

Body Art Bias

Is it stopping you hiring the best talent?



Lawyers warn employers over tattoo bias

Whilst it is perfectly legal to have a dress code that requires an employee to have no visible tattoos, this article from *Recruiter* (magazine) looks at the view that employers may be missing out!

New research reveals negative attitudes towards tattoos could result in bosses missing out on talented young workers. Employment lawyers have warned firms that they need a strong business case to support a dress code prohibiting tattoos. Research from workplace experts Acas, released recently, has revealed negative attitudes towards tattoos and piercing by managers and employees can influence the outcome of recruitment exercises within some workplaces. With almost one in three young people having a tattoo, Acas warned that employers risk missing out on this talent pool due to out of date dress codes.

Commenting on the findings of the research, Christopher Tutton, partner at law firm Constantine Law, told *Recruiter* the pressing issue for in-house recruiters is whether rejecting a tattooed candidate might result in legal action.

“The Equality Act specifically excludes tattoos from the definition of disability, so there is no basis for a claim of disability discrimination from a rejected candidate.

“However, as the ACAS report highlights, younger people are significantly more likely to have tattoos. To avoid indirectly discriminating against younger job

applicants, recruiters should be able to justify any recruitment policy that selects against employees with tattoos.

“Again, I would recommend that any justification arguments in relation to your policy on tattoos is stress-tested and reviewed periodically.”

Dr Sybille Steiner, partner solicitor, at law firm Irwin Mitchell, agrees.

She told *Recruiter*: “There are currently no laws that prohibit discrimination against people with visible tattoos or body piercings. Although efforts have been made to make body art a protected class under the Equality Act, such efforts have thus far been unsuccessful.

“Therefore, in terms of recruitment, it does remain a legitimate business decision to have a strict dress code policy which may restrict people with body art joining the business.

“However, following the recent comments made by Acas, employers should ensure that they have a genuine need or business case for making such a decision. As Acas has emphasised, whilst a ban on visible tattoos may be appropriate in some businesses, companies should be mindful that a dress code which places a complete ban on body art may mean that they restrict the diversity of their work force and/or potentially miss out on recruiting talented employees.”

Meanwhile, Christopher Lynn, employment lawyer at law firm Squire Patton Boggs warns employers to ensure that the applicant’s tattoo itself cannot be linked to a protected characteristic, such as a clear illustration of an individual’s religious beliefs.

“Unless there is such a discrimination risk, an individual is unlikely to have any legal claim where they have been rejected for a role, no matter how unfair this might seem.

“Therefore, a strict recruitment policy regarding tattoos that results in the rejection of potentially very strong applicants for a role does not necessarily raise legal issues, subject to the discrimination risk. However, the bigger issue for employers at the moment is missing out on these strong additions to their workforce due to strict recruitment policies, which further reduce their pool of applicants.”