

Note: Delete this page and following pages (total 4 pages) once you complete tailoring the template for your own business

Businesses can use this policy to set out the dress standards they require for their business.

An employer is legally allowed require certain kinds of clothing and/or prohibit certain kinds of clothing. However, the standards set should be reasonable, having regard to the type of work and the industry in which the work is performed.

This policy can be used by all employers in Australia.

Are there any related documents?

Other related documents which may also be useful in prescribing workplace standards include:

- Code of Conduct – establishes the minimum standards of behaviour and conduct expected from all employees and contractors
- Performance and Misconduct Policy – describes the way the employer will respond to poor performance and conduct issues
- Warning Letter – used to provide a written warning to employees for unacceptable conduct.

Talking point

1. Is it legal for an employer to insist that employees wear a particular uniform or type of clothing at work?

Yes, an employer can insist that employees wear a particular form of clothing – the Dress Policy allows an employer to set out its requirements and rules.

The employer can also order employees not to wear clothing which it thinks might be offensive to customers or otherwise detrimental to the business.

A dress code can cover the form of clothing itself, footwear, jewellery, hairstyles and length, tattoos and body piercing.

Case example: A Woolworths butcher was dismissed for refusing to remove his eyebrow ring while at work. The Fair Work Commission found he had refused to comply with a lawful direction of his employer and this was a valid reason for his dismissal. See *Woolworths Limited t/a Safeway v Brown* [2005] AIRCFB.

BUT, employers must be aware of potential discrimination and health and safety issues. **See below.**

2. What are an employer's obligations concerning clothing?

Employers must ensure that any employee dress code does not breach any legislation, in particular anti-discrimination/equal opportunity and workplace health and safety legislation.

Avoiding discrimination

Discrimination can occur if different dress standards are set for men and women, or if the employer refuses to let workers wear clothing connected to their ethnic customs or religion when to do so would not detrimentally affect the employer's public image, the employee's safety or the viability of the business. "Religious examples" could include wearing turbans, hijabs or religious crosses. "Double standards" could include women being required to wear high heels and men required to wear ties.

It is possible for an employer to apply for an exemption from equal opportunity legislation in relation to their dress requirements, but many disputes that have gone to a court or tribunal have resulted in a finding that the employer overstated the impact of an employee dress code (or non-compliance with it) on its business.

Health and safety

Employers have a common-law duty to provide a healthy and safe workplace to all employees and other people who visit the workplace (which includes one that is free of harassment – this is relevant to an employee refusing to wear revealing clothing. See below).

The safety requirements mean that an employer can insist that employees wear particular forms of clothing, or comply with specified requirements, in order to protect their health and safety. Examples include protective clothing, short (or tied up) hair, no jewellery, etc.

3. Do employees have a right to object to wearing clothing?

An employee is entitled to refuse to wear clothing stipulated by the employer if he/she can demonstrate that the clothing (or lack of it, such as protective clothing) would pose a threat to his/her health and safety at work.

If a requirement to wear certain clothing was discriminatory or could foreseeably expose the employee to sexual harassment, it is likely that an employee or job applicant could refuse to wear it, but it will depend very much on the individual circumstances of each case. The employee will have to prove that the requirement was unreasonable in the circumstances, discriminatory or would expose him/her to risk.

4. Can an employer insist tattoos be covered?

With more and more people wearing tattoos, they are gaining increasing attention as a dress code issue. Employers are within their rights to insist that a tattoo be covered by clothing if its contents are reasonably likely to cause offence to other people or harass them (for example if the tattoo contains a sexually explicit message or illustration). But problems may arise if the tattoo cannot be covered, eg if it is on the employee's neck or face. An employer could not reasonably insist that the tattoo be removed.

5. Can an employer insist union logos are not allowed?

Yes. The Fair Work Commission ruled that an employer was justified in preventing two union delegates from wearing shirts containing the union's logo. The shirts otherwise complied with the employer's policy that shirts worn should comply with workplace health and safety standards and could only contain the company's logo and employee's first name. See: *Alcoa of Australia Limited v AWU* [2016] FWC 3582.

This situation also could come within the scope of "displaying a political message". An employer could **ban the wearing of clothing** that displayed **political messages** if it genuinely believed such messages could adversely affect the image and reputation of its business (eg as independent or non-political), but its concerns would have to be justified.

Getting it wrong

An employee dismissed due to an unreasonable applied company dress policy can seek an unfair dismissal remedy through the Fair Work Commission, which can involve reinstatement or maximum compensation up to 6 months' remuneration (up to a current maximum of \$69,450, as of June 2017)

Example: A Full Bench of the Fair Work Commission reinstated an employee with full pay and entitlements when the employer failed to comply with its own dress policy. See *Virgin Australia International Airlines Pty Ltd t/a Virgin Australia v Taleski* [2013] FWCFB 4191.

General Information

Employers should ensure that the policy is applied consistently and in a manner that is not discriminatory. The policy should enforce a standard that is common to all employees but is sensitive to different cultures, religious practices, ages, and disabilities.

It is also important that the policy take into account any occupational health and safety requirements and the nature of the workplace and work being performed.

How to complete this template

Designed to be customised

It is completely customisable based on your specific requirements.

Include what you must and can comply with

This document should be used in conjunction with your contract of employment, and any specific company procedures and processes. Only include the commitments you are confident you can comply with, make sure you update and review the document regularly.

Important: You may have legal obligations to your employees under an employment or industrial agreement such as an award, workplace agreement or employment contract. Make absolutely certain what's written in this document is consistent with these. If you're unsure what covers your employees, ACFA Members can contact ACFA's workplace advice team on 1300 342 248 or on 02 4340 2000 for further advice/assistance.

To complete the template:

1. Using Word's Replace function, search for (INSERT COMPANY NAME) and replace with your company name.
2. Replace (items in brackets) with your own wording.
3. Once you have finished work on the template, delete the first TWO pages of the document.

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SAMPLE

Dress Policy

1. Purpose

- 1.1 The purpose of this Dress Policy (Policy) is to describe the standard of dress expected by (insert company name) in the workplace.
- 1.2 (insert company name) requires that all staff wear a standard of dress appropriate to the circumstances and environment in which work is performed. Importantly, attire should be neither offensive nor likely to give rise to health and safety risks in the workplace.

2. Commencement of the Policy

- 2.1 This Policy will commence from XX/XX/XXXX. It replaces all other (insert company name) dress policies (whether written or not).

3. Application of the Policy

- 3.1 This Policy applies to employees and contractors (including temporary contractors) of (insert company name), collectively referred to in this Policy as 'workplace participants'. This Policy does not form part of any employee's contract of employment. Nor does it form part of any other workplace participant's contract for service.

4. Health and safety

- 4.1 (insert company name) is required to remove any reasonably foreseeable risk to workplace health and safety. If (insert company name) considers that a particular item of clothing or jewellery constitutes a foreseeable hazard having the potential to harm health or safety, (insert company name) may take whatever action it considers necessary to satisfactorily address the situation.
- 4.2 Action may include directing the workplace participant to remove the particular item of clothing or jewellery whilst in the workplace. If it is not practicable to remove the particular item, (insert company name) may direct the workplace participant to leave the workplace. A workplace participant is required to comply with any such direction.

5. Acceptable attire

- 5.1 Acceptable attire at (insert company name) is as follows:
 - Acceptable Attire – List your suitable / acceptable attire here
- 5.2 Costume and garments worn to comply with religious or cultural requirements are acceptable as long as they do not pose a **foreseeable hazard having the potential to harm health or safety**. If a workplace participant is uncertain as to whether an item of clothing poses a foreseeable hazard, the workplace participant should ask his/her manager or supervisor for clarification.

6. Unacceptable attire

The following is a guide to attire that is unacceptable in the workplace. It is not an exhaustive list. A workplace participant that presents for work wearing unacceptable

*** This is only a preview of the document, you will need to purchase the document to see all the content.**

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