



CITY OF IOWA CITY MEMORANDUM

Date: September 11, 2020

To: Iowa City Business Owners

From: Kristin Watson, Human Rights Investigator

Re: Appearance Discrimination

One of the most common areas of workplace discrimination is also one of the least acknowledged. Appearance discrimination occurs when a person is treated differently based upon how they look. This can take many forms and can affect anyone.

What are the types of appearance discrimination?

Many types exist. One of the most common, however, is attractiveness bias. While older studies found attractiveness to be a gender-neutral advantage, newer research shows that conventionally-attractive men enjoy a universal career advantage, while women's attractiveness can actually function as a career detriment. Researchers found that for women, attractiveness was an advantage only in traditionally feminine careers, such as administrative assistants or educators. In male-dominated professions such as engineering and construction, however, female attractiveness was found to be a detriment to hiring and advancement. Other types of appearance discrimination include discrimination based upon a person's weight, their clothing, their hair, their personal presentation style, and other factors.

Is appearance discrimination illegal?

Not as such. Several retailers and restaurant chains are famous for the image their employees reflect. It is not illegal to impose a dress code or safety requirements that may affect how employees look. But there is a difference between Target mandating that all employees wear khaki-colored pants and red shirts to work, and the almost \$45,000 Abercrombie had to pay a job applicant in damages and court costs for discriminating against her because her religious head covering did not fit their "look."¹

If appearance discrimination is not illegal, why are there court cases about it?

The reason is that appearance is often tied to one or more of a person's "protected classes." A protected class is (1) a personal characteristic a person cannot change, like their race or age, or should not have to change, like their religion, that (2) is protected by anti-discrimination laws. In the Abercrombie case, the job applicant was not hired because managers felt her headscarf did not fit Abercrombie's "classic collegiate East Coast style." However, the headscarf was a hijab, required by the applicant's religion. Her lawsuit was based not upon the "look" policy, but on religious discrimination.²

Similarly, in the very first case recognizing discrimination could be based upon perception of gender roles and sex-stereotypes, Ann Hopkins was denied partnership at Price Waterhouse Coopers because she, as a male partner wrote in her evaluation, "needed a course in charm school." Although she won the firm's most lucrative contract, a \$44 million project for the State Department, and was described in evaluations as "one of the very best," male partners rejected

¹ See EEOC v. Abercrombie & Fitch, 575 U.S. ___ (2015).

² For those interested in the details, the suit was based upon the narrow question of whether the applicant must inform the employer of the religious nature of the head covering, or whether the employer must inquire about it before rejecting the applicant.

her for partnership because they felt she needed to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." The US Supreme Court found that this was discrimination based upon her sex, as a man being considered for partnership would not have been subjected to the same stereotypical appearance and behavior standards as Ms. Hopkins. After seven years of litigation, Price Waterhouse Coopers was ordered to grant Ms. Hopkins a partnership, along with over \$370,000 in back pay.³ The Hopkins case remains relevant today, as gender-non-conforming people fight for the right to wear the clothing and hair styles in which they feel comfortable.

Are there developing areas of appearance-discrimination law?

Yes. A current issue in appearance discrimination is natural hair. Chastity Jones, a Black woman, was offered a job, provided she get rid of her dreadlocks. When she refused, the offer was rescinded. The EEOC filed a lawsuit on her behalf claiming race discrimination, which was dismissed on the theory that a protected class refers to things a person can't change, while a hairstyle is merely a matter of grooming. An appeals court agreed. The EEOC appealed to the U. S. Supreme Court, which declined to hear the case. However, a growing number of states and local governments are recognizing that a hairstyle can be much more than grooming; it can be a matter of identity.

The Jones case is problematic for several reasons: it ignores stereotypes associated with Black natural hairstyles, it relies on outdated theories of race as a biological instead of a social and cultural construct, and perhaps most important from a legal precedent standpoint, it entirely ignores the Hopkins case. It has been settled law for over 30 years that anti-discrimination laws apply not only to the person's unchangeable characteristic (in this case, race), but also to stereotypical perceptions about how that characteristic should be expressed (in the Hopkins case, "needing charm school;" in this case, having a "messy" hairstyle). For this reason, the states of California and New York, as well as the City of Cincinnati, have enacted laws against race-based hair discrimination. New Jersey, Michigan, Wisconsin, Illinois, Kentucky, and Montgomery County, Maryland, are considering enacting similar provisions.

Another developing area is weight. Although severe obesity and obesity that contributes to secondary health conditions may qualify a person to make a disability-related claim of discrimination, the act of discriminating against a person solely because of their weight is also beginning to be outlawed. Michigan was the first state to do so (also including height), and Massachusetts introduced a bill last year. The cities of San Francisco and Binghamton, New York also forbid weight discrimination. Madison, WI; Urbana, IL; Santa Cruz, CA; and Washington, D.C. go further, forbidding discrimination based upon "physical appearance," "personal appearance, weight, or height," "physical characteristics," and "personal appearance," respectively.

How should employers avoid appearance-bias?

Be sure employees are evaluated on one thing only: job performance. If appearance is genuinely an essential function of the job, as it may be in customer-facing positions or professional environments, be certain employees' appearance is judged objectively. Become aware of implicit bias⁴ and be sure appearance evaluation is not based upon stereotypes.

The City of Iowa City Office of Equity and Human Rights has been providing memos to businesses on areas of discrimination since August of 2016. Please send topics you would like to receive guidance on in the future, or inquiries regarding discrimination issues, to humanrights@iowa-city.org.

³ See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

⁴ A good resource is Harvard University's "Project Implicit." <https://implicit.harvard.edu/implicit/>