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Grooming Standards in the Workplace: How Much is Too Much?

By Philip S. Holloway, Esq.

In the ever-competitive service industry, companies with razor-thin margins and stiff competition for customers look for every edge. In customer-facing businesses, employers understandably want to put their best foot forward (as it were) in their interactions with the paying public. As part of that effort, most employers have some version of grooming standards for their employees. Perhaps employers require their employees to wear a uniform or to wear business casual clothing. Many employers even have jewelry or guidelines for the hairstyle and facial hair of their employees. But how far is too far when it comes to employer enforced grooming standards? Can such standards run afoul of federal or state anti-discrimination law? For example, can an employer require that female employees wear makeup to work? The Ninth Circuit Court of Appeals (which covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands) faced this very issue in *Jespersen v. Harrah's Operating Company, Inc.*, 444 F.3d 1104 (9th Cir. 2006).

Ms. Jespersen served as a bartender for Harrah's Casino for 20 years. Harrah's had uniform, appearance, and grooming standards in place for all bartenders. Those standards required all bartenders - men and women alike - to wear the same uniform (black pants, a white shirt, a bow tie, and black shoes) and conform to certain grooming standards for the face, hands, and hair. Harrah's standards also required women to wear some facial makeup and forbid men from wearing any makeup. In 2000, Harrah's began to strictly enforce its grooming and appearance policy, and Ms. Jespersen was terminated after she refused to comply with the policy by wearing makeup to work.

After her termination, Ms. Jespersen filed a sex discrimination

lawsuit under Title VII against Harrah's. The district court granted Harrah's motion for summary judgment, and Ms. Jespersen appealed to the Ninth Circuit. In support of her opposition to the casino's motion for summary judgment, Ms. Jespersen offered only her own deposition testimony that she subjectively found Harrah's policy degrading and believed that it took away her credibility as an individual and as a person. The Ninth Circuit, however, found that although Ms. Jespersen may have strongly disliked wearing makeup, nothing in the record established that complying with Harrah's policy caused her an unequal burden or that the policy was motivated by sexual stereotyping.

With respect to Ms. Jespersen's unequal burden claim, the court stated that Harrah's requirements "on their face, are not more onerous for one gender than the other. Rather [the casino's policy] contains sex-differentiated requirements regarding each employee's hair, hands, and face. While those individual requirements differ according to gender, none on its face places a greater burden on one gender than the other. Grooming standards that appropriately differentiate between the genders are not facially discriminatory." The court noted that Ms. Jespersen failed to offer any evidence - such as proof the makeup requirement caused female employees an undue burden in terms of cost and time spent preparing for work - to indicate females had a greater burden meeting Harrah's policy than did males.

With respect to Ms. Jespersen's sexual stereotyping claim, the court found no evidence that Harrah's adopted its grooming and appearance policy to make women bartenders conform to a commonly-accepted stereotypical image of what women should wear. The policy did not seek to make female employees appear sexually provocative, and there was no evidence Harrah's treated male employees who failed the policy any different than it treated Ms. Jespersen. Rather, the policy applied equally to all bartenders - both male and female alike - and required each individual bartender to wear the same uniform while interacting with the public in the context of the entertainment industry. Thus, the court found Harrah's policy to be, for the most part, unisex. Ms. Jespersen, who could only offer her own, subjective testimony that the policy caused stereotyping, could not show otherwise.

Finally, the court stated, "We respect Jespersen's resolve to be true to herself and to the image that she wishes to project to the world. We cannot agree, however, that her objection to the makeup requirement, *without more*, can give rise to a claim of sex stereotyping under Title VII. If we were to do so, we would come perilously close to holding that every grooming, apparel, or appearance requirement that an individual finds personally offensive, or in conflict with his or her own self-image, can create a triable issue of sex discrimination." (Emphasis added.)

While the court in *Jespersen* found that the casino's make-up requirement did not violate Title VII, it did so primarily because the only evidence Ms. Jespersen presented was her own deposition testimony. The court repeatedly emphasized this shortcoming in its decision. Given the limited evidentiary record in *Jespersen*, what lessons can the case have for employers who implement grooming

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standards?

First, employers should strive to ensure that their grooming standards are, as much as possible, applied to all employees equally without regard to gender. Grooming standards that incorporate as many gender-neutral requirements as possible will have far better insulation against sex discrimination complaints should gender-specific aspects of those standards come under attack.

Second, employers should make sure that their grooming standards do not impose a greater burden on one gender over the other. The court in *Jespersen* did not rule out a claim for sex discrimination in the context of grooming standards where a plaintiff can objectively demonstrate that a standard imposes a significantly greater burden of compliance on one gender. Employers should carefully consider the relative impact of grooming standards on their workforce before implementation.

Finally, employers should take steps to craft their grooming standards so that they steer clear of re-enforcing commonly accepted gender stereotypes, particularly those that impede an employee's ability to do their job. This is not an easy task, as there will inevitably be gender-specific differences in grooming standards. However, as the court in *Jespersen* stated, "[with] grooming standards, the touch-stone is reasonableness." In other words, to avoid the appearance of a stereotypical motivation, employers should narrowly craft their grooming standards so that they are tied to a legitimate and reasonable business need. In a customer-facing business environment, any grooming standard that ensures employees present a neat and professional appearance to the paying public would most likely be reasonable.

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