

Stripping it back to understand dress codes

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This summer has seen dress codes being re-written by Royalty, MPs and now the Anglican church, leaving many wondering where they stand in the workplace.

First, the Queen conducted the State Opening of Parliament in a hat and coat, in place of the traditional gown and crown. Then the Speaker of the House declared jackets and ties an unnecessary convention for male MPs. And now the Synod, the Church of England's ruling body, has agreed to a change in canon law that will see clergy ditching their traditional robes when taking communion or conducting weddings, funerals or baptisms.

But there are still situations where rigorous dress codes are maintained, notably the 'almost entirely white' clothing rule that is imposed strictly by the All England Club during the annual Wimbledon Grand Slam tennis tournament. Players have been forced by umpires to change and resort to borrowing kit when told to remove offending colours or flashes that have broken the rule. And while many big names have tried to resist the ruling, it remains carefully guarded by the club, despite dating from the 1800s.

When it comes to dress codes in a workplace setting, there are three main areas where employers have obligations:

1. they must comply with equality legislation on gender, religion and disability;
2. any requirements must take account of health & safety issues; and
3. where employees are required to purchase specific clothing, this must be reflected in National Minimum Wage calculations.

Employment lawyer, [Emma de Graauw](#), outlines below the main issues employers need to consider when drawing up and implementing dress code policies.

The design considerations for dress codes

Gender discrimination

The treatment of temporary receptionist Nicola Thorp, who was sent home without pay for failing to comply with a requirement to wear heeled shoes, won much coverage and led to the matter being debated in Parliament, where MPs highlighted the requirements of employers under the [Equality Act 2010](#).

The Act makes it illegal to discriminate against someone with a protected characteristic whether directly, indirectly or by harassing them. In the context of dress codes, the protected characteristics of gender, religion and disability are likely to be relevant. So, if a man would not be required to wear high heels, a requirement for women to do so may be discriminatory on the grounds of sexual equality.

This does not mean that detailed dress codes may not be different for men and women, but they must be broadly similar in their intended effect and sanctions for breach should be the same.

In one case, a trainee police constable alleged that he was discriminated against because of his shoulder length hair, which he was told to cut or face disciplinary action. He argued that a woman with hair neatly tied in a bun, as his was, would not have received the same order. The argument was rejected by the [Employment Appeal Tribunal](#), saying that such differences in treatment do not necessarily amount to more favourable treatment of one sex compared with the other.

Religious discrimination

The topic of religious discrimination is complex and two recent cases have added to the confusion among employers.

Nadia Eweida, a practising Coptic Christian, lost her job with British Airways after refusing to keep her crucifix necklace out of sight when wearing her uniform. In a landmark judgment, the European Court of Human Rights ([ECHR](#)) said that Ms Eweida's right to manifest her religion under [article 9](#) of the European Convention of Human Rights had been breached. The ECHR said that a fair balance had not been struck between her desire to manifest and communicate her religious belief, and on the other side, her employer's wish to project a certain corporate image without religious connotations.

But in a recent joint case over the wearing of Islamic headscarves, the European Court of Justice ([ECJ](#)) decided that employers could have a policy of religious neutrality in their dress codes, ruling that prohibiting the wearing of a headscarf was not direct discrimination, although it could amount to indirect discrimination. The employer would need to be able to show that if there was a greater negative effect on one group of employees, there must be a fair reason for doing so, and that it was appropriate and necessary in all the circumstances. In this case, the ECJ highlighted the difference between employees who interact with customers and those who do not.

When handling religious views in the workplace, employers need to strike a balance between the requirements and duties required by the company, and the employee's right to practice and express their religion.

Health and safety

Health and safety law requires employers to conduct a workplace health and safety risk assessment for all workers, with a continuing obligation to provide a safe system of work, and no one is surprised that they are required to wear a hard hat and hi-vis vest when visiting a construction site.

But the risks associated with many aspects of dress code may be overlooked in such assessments, despite well-documented outcomes. For example, high heels are known to lead to joint pain, back problems, bunions and may potentially contribute to sprains and falls, so as well as being unlawful under the Equality Act, requirements on female employees to wear high heels may breach health and safety law.

Such risk assessments are also essential if an employer is looking to impose specific requirements such as a ban on jewellery, that may otherwise be taken as indirect discrimination, for example, where someone was banned from wearing a religious symbol, such as a crucifix. If there is a health and safety risk, for example where employees are operating potentially dangerous machinery where jewellery could be caught, this may be the justification for such a ban.

Uniforms and the National Minimum Wage

Where employees are required to wear a specific form of dress or uniform at their own expense, employers need to ensure the cost does not impact on National Minimum Wage compliance.

The retailer Monsoon found itself unintentionally breaching the regulations because it required staff to buy and wear items from the retail chain's clothing range. [HMRC](#) investigated and said that as the wearing of Monsoon clothes was compulsory, the amounts spent by the employees on clothes for work in any pay reference period should have been deducted from their pay for that period before calculating whether they have received the [National Minimum Wage](#). For Monsoon, this resulted in back-pay of more than £100,000 to reimburse employees, and a fine of £28,147.81.

This applies equally where a loose policy is in place, for example requiring a certain colour to be worn. HMRC gave as an example the requirement for hairdressing staff to wear white t-shirts and black trousers for work, saying this should be treated in the same way.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

