

## Beards: Smart or Not?

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The issue of dress codes and their impact on women have been in the press over requirements to wear high heels or particular colour bras – or most recently, a ban by some companies in Japan on women wearing glasses at work! However, in *Sethi v Elements Personnel Services Limited*, the Employment Tribunal has considered the implications of dress codes on men. Mr Sethi applied for agency work with a specialist agency providing temporary staff for the hospitality industry, predominantly 5 star hotels working within front of house food and beverage roles. The agency's dress code policy included (amongst other requirements) a "no beards" provision, expressed to be part of their "professional appearance standards". As a practising Sikh adhering to Kesh (the requirement that hair on the body not be cut), Mr Sethi was unable to comply with this requirement and was removed from the agency's books. The ET accepted that the provision placed Sikhs at a disadvantage and went on to consider three potential legitimate aims – food hygiene; appearance; and/or complying with client requirements.

Given the agency's own policy was expressed to be appearance-related, and there was evidence that in some other 5 star (and lower) establishments there was no enforcement of a "no beards" policy, the ET did not accept hygiene was a legitimate concern in respect of non-food-preparation roles. In any event, any such concerns could be alleviated by a beard net. Appearance could be a legitimate aim (although some query was raised as to whether a beard was or was not smart) – however, the ET felt that high standards of appearance could be met by requiring beards to be maintained in a tidy fashion and a blanket ban would not be justified. Adhering to client requirements could also be a legitimate aim but the ET was not satisfied that a "no beards" policy was justified – at least one of the Respondent's clients accepted beards in certain circumstances, and there was no evidence at all that the Respondent had explored with its clients whether they would be prepared to make an exception for a Sikh, nor explained why they should.

There are a number of factors that need to be considered when designing (or enforcing) a dress code – and the situation can be complicated when third party requirements need to be taken into account. However, this case serves as a reminder of the steps that employers need to take to avoid discrimination. Had the agency approached its clients to seek an exception for Sikhs and those clients had refused, then the ET may have been more willing to uphold its legitimate aim (although this could, of course, create a separate discrimination issue for those clients unless their refusals were objectively justified).

## Contact

**Mark Hickson**

Head of Business Development

[onlineteaminbox@brownejacobson.com](mailto:onlineteaminbox@brownejacobson.com)

+44 (0)370 270 6000



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