

# Tattoos, Facial Piercings, Ear Gauges? What's an Employer to Do?

## Labor & Employment Law Update

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In the past, dress codes were straightforward. Depending on the nature of the business, they required a “neat, clean uniform” or perhaps “professional attire” and banned tube tops and flip flops. But as visible body art becomes more mainstream, many employers find themselves struggling to decide whether and where to draw the lines when drafting a personal appearance policy that works for their business.

As a starting point, body art itself is not a legally protected characteristic so bans are generally permissible. However, employers should be mindful that some tattoos, piercings, and other body adornments could have religious or cultural roots. Accordingly, employers must ensure their policies do not adversely impact a particular ethnic or religious group and should take seriously requests to accommodate religious beliefs.

Back in 2004 a federal appeals court dismissed claims brought by a member of the Church of Body Modification finding that accommodating her multiple facial piercings imposed an undue hardship because it could adversely affect the employer's public image. Since then, district courts have found that a restaurant employee who claimed covering his tattoo amounted to sacrilege; an employee who refused to remove her allegedly religious nose ring; and a Rastafarian who was moved to a non-customer contact position after refusing to cut his hair, all presented potentially viable claims warranting jury trials.

It is tough to say whether the tide is turning. Nevertheless, it is an issue many employers deal with on a regular basis.

Best practices for drafting an effective and workable personal appearance policy:

1. Really think about what you will tolerate and why. Will you hire an employee with a visible tattoo? What if the tattoo is on her face? Might a total ban exclude applicants who would be a great asset for your business? Is there an alternative to a total ban that makes more sense? What about ear gauges and tunnels?
2. Be prepared to justify the reasoning behind any bans or limits you decide are best for your business. Is the policy rooted in concern for the company's

public image? Fear of customer reaction? Safety or sanitation concerns?

3. Consider whether the policy might look different for different segments of your workforce. One size fits all might not make the most sense here.
4. Most importantly, as the cases referenced above demonstrate, employers must take claims for accommodation of religious beliefs seriously and engage in an interactive process to determine whether a workable accommodation exists if an employee or applicant claims conforming to the policy would infringe upon his religious beliefs.

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