

Looking the part

Lookism in the workplace—
discrimination or a fact of life? asks
Helen Crossland

It is a commonly held belief that there is now a culture of “lookism” in most workplaces in that staff are recruited, promoted and retained either on an arbitrary view of their attractiveness or on the basis of how their appearance best matches the image their employer wishes to present. While such a culture is unlikely to be acknowledged openly in the majority of workplaces case law shows that job applicants and employees are being discriminated against on the basis of how they look.

There is strong statistical evidence that women who wear make-up in business get better jobs and are promoted more quickly. More surprising were the results of a recent survey by *Personnel Today* in which 81% thought it was acceptable to make fun about people’s ginger hair while more than 70% considered blonde hair, regional accents, baldness and shortness to be acceptable topics of banter.

The issue of lookism in the workplace has been highlighted by the much publicised employment tribunal case of *Riam Dean v Abercrombie & Fitch*. The claimant in this case was last month awarded £9,000 compensation from her former employer which included an award of £7,800 for injury for feelings on the ground that it unlawfully harassed her and failed to make reasonable adjustments to its “look policy” due to her disability.

Background

Ms Dean, a 22-year-old law student, has worn a prosthetic arm for most of her life having been born without her left forearm. She claimed that upon starting work for Abercrombie & Fitch it initially agreed that she could wear a cardigan to hide her prosthetic arm. However, Ms Dean claimed that she was then instructed to remove her cardigan as it did not comply with the company’s look policy. When she refused Ms Dean was told she would have to work in the stock room.

Although Ms Dean lost her claim that Abercrombie & Fitch had directly discriminated against her by using its look policy to keep her off the shop floor out of sight of customers because of her disability, the outcome and publicity surrounding the case will have prompted many employers to review their look policy and consider whether its existence or application could leave them exposed to claims.

An increasing number of organisations now have look policies as part of their standard employment documentation and some even award prizes for staff whose appearance best represents the company’s image. Such policies are most commonly found in the retail, beauty, fashion and

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hospitality industries and go beyond the standard dress policies of old by imposing strict rules about clothing and image.

“Look policies”

Look policies are lawful provided they do not discriminate against any individual or particular groups on the basis of how they look. The difficulty with such policies lies in the fact that however lawfully and fairly they may be applied, they can be a gift to an aggrieved employee who is considering embarking on a discrimination claim and who may use the look policy as evidence that the company has a policy of favouring certain types of people based on how they look to the detriment of others.

A crumb of comfort for employers is that in order to be eligible to bring a looks-based claim, the claimant must have one or more of the “prohibited grounds” upon which to base the claim such as sex, race or age etc. A person will not be able to bring a claim on the basis of their



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ginger hair or baldness for example, unless there is an underlying discriminatory reason. However, even where a candidate or employee has been the subject of harassment or less favourable treatment for a reason that does not appear to fall within one of the prohibited grounds, there may still be an underlying discriminatory reason. For example, a person’s figure or height, ie if they are overweight or very short may be due to a disability, as may be the wearing of glasses or being bald.

While some employers might be able to argue that there is a genuine occupational requirement for its staff to

look a certain way and/or that its look policy is justifiable, the case law on the matter is by no means encouraging for employers.

Look before you leap

If you have a look policy monitor it carefully to ensure that it does not discriminate against any individual or certain groups. A look policy which sets specific rules about employees’ appearance and image can present a risk to your business and be hard to justify so its necessity should be reviewed regularly. Whereas it is commercially prudent to expect your staff to dress smartly or in a way that meets your clients’ expectations, look-based claims can be inherently difficult to defend as well as attracting adverse publicity that your business could well do without.

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