew, 2002). Though the majority of Americans (70.6%) identify with the Christian faith (Pew, 2014), the Hindu and Buddhist religions also have many members in the United States (Atkinson, 2000). Individuals' desire to express religious affiliation is blurring the division between the workplace and personal faith (Borstorff & Arlington, 2011).

Retail occupations are primarily customer-facing jobs; therefore, many employers feel employee dress affects customer perception of the brand/company (Easterling et al., 1992). Both formal and informal dress codes are used to regulate employee appearance in the workplace. While employers are not permitted to limit certain freedoms of employees, they have the authority to determine essential aspects of business operation (Lennon et al., 1999). It is important to note, however, that retailers must avoid discrimination. The purpose of this study is to a) explore dress code disputes in the courts related to religious discrimination; b) encourage retail educators to inform students about dress codes and the law; and c) suggest ways for retailers to avoid appearance-based discrimination claims.

Retailers' rights to control employee dress are being challenged by appearance-based discrimination claims related to body supplements (i.e., apparel, head wear, jewelry) and body modifications (i.e., tattoos, piercings). U.S. courts initially dealt with employee dress via the First Amendment, which ensures the free exercise of religion and freedom of expression. Further, Title VII of the Civil Rights Act prohibits discrimination on the basis of employee race, color,

religion, sex, or national origin (Goldner, 2010). Employers must ensure dress code policies are applied fairly without regard to any protected status (Mitchell et al., 2013). Well-written dress codes must be based upon defensible business, health or cleanliness rationales (Lennon et al., 1999).

When an employee requests a religious dress code accommodation, the employer must investigate the feasibility of a “reasonable” accommodation. When the employer offers a reasonable accommodation, the employee cannot require a “more reasonable” or a “preferred” accommodation. Further, employers are not obligated to accommodate an employee’s religious beliefs when it poses an “undue burden” on the business (Mitchell et al., 2013).

## Methodology

The authors reviewed over 100 decisions in the United States Federal Courts where employees charged their employer with religious discrimination under Title VII of the Civil Rights Act. Recent cases were selected and reviewed based on relevance. Particular attention was given to cases involving dress code violations and employee requests for reasonable accommodations. Court decisions involving specific issues such as what may be required as a “reasonable accommodation,” and what may constitute an “undue hardship,” were given additional attention.

## Results, Implications, and Conclusions

One example of a court decision based on religious discrimination is *Cloutier v. Costco* (2004) where Costco was accused of failing to offer a reasonable accommodation after a female employee alerted management to the conflict between her practice of body piercing as a religious symbol of the Church of Body Modification and the company’s no facial jewelry policy. The court found that Costco offered reasonable accommodations for the employee, but the employee felt that the only reasonable accommodation was to exempt her from the no-facial-jewelry policy. This preferred or more reasonable accommodation was not honored and the religious discrimination claim failed in court.

Another example of a court decision is *Khan v. Abercrombie* (2013) wherein a Muslim employee accused the retailer, Abercrombie & Fitch, of religious discrimination for not allowing her to wear a hijab at work. Abercrombie admitted that Khan was terminated for non-compliance with the company’s “Look Policy.” A federal judge found that Abercrombie was liable for religious discrimination because it could not establish an undue hardship defense for allowing the employee to wear a hijab at work.

Retail educators should teach students about legal dress code guidelines, inform students of their dress code “rights” under the law, and challenge students to request written dress code policies from their employers. Retailers must be aware of the requirements of all federal, state and local laws that prohibit discrimination on the basis of religion.

To avoid discrimination claims related to appearance policies, Mitchell et al., (2013) recommended these six actions for retail employers: prudently draft a judicious dress code, communicate the dress code with all employees, train supervisors to enforce the policies, apply dress code policies uniformly to all employees, consider employee complaints about the company's dress code policies, and discuss reasonable religious accommodation requests. Drafting a reasonable employee dress code can: a) safeguard a retailer's public image; b) support a productive work environment; c) comply with employee safety standards; and d) thwart unlawful harassment claims (Mitchell et al., 2013). Communicating dress codes to retail employees, training retail supervisors to enforce dress code policies, and uniformly applying dress code policies to all employees will ensure consistency. Further, considering employee complaints about company dress code policies and discussing reasonable religious dress code accommodation requests will demonstrate employer sensitivity to potential discrimination on the basis of religion.

To ensure compliance with federal case law, retailers should seek the advice of legal counsel when drafting or updating employee dress code policies. In conclusion, retailers can avoid potential religious dress code discrimination claims with carefully conscripted and consistently applied reasonable dress codes.

#### Relevance to Marketing Educators, Researchers and Practitioners:

This exploratory study discusses retailer employee appearance standards in light of religious discrimination. It highlights the need for retailers to create carefully conscripted and consistently applied dress codes to reduce the potential for costly, time-consuming litigation.

#### References:

*Atkinson, W. (2000) Divine accommodations: Religion in the workplace. Risk Management, 47(10), 12-17.*

*Borstorff, P. & Arlington, K. (2011). Protecting religion in the workplace? What employees think. Journal of Legal, Ethical and Regulatory Issues, 14(1), 59-70.*

*Cloutier v. Costco, 04-1475 (1<sup>st</sup> Cir. 2004).*

*Easterling, C. Leslie, J. & Jones, M. (1992) Perceived importance and usage of dress codes among organizations that market professional services. Public Personnel Management, 21(2), 211-219.*

*Goldner, H.M. (2010). You're going to wear that? Appearance in the workplace. Retrieved from [http://www.americanbar.org/content/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/goldner.html](http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/goldner.html)*

*Kahn v. Abercrombie, 11-CV-03162-YGR (N.D. Cal. 2013)*

Lennon, S.J., Schulz, T.L., & Johnson, K.K.P. (1999). Forging linkages between dress and law in the U.S., part II: Dress codes. *Clothing and Textiles Research Journal*, 17(3), 157-167.

Mitchell, M.S., Koen, C.M., & Moore, T.W. (2013). Dress codes and appearance policies: Challenges under federal legislation, part 1. *The Health Care Manager*, 32(4), 294-302.

Pew Research Center (2002). Among wealthy nations... U.S. stands alone in its embrace of religion. Retrieved from <http://www.pewglobal.org/2002/12/19/among-wealthy-nations/>

Pew Research Center (2014). America's changing religious landscape: Christians decline sharply as share of population. Retrieved from <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>

**Keywords:** *retailers, dress code, religion, discrimination*

**Author information:**

Kelly Green Atkins is an Associate Professor of Marketing at East Tennessee State University.

Cliff Koen is a Professor of Business Law at East Tennessee State University.

Christy M. Hayes is an attorney with Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. in Johnson City, TN.

**Track:** Consumer Behavior/Retailing

**ID#:** 1328