

TATTOOS AND BODY PIERCINGS IN THE WORKPLACE: AS EMPLOYEES MAKE THEIR MARK, EMPLOYERS ARE FORCED TO COVER THEMSELVES.

When it comes to tattoos and body piercings the workplace norm has shifted over the last number of years. According to a mid-2010 Pew Research Center Study, 12 percent of the 18 to 29 year olds otherwise known as the “Millennial Generation” surveyed answered that they had one tattoo and 26 percent had more than two. “Generation X” is also fond of body art. About one-third of those between the ages of 30 through 45 surveyed responded that they have at least one tattoo. Baby boomers, those between the ages of 46 and 64, only 15 percent have one. The fact is that body art has evolved from a stigma to a fashion statement and that younger employees see tattoos and body piercings as modes of self-expression rather than rebellion. Like it or not, wear it nor not or ignore it or not tattoos and body art are here to stay.

Surprisingly, despite the growing number of employees with body art, many companies in the private sector do not have specific policies addressing this reality and many companies simply leave it to the discretion of supervisors and employers to handle each situation as it arises. The companies we surveyed run the gamut from allowing pink hair and tattoos to those companies that are concerned that body art will cast the wrong message for the company. For example, FedEx regards body art differently as to each situation. The FedEx employee handbook allows the use of tattoos when they are not “offensive, sexual or have gang-related content or are disruptive, distracting or otherwise inappropriate.” The company allows managers in each department to make the call based on each particular situation. On the other hand, at Borders Group, employees are allowed to display body art as long as it is not “excessive.” How “excessive” is defined is different, of course, in each situation. The public sector, on the other hand, has dealt with this cultural and social sea change in a more restrictive fashion. The United States Air Force and Los Angeles Police Department have banned the allowance of noticeable or visible tattoos altogether claiming that a “public perception” issue would arise particularly for those serving in the military or as part of a police department.

To date, the most prudent way for an employer to calculate whether body art is acceptable in every situation is to adopt, in the first instance, a “business impact rule.” Such a rule would measure the potentially damaging effect of tattoos and piercings on the corporate image. Obviously, an employee wearing pink hair at a Borders book store is going to generate a different image issue and result than a Los Angeles police officer who wears an industrial bar in her ear. There is no doubt that lines have and will be drawn according to the purpose of the business and whether the tattoos or piercings affect or interrupt that purpose. Consideration, at all times, will be necessary if the employee claims that body art is part of her religious belief system. According to recent rulings from the Equal Opportunity Employment Commission (EEOC) companies can regulate employees’ personal expression so long as they do not tread upon employees’ personal liberties.

The key, in each case, is to decide whether tattoos are acceptable and, if so, within what limits. The employer should strive for as much consistency and uniformity as it makes sense according to the specific function and purpose of the company. Having said this, the following is a set of guideposts that an employer can use to achieve such a result:

1. Base the policy on business-related reasons. Explain your reasons in the policy as employees understand the rationale behind the restrictions. This would include consideration of public image, promoting a productive work environment or complying with health and safety standards.
2. Require employees to comply with any existing dress codes. If your company does not have a uniform dress code then it will be harder to implement any policies toward either eliminating or restricting body art of employees.
3. Apply all policies uniformly according to the specific purpose of your business. Be prepared to accommodate those whose religious beliefs incorporate body art. The same rule applies to those individuals whose religious beliefs require either head coverings or facial hair and to make reasonable accommodations accordingly and
4. Apply consistent disciplinary measures for violators of the code and to be specific as to the nature of the violation the means by which the employee can fix the problem.

For more information as it relates to this specific issue, please contact our office.