

Court Upholds Retailer's Dress Code Despite Employee's Body Piercing Beliefs

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Compliance with Request for Exemption from Code Would Cause Undue Hardship
A retailer had no duty to accommodate its sales employee's religious beliefs by exempting her from the company's dress code prohibiting all facial jewelry other than earrings, because to do so would impose an undue hardship on the employer, the U.S. Court of Appeals in Boston has held. (*Cloutier v. Costco Wholesale Corp.*, No. 04-1475, 1st Cir. 2004).

Kimberly Cloutier, a former cashier at Costco's retail store in West Springfield, MA, and a professed member of the Church of Body Modification, brought suit under Title VII and Massachusetts' anti-discrimination law, after refusing to remove her facial piercings based upon religious grounds, and declining to accept any accommodation short of an outright exemption from the retailer's neutral dress code. "Granting such an exemption would be an undue hardship because it would adversely affect the employer's public image", the Court stated. "Costco has made a determination that facial piercings, aside from earrings, detract from the 'neat, clean and professional image' that it aims to cultivate. Such a business determination is within its discretion."

At the time of her hire in the delicatessen department in mid 1997, Ms. Cloutier had 11 ear piercings and several tattoos, but no facial piercings. In 1998, she received a transfer, because the company's dress code at the time prohibited the wearing of jewelry by any employee handling food. About this time, Ms. Cloutier got her eyebrow pierced. During the next two years, Ms. Cloutier engaged in tattooing, piercing and cutting. During the spring or summer of 2001, she became a member of the Church of Body Modification ("CBM"), a congregation of approximately 1,000 members that espouses body modification and manipulation as a way to strengthen the connection between mind and body and ensure spiritual fullness.

In March 2001, the company further revised its dress code by forbidding generally the wearing of any facial jewelry other than earrings (e.g., facial and tongue piercings). Cloutier did not challenge the new policy or request an accommodation, but continued to wear her eyebrow piercing without incident. Three months later, however, Costco informed Cloutier that she would have to remove her facial piercings. Ms. Cloutier did not comply. When she was confronted by one of her supervisors, Ms. Cloutier stated that she was a member of CBM and that her eyebrow piercing was part of her religion. The following day, Ms. Cloutier filed a religious discrimination complaint with the Equal Employment Opportunity Commission ("EEOC").

When Ms. Cloutier returned to work, she was still wearing her facial jewelry. The store manager told her to remove the piercing or go home. Ms. Cloutier left work. A few weeks later, after being told that she had been suspended, Ms. Cloutier received notice that she had been terminated for her unexcused absences resulting from noncompliance with the dress code.

During the EEOC mediation the retailer offered to let Ms. Cloutier return to work wearing either plastic retainers or a band-aid to cover the jewelry. Ms. Cloutier maintained that neither of the proposed accommodations would be adequate according to her religious beliefs. She asserted that the only reasonable accommodation would be to excuse her from the company's dress code.

The Court of Appeals concluded that "the only accommodation Cloutier considers reasonable would impose an undue hardship on Costco," even assuming her religious beliefs were generally held. "A religious accommodation constitutes an undue hardship when it would impose upon an employer more than a de minimus cost", the Court stated, whether the cost be economic or non-economic. Recognizing that, "Costco is far from unique in adopting personal appearance standards to promote and protect its image," the Court observed that "[c]ourts have long recognized the importance of personal appearance regulations, even in the face of Title VII challenges." Such codes, it added, "which are designed to appeal to customer preference or promote a professional public image," have been upheld. The Court affirmed the dismissal of the state claim as well, in the absence of state decisions

Practices

General Employment Litigation

departing from the Title VII analysis.

The Court's decision offers encouragement and instruction to retail employers (and some others) concerned about the appearance of their employees and associates to customers. This decision also suggests, however, that employers faced with dress code violations, including those involving facial piercings, should proceed carefully. Employers must reasonably accommodate all employees' religious beliefs and practices unless to do so would impose an undue hardship on the employer's business. The law puts a corresponding duty upon the complaining employee to cooperate with an employer's good faith offer of a reasonable accommodation. Although reasonable dress codes or grooming requirements grounded in safety, efficiency, discipline or business concerns may be upheld, employers should review their dress codes to ensure the policy is reasonably related to their employees' jobs and that it is applied equally to all employees in the workplace.

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