

Can an employer make you wear high heels? - AvvoStories

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BUSINESS, MONEY, RIGHTS

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Even the military no longer requires women to dress differently than men, so it would seem like dress code double standards are things of the past. But female employees who want to, say, wear flats instead of heels may still not have a legal leg to stand on.

Dress codes

Federal legal code allows employers to establish a dress code as long as that dress code applies uniformly to all
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Federal legal code allows employers to establish a dress code, as long as that dress code applies uniformly to all employees or employees within certain job categories, and as long as accommodations are made for employees who cannot conform to the dress code as a result of a disability or religious belief.

There are three widely accepted reasons for an employer to establish a dress code:

- **Safety** – obviously, employers are expected to keep their employees safe at work
- **Visibility** – from the city utility to a small plumbing company, employers often need their employees to be immediately identifiable to customers and the public
- **Image** – Creating a consistent brand is valuable for any business, and employers are allowed to expect their public-facing employees to present a professional image

Better safe than sorry

Case law based on Title VII of the Civil Rights Act of 1964 establishes gender stereotyping as discrimination, thanks to Ann Hopkins. In the late '80s, Hopkins took Price Waterhouse to court after she was passed over for partnership by male coworkers who complained that she was unfeminine.

Employers are safest when dress codes are gender neutral and strictly practical. Safety and visibility requirements like steel-toed shoes and company jackets apply to all employees equally and are easily defended. Unisex uniforms and logo-embazoned shirts are a safe way to give a company visibility without inspiring a lawsuit.

Even in cases where the fit of a uniform can affect the wearer's ability to do the job, as can be the case with unisex police uniforms, there hasn't been much of a legal push for the right to *not* wear something unisex. However, whether fit affects function or not, many employees will appreciate having the choice of men's or women's uniforms as long as it's only the fit, and not the style, of the uniform that is based on anatomy.

Wobbly precedents

Image is by far the most problematic type of dress code, both in practice and in court. Guidelines such as "maintaining a professional appearance" are exceedingly broad, and many people feel they are socially and fashionably (if not legally) outdated. Suits for men/pencil skirts for women or black slacks for men/black skirt for women have been fairly standard dress codes for decades.

To date they have not been legally challenged and for now, even human rights groups are only calling for transgender employees to be allowed to follow the dress code that corresponds to their gender presentation. However, public awareness of gender fluidity is growing, and it doesn't take a legal expert to predict the inevitable lawsuit against forcing employees to declare a gender with their work wear.

Many companies' dress codes are quite specific, and the *Hopkins* precedent has been unevenly applied, with some courts strangely ignoring the decision that sex stereotyping is inherently discriminatory.

In the case of Jespersen vs Harrah's, a female bartender was terminated for refusing to wear makeup (men at the same casino were not permitted to wear makeup). The court ruled that sex-differentiated grooming and dress codes are permissible under Title VII as long as they do not impose unequal burdens on men and women (clearly the judge had no idea how much time and money daily application of full-face makeup requires). Meanwhile, high heels have not been specifically called out in any of the dress code challenges to date, but with widely recognized health impacts, they clearly create an unequal burden.

So there is case law both establishing gender stereotyping as discrimination, and requiring that gender-specific dress codes not create unequal burden. But in practice, employers have had success defending burdensome sex-stereotyped dress codes. Employers who are determined that their female employees wear heels have a good chance of winning a lawsuit to defend the requirement.

Walking the talk

Most employers, and especially small business owners, don't want to win any lawsuits; they would rather avoid lawsuits entirely. For business owners who want to present a professional image to customers while treating employees fairly, the safest course is to establish an ungendered dress code.

If, for any reason, doing so presents a challenge, or if in defining standards for different job classifications it becomes clear that the job classes are divided along male/female lines, consider consulting an attorney to ensure that neither your dress code nor your hiring practices are discriminatory.

Tagged employment, rights, sexual harassment

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