

[HUMAN RESOURCES]

By Stephanie Ramsey

HR REALITY

HR CASE
STUDY #26

CHECK

Yep, the Stories are True!

Scenario: Jacob and Cathy Thomas own a thriving funeral business in the Southeast that consists of multiple funeral homes, a crematory, a pet crematory and a cemetery. Jacob and Cathy employ a large staff who are assigned to work at a specific business, each with their own employee handbooks and standard operating procedures based on the nature of the business. Through the various businesses, they and their team successfully serve approximately 100 families each year. Jacob and Cathy are very proud of what they have accomplished. While dealing with employees can be challenging, they feel they have a strong and talented team that provides exceptional care to their families.

Recently, they faced a unique employee situation they were unsure how to address. They had an employee, Gerald, who had been hired and assigned to work at the pet crematory, apply and successfully obtain a position within one of their funeral home locations. As part of being hired to work at the funeral home location, Cathy provided Gerald with a copy of the employee handbook for the funeral home.

The first day that Gerald appeared at the funeral home to start work, he had diamond studs in his ears, which was a violation of the employee handbook dress code; otherwise, he was dressed properly. Cathy pulled Gerald aside in private and requested that he please remove his earrings and pointed out that it was against the dress code for him to be wearing them. Gerald became agitated and argued that he was able to wear the earrings when he was working at the pet crematory. Cathy calmly replied that while working at the pet crematory there was an entirely different dress code.

At the pet crematory, employees were directed to wear golf polos with the company logo and khaki slacks. Additionally, as the pet crematory had a very casual atmosphere, both men and women were allowed to wear earrings. However, at the funeral home they maintained a more conservative dress code as they perceived that was desired by their families and, therefore, modest earrings could only be worn by women, not the men. Gerald was not pleased with this explanation and proclaimed that it was discriminatory based on sex. Cathy was shocked by his statement and advised him that she was not trying to be discriminatory but rather aware of the conservative nature of the families they served. She advised him that she would research the policy to ensure that it was not discriminatory but once again requested that he remove his earrings to be in compliance with the current dress code. Gerald seemed appeased by her willingness to research the policy and removed his earrings so he could work his shift. Cathy immediately sought the assistance of an HR professional to determine if there was a discrimination issue with



their policy.

WHAT ARE THE RULES?

There are rules that restrict discrimination based on sex. Title VII of the Civil Rights Act of 1964 essentially prohibits discrimination based on race, color, religion, sex and national origin. The Equal Employment Opportunity Commission (EEOC) enforces this law. In addition to Title VII, each state typically has anti-discrimination laws that may be applicable to this situation. It is important to know these laws and how they might apply to your business.

However, employers are allowed to enforce dress codes that are appropriate for their businesses in terms of safety protocols, meeting client expectations or representing the company branding. For example, casinos in Las Vegas and other states have long been allowed to have a dress code for their female drink servers and bartenders, requiring them to wear more revealing outfits, makeup and high heels, while the male servers have more traditional shirts and slacks. In fact, Harrah's Casino in Reno, Nevada, was taken to court by a female employee as she felt it was sexual discrimination to be required to wear makeup (*Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104, 1177 (9th Cir. 2006)). She lost the case.

Courts generally accept that businesses are allowed to have dress codes; whether the dress codes are creating a situation deemed to be sexually discriminating is the concern for employers. The bottom line is that employees must prove that

there is real harm being experienced by the policy. In reviewing the dress code policy that Jacob and Cathy had created for their funeral business, it did not appear that they were causing harm to either sex by attempting to meet the expectations of the clients they served in an industry that is known to have conservative expectations of the individuals providing them services.

DID THE EMPLOYER MAKE ANY MISTAKES?

Cathy and Jacob did not make a mistake by having dress code policies for each of their businesses specific for women and men, nor were they mistaken by enforcing those policies. Cathy also did a good job of handling Gerald in the moment, allowing his concerns to be heard, yet still assuring that the company protocol was followed.

RESOLUTION OF THE ISSUE

Once confident of their policy and position, Jacob sat down with Gerald to discuss the dress code, and specifically the earrings. Jacob took the time to explain that the dress code for the funeral home was specifically crafted to make the families they served during the most difficult time in their life comfortable. With that core philosophy in mind, they do not want themselves or anyone of their team members to create a distraction from the family's loved one. After this open discussion, Gerald appeared more comfortable with the dress code. He also shared with Jacob that he had observed that none of the other men on the staff wore earrings while clocked in. Jacob considered this issue resolved at this point.

PREVENTIVE MEASURES

It may have been beneficial for Cathy or Jacob to have spoken to Gerald before the first day on the job with this new position that the dress code would include the requirement that he remove his earrings during the workday so any concerns or issues he had could have been addressed in advance. But as owners of a large business, Cathy and Jacob had done a nice job establishing the foundation documents to confidently handle this HR issue as it needed to be addressed. •