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Grooming and Appearance Rules for Public Safety Workers

Part Two: Tattoos, Piercings, Jewelry, Dental Ornamentation, Cosmetics and Religious Headwear

This is multipart article. Part One addressed hair regulations for the fire, police and correctional services.

Tattoos

More than fifty tattoos were found on the Schnalstal glacier mummified corpse, who lived over 5,000 years ago. Beauty, or the lack of it, is in the eye of the beholder. Senior military commanders, police chiefs and sheriffs have fretted over what to allow and what to ban.

Tattoos can be removed by laser surgery, surgical excision or dermabrasion. See, "Tattoo Removal," American Society for Dermatologic Surgery [webpage](#). Many employees do not welcome removal, and a few have contested the issue.

The current Army regulation states that "tattoos or brands cannot be on the head, face, or neck. They cannot be vulgar, indecent, sexist, racist or incite libidinous thoughts". Army [Regulation 670-1](#), "Wear and Appearance of Army Uniforms and Insignia," (2005). Exactly what is considered vulgar, indecent or libidinous was left for the courts to define. The Navy has also has a regulation, NAVADMIN 110-06 (2006).

In Indiana, a federal court upheld a management order that an employee cover a racially offensive tattoo on his arm. It depicted a hooded figure standing in front of a burning cross. The worker was a member of the Church of the American Knights of the Ku Klux Klan. [Swartzentruber v. Gunite Corp.](#), 99 F.Supp.2d 976, 2000 U.S. Dist. Lexis 8253, 83 FEP Cases (BNA) 181 (N.D. Ind. 2000).

Some agencies have insisted that officers with "objectional" body art on their arms wear long sleeved shirts in the summertime.



A Texas police officer with extensive tattoos on his arms and legs was ordered to wear long pants and a long shirt to cover his tattoos. The police department did not ban tattoos, but the chief believed that the officer's tattoos were excessive and looked unprofessional.

His markings were not racist or obscene. They included a Celtic tribal band, a Celtic design with his wife's name, a mermaid, a family crest, a cartoon character and St. Michael spearing Satan.

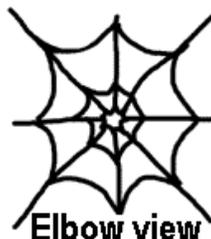
The District Court upheld the restriction because the police chief "had legitimate, non-discriminatory reasons for requiring the only officer in the Fort Worth Police Department who has tattoos covering his legs and arms ... to wear a uniform that is not required of other police officers."

"A police officer's uniform is not a forum for fostering public discourse or expressing one's personal beliefs," the judge wrote. [Riggs v. City of Fort Worth](#), 229 F.Supp.2d 572 (N.D. Tex. 2002).

More recently, three Connecticut police officers were ordered to cover spider-web tattoos on their arms after the chief learned that such tattoos symbolized "race hatred of nonwhites and Jews."

Tattoos can have coded messages for gang members and criminals. "A spider web tattoo (usually on the elbow) is a sign by white supremacists indicating that they have killed or severely injured an 'opponent'." See Wikipedia: [Criminal tattoo](#).

The officers responded that they liked the design and that the spider webs had no meaning to them. Two other officers got the same spider-web tattoo and they also were ordered to cover them.



The officers brought suit claiming that the policy violated their freedom of expression rights under the First Amendment and their equal protection rights under the 14th Amendment. The District Court determined that the city had a legitimate interest in making the officers cover their tattoos.

The Second Circuit summarily affirmed. [Inturri v. City of Hartford](#), #05-2114, 165 Fed. Appx. 66, 2006 U.S. App. Lexis 2538 (2d Cir., Jan. 31, 2006), affirming #3:03CV987, 365 F.Supp.2d 240, 2005 U.S. Dist. Lexis 5087 (D. Conn. 2005).

Piercings and Jewelry

Body piercing involves the implant of an object on the earlobe, tongue, nose, eyebrow, eye-bridge, lip, cheek, navel, nipple, or genitals of an individual for ornamental, spiritual, or sexual reasons. A nose ring is mentioned in the Book of Genesis [24:22].

[U.S. Navy Regulations](#) prohibit the intentional mutilation of any part of the body:

“Mutilation is defined as the intentional radical alteration of the body, head, face, or skin for the purpose of and or resulting in an abnormal appearance.

a. Examples of mutilation include, but are not limited to:

- (1) a split or forked tongue;
- (2) foreign objects inserted under the skin to create a design or pattern;
- (3) enlarged or stretched out holes in ears (other than a normal piercing);
- (4) intentional scarring on neck, face, or scalp; or
- (5) intentional burns creating a design or pattern.

[NAVADMIN 110-06 (2006)].

The Aurora, Colorado, Police Dept. Directives Manual, Sec. 8.1 provides:

Jewelry: Sworn members may wear jewelry, which is conservative and in good taste, provided they do not jeopardize safety. Conservative rings may be worn. Extremely large or gaudy jewelry items and earcuffs are prohibited. Female sworn members may wear no more than two pairs of earrings, which are conservative, and in good taste. Male employees are prohibited from wearing earrings. All personnel are prohibited from wearing nose-rings or other visible jewelry.

The St. Louis, Mo., Metropolitan Police Special Order 91-S-3, provides for sworn members:

Only one ring on each hand [a wedding pair is one ring]. No dangling jewelry; women officers may wear a pair of stud earrings. Visible necklaces not permitted.

A leading jewelry case arose in a Chicago suburb. A federal appeals court upheld a police dept. policy forbidding male officers from wearing earring studs while *off-duty*. [Rathert v. Village of Peotone](#), 903 F.2d 510 (7th Cir. 1990).

The rationale was they might be recognized as officers, and the police department could be viewed unfavorably. The Peotone officers were disciplined in 1987; styles change, and it is questionable whether that perception is valid twenty years later.

In the private sector, an arbitrator upheld management's order requiring a telephone operator to cover up or remove a nose hoop while on duty. [M.P. & T. Fund and Hosp. & Serv. Emp. Un. L-399](#), 103 LA (BNA) 988 (Gentile, 1994).

In another case, a male optometrist was ordered to not wear an earring at work. He sued for sex discrimination, because female employees could wear earrings. The court dismissed the case and noted that Title VII allows "minor differences in personal appearance regulations that reflect customary modes of grooming ... grooming codes do not have to be entirely gender neutral." [Kleinsorge v. Eyeland Corp.](#), #99-5025, 2000 U.S. Dist. Lexis 812, 81 FEP Cases (BNA) 1601 (E.D. Pa. 2000), citing [Knott v. Mo. Pac. Rwy.](#), 527 F.2d 1249 (8th Cir. 1975).

Some women have long fingernails, or wear false nails that are colored or ornamented. Some agencies have found a need to regulate nails. Typical is the Berlin, Connecticut, Police Department's General Order No. 41.3.5:

3. Sworn personnel shall keep their fingernails trimmed so as not to extend further than 1/8 inch from the edge of the finger. (The fingernail limitation is included as a safety measure. Longer nails may impede an Officer's ability to properly operate issued weapons and handcuffs. Additionally, injury will likely result during physical confrontations).

4. Civilian personnel shall keep their fingernails trimmed so as not to interfere with their assigned duties.

5. If uniformed police personnel desire to wear nail polish, it shall be clear. If plainclothes sworn or civilian female employees desire to wear nail polish, it must be conservative in nature. Multi-colored polish, airbrush designs and nail accessories are prohibited.

Religious Jewelry

The Fifth Circuit upheld a police rule against wearing religious or other pins on uniforms. "Visibly wearing a cross pin ... takes on an entirely different cast when viewed in the context of a police uniform."

“A police officer’s uniform is not a forum for fostering public discourse or expressing one’s personal beliefs,” they added. [Daniels v. City of Arlington](#), #00-11191, 246 F.3d 500 (5th Cir.); cert. den. #01-187, 534 U.S. 951, 2001 U.S. Lexis 9494 (2001).

A different rule applies to civilian employees. A federal court in Kentucky upheld the right of a library worker to wear a cross on her necklace. [Draper v. Logan County](#), #1:02CV-13, 403 F.Supp.2d 608, 2003 U.S. Dist. Lexis 26835 (W.D. Ky., 2003).

A federal court in Pennsylvania required a school district to reinstate a teacher’s assistant after she was fired for wearing a cross on her necklace. [Nichol v. ARIN Intermediate Unit 28](#), #03-cv-646, 268 F.Supp.2d 536, 2003 U.S. Dist. Lexis 10810 (W.D. Pa. 2003).

In Boston, however, the Second Circuit upheld a private employer’s refusal to allow workers to have visible body piercings, even if the employee claims the jewelry was worn for religious reasons. [Cloutier v. Costco](#), #04-1475, 390 F.2d 126, 2004 U.S. App. Lexis 24763, 94 FEP Cases (BNA) 1476 (1st Cir. 2004).

Dental Ornamentation

Stars, crescents and other shaped objects have been bonded to frontal teeth for aesthetic reasons. Famous rappers and their admirers have worn tooth “grills”.

Some adults wear teeth braces for orthodontic reasons, either to straighten alignment or to repair a traumatic injury. In some cases, braces have colored ornamentation.



The U.S. Navy prohibits the use of gold, platinum or other veneers or caps used for decorative purposes. Agencies such as the New Jersey State Police have a prohibition against any above-shoulder jewelry, including aesthetic dental art.

Cosmetics

Aurora, Colorado, allows female police members to wear facial make-up or coloring that is “subdued and moderate in tone and application.” Decals or ornamentation that detract from uniform appearance is prohibited.

What if a woman wants to wear no make-up? In a 7-to-4 decision, the Ninth Circuit upheld the firing of a woman casino employee who refused to wear facial makeup. She unsuccessfully alleged gender discrimination. [Jespersen v. Harrah's](#), #03-15045, 444 F.3d 1104, 2006 U.S. App. Lexis 9307 (9th Cir. en banc 2006).

Some individuals have unsightly facial moles, hemangioma birthmarks *or nevus flammeus* (port-wine stains). Thick make-up helps masks the affected area.

Federal civil rights laws do not protect unattractive job applicants, although the D.C. Human Rights Act §2-1402.11 (1977) protects “personal appearance.”

Religious Headwear

Uniformed public safety and military personnel have no right to wear caps or scarves of their own choosing, even for religious reasons.

Air Force Rabbi Goldman contended that the First Amendment permitted him to wear a yarmulke while in uniform, notwithstanding an Air Force regulation mandating uniform dress for Air Force personnel. The District Court enjoined the Air Force from enforcing its regulation, but the Court of Appeals reversed -- on the ground that the Air Force’s strong interest in discipline justified the strict enforcement of its uniform dress requirements.

In affirming, the Supreme Court wrote:

“The desirability of dress regulations in the military is decided by the appropriate military officials, and they are under no constitutional mandate to abandon their considered professional judgment. Quite obviously, to the extent the regulations do not permit the wearing of religious apparel such as a yarmulke, a practice described by petitioner as silent devotion akin to prayer, military life may be more objectionable for petitioner and probably others. But the First Amendment does not require the military to accommodate such practices in the face of its view that they would detract from the uniformity sought by the dress regulations.”

[Goldman v. Weinberger](#), #84-1097, 475 U.S. 503, 509 (1986).

Civilian personnel are different. A federal court in Arizona granted a summary judgment favoring a uniformed private employee who was fired for wearing a headscarf during the month of Ramadan. The complainant had emigrated from Somalia, which is a Sunni Muslim country.

The employer claimed that management had reasonably accommodated her

religious interests by permitting her to wear a headscarf in the back room, but not at the rental counter. The employer had a “Dress Smart Policy” that promoted a “favorable first impression with customers, and expressly prohibited employees from wearing certain clothing and accessories.”

While the employer failed to show an adverse economic impact by fully accommodating the worker, management feared that if she wore the headscarf when working at the customer desk it could lead to demands for clothing preferences by other employees and a loss of morale if exceptions were made for some, but not all workers.

Although the employer may have legitimately believed that accommodating a request to wear a head covering at the rental counter might have “opened the floodgates to others violating the uniform policy,” the court noted that there was no evidence to support that fear. The court said:

“A claim of undue hardship cannot be supported by merely conceivable or hypothetical hardships; instead, it must be supported by proof of actual imposition on co-workers or disruption of the work routine.”

[EEOC v. Alamo Rent-A-Car](#), #2:02-cv-01908, 432 F.Supp.2d 1106, 2006 U.S. Dist. Lexis 34674, 98 FEP Cases (BNA) 324 (D. Ariz. 2006).

See also, “[Questions and answers about employer responsibilities concerning the employment of Muslims, Arabs, South Asians, and Sikhs](#),” U.S. Equal Employment Opportunity Commission (2005).

The Metropolitan Police of greater London allow Islamic women constables to wear a hijab. There are four different official styles, in police colors.

Although the U.K. has had a Race Relations Act for 30 years, it does not ban religious discrimination. The apparel accommodation was adopted to assist recruitment efforts to implement the force’s 2001 “Diversity Strategy Action Plan.”



The “Met” also allows distinctive headwear for male Sikh officers. There are separate associations of Muslim and Sikh police constables in Britain.

Although American employers can challenge the sincerity of an employee’s beliefs, they cannot refuse to accommodate a worker because:

- (a) a religious practice is unusual or unorthodox, or
- (b) a spiritual organization lacks legitimacy in the judgment of management, or
- (c) the worker is unable to articulate aspects of his or her religious beliefs.

[U. S. v. Seeger](#), 380 U.S. 163 (1965); [Fowler v. Rhode Island](#), 345 U.S. 67 (1953); [Thomas v. Review Bd. IESD](#), 450 U.S. 707 (1981).

It can even be a “religion of one,” because [29 C.F.R. §1605.1](#) states:

“Religious” nature of a practice or belief:

“The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee.”

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