

Employment ACT NOW



A guide to employment law from

CollinsBensonGoldhill
solicitors

HAIR LENGTH AND DRESS CODES

When formulating a dress code for employees, it is important not to treat one sex less favourably, if you are to avoid leaving yourself open to claims under the Sex Discrimination Act 1975. However, this does not mean that the provisions for men and women have to be identical.

In *Dansie v The Commissioner of Police for the Metropolis*, a trainee policeman claimed that he had been less favourably treated on account of his sex because he was told to get his hair cut or face disciplinary action. The Police Force's Dress Code Policy stated that the standard of dress should be smart, fit for the purpose and give a favourable impression of the service. It was common ground that a female recruit would not, in similar circumstances, have been told to have her hair cut.

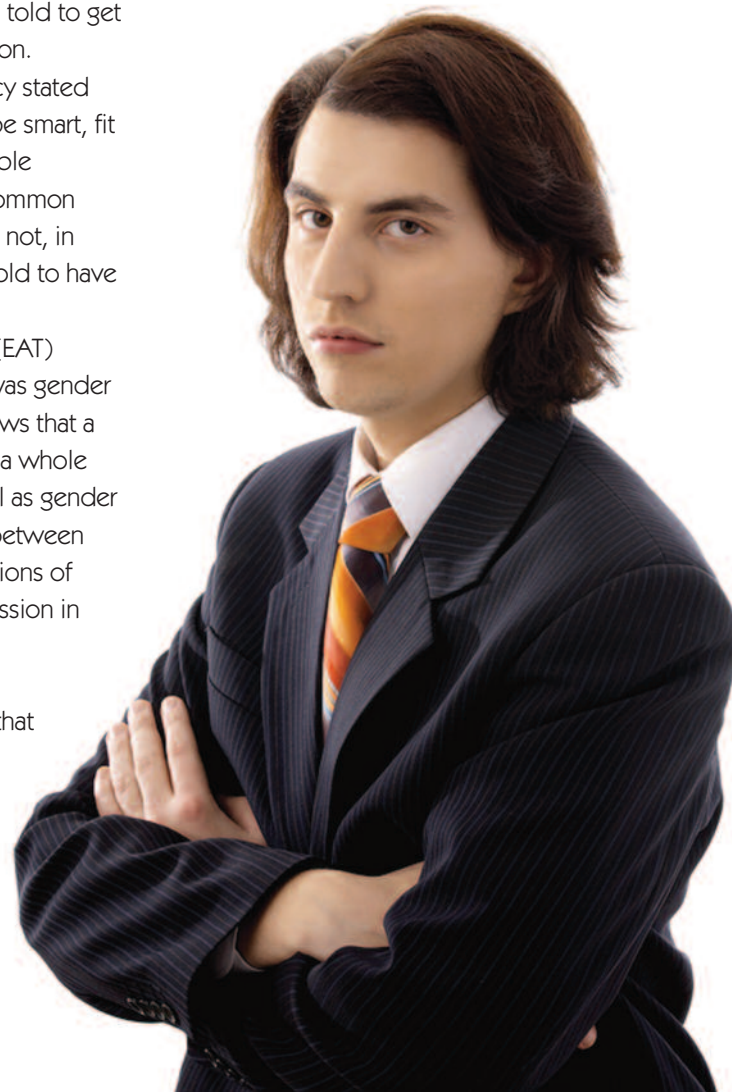
The Employment Appeal Tribunal (EAT) found that the Dress Code Policy was gender neutral overall. Earlier case law allows that a dress code 'can be considered as a whole and can be gender specific as well as gender neutral provided it is fair-handed between the sexes and fits with the conventions of society and the needs of the profession in question'.

The EAT held that the Employment Tribunal was entitled to conclude that a female comparator who failed to comply with a dress code that was equally balanced between the sexes and necessary for a disciplined service like the Police Force would have been treated in the same way if she had failed to comply with the

Policy as it applied to women.

In this case, the dress code under scrutiny was found to take a fair approach to both sexes as a whole and the employer was able to establish a non-discriminatory reason for the difference in treatment. However, a code that applies different standards to men and women who do not work in public-facing roles may not be justifiable.

Contact us if you would like advice on this subject.



SUMMER 2010

IN BRIEF

STATUTORY MATERNITY, ADOPTION AND PATERNITY PAY INCREASES

The standard weekly rate of Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay increased from £123.06 to £124.88 from 6 April 2010. There is guidance for employers on administering these benefits on the Business Link website at <http://www.businesslink.gov.uk>.

The weekly rate for days of sickness absence commencing on or after 6 April 2010 remains at £79.15.



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42-YEAR-OLD BANKER WINS AGE DISCRIMINATION CLAIM



A 42-year-old banker has had his claim of age discrimination against his former employer upheld by the Employment Tribunal (ET).

Mr Beck lost his job following a redundancy restructuring process. However, his employer had simultaneously hired a firm of headhunters to find a replacement for him and instructed them that they were seeking a person who fitted a 'younger, entrepreneurial profile'.

When asked by the ET to explain the use of the word 'younger', the bank said that it simply meant someone less experienced who 'would not be an expensive senior

figurehead'. The ET was not convinced by this explanation and found that Mr Beck's employer had failed to prove that age was not a factor in its decision to dismiss him. It held that he had been treated unfairly and that the redundancy process was a 'sham' used to achieve the bank's aim of replacing him with someone younger.

In this case, Mr Beck was able to produce evidence to support his claim that his age was a factor in his employer's decision to replace him and his employer was unable to justify its actions.

We can advise you on any aspect of the age discrimination legislation.

IN BRIEF

NEW MINIMUM WAGE RATES

The Government has announced the new rates for the National Minimum Wage that will come into force on 1 October 2010. The adult rate will rise from £5.80 per hour to £5.93 and will apply to workers aged 21 and over. The rate for 18- to 20-year-olds will increase from £4.83 to £4.92 an hour and for 16- and 17-year-olds the rate will be £3.64 an hour instead of £3.57.

ADDITIONAL PATERNITY LEAVE

The House of Lords has approved the Additional Paternity Leave Regulations 2010, which give new fathers the right to take additional paternity leave if the mother chooses to return to work with maternity leave outstanding and the father will have the main responsibility for caring for the child. The Regulations will apply to the parents of children due to be born on or after 3 April 2011.

PREGNANT WOMEN AND RISK ASSESSMENTS

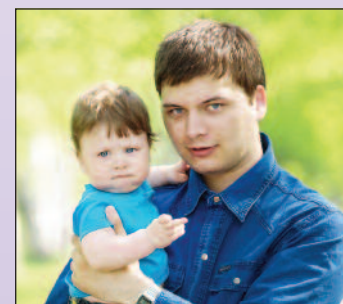
The Employment Appeal Tribunal held (O'Neill v Buckinghamshire Council) that there is no general obligation under the Management of Health and Safety at Work Regulations 1999 to carry out a risk assessment for all pregnant employees so that a failure to do so amounts to discrimination per se. Whilst it is clearly prudent for employers to do so, the obligation is only triggered where:

- the employee notifies the employer in writing that she is pregnant;
- the work could involve a risk of harm or danger to the health and safety of the expectant mother or her baby; and

- the risk arises from either the processes or working conditions or from physical, biological or chemical agents in the workplace.

Where risks to the health and safety of a pregnant worker have been identified, the employer must provide the employee with comprehensive and relevant information concerning these and must do all that is reasonably practicable to remove or prevent exposure to them.

We can advise you to make sure you act in accordance with the law and are not open to claims of unlawful sex discrimination.



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