

PUBLICATION

Body “Art” and “Piercing” Jewelry – Problematic for Employers in the Hospitality Industry?

September 20, 2010

Body art or tattoos and body piercings of a wide variety are becoming the "norm," especially among younger adults. However, a recent article in *USA Today* clearly demonstrates that the public does not expect to see tattoos and piercings on the people who greet them when they check into a hotel. The overwhelming majority of readers who commented on the article said it did not matter what type of hotel it was, they did not want to see tattoos and body piercings, besides regular earrings, on hotel workers or other people who deal with the public. One reader added, "Do you want piercings or a career?" While another echoed the same sentiment: "If the pierced, inked lifestyle is the one they chose, they should also accept the lack of opportunities it may represent."

Despite the potential impact on career options, tattoos and body piercings have exploded in use by the younger generation. A Pew Research Center poll reported that 36% of 18- to 25-year-olds and 40% of 26- to 40-year-olds have at least one tattoo. In those same age groups, 30% and 2%, respectively, have a piercing somewhere other than their ears. The same survey found that even in the 40- to 60-year-old age group, over 10% had tattoos or piercings other than their ears, with these numbers expected to grow as the demand for tattoos and piercings continues to increase.

Obviously, there are some employees in the hospitality industry whose tattoos or body piercings might be acceptable, even when dealing with the public. Trendy clubs or coffee houses come to mind. But for the vast majority of the hospitality industry, the public generally does not want to be greeted by a customer service person or server with a nose ring, a pin in their ear or a tattoo that covers their arm. So what should the employers do? They should dust off their dress codes and add some guidance and limitations applicable to piercings and tattoos.

According to the Equal Employment Opportunity Commission (EEOC), employers are allowed to impose dress codes and appearance policies as long as they do not discriminate or hinder a person's race, religion, color, age, national origin or gender. There is a strong legal basis for limiting tattoos and piercings in the workplace, especially if employers have reason to believe that tattooed or pierced employees will hurt their image with customers. It is reasonable to limit piercings and to distinguish between men and women. For example, it is reasonable to require men to have short, neatly groomed hair and be clean shaven or have neatly trimmed beards. When a religious practice affects the appearance of a beard, the issues get more complex and require more analysis. Likewise, it is reasonable for an employer to require men not to have any visible piercings, while allowing women to have a limited number of piercings in their ears, but otherwise, no visible piercings. In addition, if an employee has a tongue piercing, an employer can require them to remove it while they are at work, especially if the employee deals with the public. With the advent of gauges or large holes in ears, an employer might consider adding that earrings should be tasteful and appropriate for all business and professional attire.

With respect to tattoos or body art, an employer might consider requiring that no employee can have visible tattoos while at work. If an employee wants to express themselves with body art, they should do so on parts of the body that can be covered with appropriate attire for the workplace. Some employers may allow visible

tattoos provided they are not offensive, but the majority of guests in the hospitality industry have expressed sufficient concern to make an employer think twice before doing so.

If the employer is going to make changes to the dress code to address these issues, it is important that they obtain some input from employees before making across-the-board changes. This allows the employees to understand the reasons for addressing tattoos and body piercings in the dress code, but also, hopefully, allows the employees to have some input into the process or "buy into it."

One final consideration: if an employee has a visible piercing or tattoo that they assert is an expression of religious beliefs or practices, the employer needs to evaluate whether it can make a reasonable accommodation for the employee without creating an undue hardship. The most important point is to address these issues in the employer's dress code, and then act consistently in enforcing it.

Ms. Thompson is an attorney in our Knoxville office.