

Halton District School Board

Report Number: 22147
Date: November 8, 2022

FOR INFORMATION

TO: The Chair and Members of the Halton District School Board

FROM: S. Taha, Superintendent of Human Resources
C. Ennis, Director of Education

RE: Dress Code Considerations

Background

On September 21, 2022 The Board of Trustees approved the following motion, requiring the Director of Education to bring for information a report about factors to consider when determining whether the development of a staff dress code would be advisable:

M22-0132 T. Ehl Harrison / T. Rocha
Be it resolved that the Director be requested to return to the board by Nov 2022 with a report addressing various considerations regarding dress codes.

This report provides the following considerations:

- whether the imposition of a staff dress code would be permissible from a labour and employment law perspective; and
- whether such a dress code would raise any concerns in relation to the Board's obligations under the Ontario Human Rights Code.

Important to note that the **Ontario Labour Relations Act** imposes a “statutory freeze” during the period when there is no governing collective agreement, which prohibits employers from altering working conditions during negotiations. The HDSB's collective agreements expired on August 31, 2022 and new agreements have not yet been reached. As a result, the HDSB is not in a position to impose a staff dress code during bargaining, but is not restricted from considering dress codes in general.

Implementing a Dress Code as a Reasonable Workplace Rule

As a general rule in unionized environments, employer policies must meet a test established in an Ontario arbitration decision, which requires that a policy must satisfy each of the following substantive requirements:

- (i) the policy must be consistent with the terms of the collective agreement;
- (ii) the policy must be reasonable;
- (iii) the policy must be consistently enforced after its implementation.

With respect to the requirement in (i), the Board's collective agreements with its current bargaining agents do not specifically restrict the Board from making rules regarding employee attire, grooming, or dress. Thus, at least in that respect, the Board is likely able to unilaterally implement a dress code through the residual management rights, provided that such a policy meets the other requirements.

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With respect to the requirement in (ii) and assessing whether an employer's dress and grooming standards are reasonable, arbitrators will often engage in a balancing of the employer's legitimate business interests with employees' interests in personal expression. The employer bears the burden in these cases to establish that the employee's appearance poses a real threat to its business that is more important than the rights of the employee. Evidence of actual lost production or legitimate customer complaints will be required to support such a contention, rather than subjective impressions or speculative claims.

With respect to the requirement in (iii), even where a dress code requirement is generally reasonable, an employer must ensure that the dress code is non-discriminatory in its application, and that it has been implemented in good faith. Dress code and grooming requirements which provide insufficient latitude for employees to comply with religious tenets and beliefs, or which result in differential treatment will generally be found to be discriminatory, and thus, unenforceable. Policies which impose different grooming standards on men and women, or which place additional burdens on members of one gender, will quite often be deemed unenforceable.

Dress Codes and the Human Rights Code

While the Ontario Human Rights Tribunal has acknowledged the ability of an employer to establish dress and grooming standards for the purposes of professional business, and health and safety reasons, the Tribunal has likewise acknowledged that an employer cannot establish standards which, in their application or administration, result in differential treatment on the basis of a protected ground. Where an employer's dress or grooming standards create a discriminatory impact, it will be incumbent on the employer to establish that the standards are a bona fide occupational requirement, most likely on the basis that they are necessary to protect workplace health and safety.

The Tribunal also notes that an employer will have to be prepared to establish that any sex-linked differences within its dress code are bona fide occupational requirements, otherwise they will more than likely be found to be discriminatory.

If an employer's dress and grooming standards place more difficult requirements on female employees relative to those placed on male employees, or require female employees to dress in a manner which is more conventional, such standards could form the basis of a discrimination claim under the Code.

Similarly, it is important to recognize the impact that dress code policies can have on members of the transgender community. Most notably, it is important for employers to make allowances to ensure that these employees are able to express themselves in accordance with their lived gender. To the extent that workplace policies mandate that employees dress in a particular manner, it is important for those policies to be gender neutral in their application, and that they impose similar dress standards and requirements for all employees, regardless of gender.

Concluding Remarks

The Board has requested that the Director of Education provide information on the potential implications which may arise from a decision to implement a staff dress code.

It is clear from the above analysis that the implementation of a formal staff dress code or grooming standards would likely expose the Board to considerable liability. Even if a dress code is implemented for non-discriminatory reasons, it would likely be found to be discriminatory where it adversely affects an employee or group of employees on the basis of their Code-protected grounds.

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Finally, and most importantly, we note that if the employer desires to foster a culture of professionalism, respect, equity and inclusion, a truly reasonable and non-discriminatory dress code or grooming standards would most likely fail to yield the intended results.

Respectfully submitted,

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Superintendent of Human Resources

Curtis Ennis
Director of Education