

CGA Symposium  
Coffee with Counsel Agenda E.1.

Employers may impose dress codes, and they may fire employees for violating the dress code. However, the dress code should not violate the employee's rights under the Fair Employment and Housing Act (FEHA) or a number of other federal and state laws and regulations. E.g. Cal. Gov't Code § 12940. This means employers are prohibited from discriminating against or firing an employee when a dress code violation is related to the employee's membership in a protected class.

For example, a dress code may not restrict transgender employees from dressing or taking the appearance of the gender with which they most identify, and a dress code may not prohibit women from wearing pants. Recently, California instituted its own CROWN Act, which means employers may not impose dress code restrictions on hair textures or hair styles typically associated with race. Additionally, when asked, employers must make reasonable accommodations for religious requirements or disabilities.

If a dress code is challenged, Employers are entitled to present a bona fide occupational qualifications (BFOQ) or a business necessity to defend any section of the dress code that appears to violate FEHA. That said, employers must still provide evidence that demonstrates an actual BFOQ or valid business necessity. Employers may do so by providing an equipment's user manual which warns against having long hair or wearing shoes without toecaps, or a Cal-OSHA regulation that requires men be clean shaven to prevent leakage while wearing a respirator. See Home Depot U.S.A., Inc. v. Occupational Safety & Health Appeals Bd., No. E071313, 2019 WL 6710853, at \*3 (Cal. Ct. App. Dec. 10, 2019); See also Vernon v. City of Berkeley, No. A109680, 2006 WL 1467790 (Cal. Ct. App. May 30, 2006).

Additionally, employers should be careful that their dress code policies do not present as uniforms. If employees are required to wear uniforms, then employers are required to pay for, provide, or reimburse employees for the cost of those uniforms. Palm v. Charlotte Russe, Inc. (Cal. Ct. App., Sept. 13, 2011, No. B225586) 2011 WL 4036069. A dress code may turn into a uniform if employees are required to wear specific brands and even specific colors. Brown v. Abercrombie & Fitch Co. (C.D. Ca., July 16, 2015, No. CV141242JGBVBKX) 2015 WL 9690357, at \*9.

Copies of the court precedents cited above will be linked to the website at the bottom of the Agenda for this session.