HR Question

Appearance and Discrimination in Hiring

**Question:** What laws impact an employer’s ability to use appearance in making a hiring decision?

**Answer:** There is no specific law prohibiting an employer from refusing to hire an applicant because the employer does not like how the applicant looks. There are, however, several provisions under Michigan and federal employment discrimination laws that impact such a decision. For example, the Michigan Elliot-Larsen Civil Rights Act specifically prohibits discrimination based upon height or weight. Thus, an employer could not refuse to hire an applicant based upon these criteria unless the employer could demonstrate that a height or weight requirement was a bona fide occupational qualification for the job.

Laws prohibiting discrimination based upon sex, religion and handicap also affect a hiring decision based upon appearance. For example, a no facial hair rule may be the basis for a claim of handicap discrimination if the applicant suffers from a medical condition which requires its victims to grow a beard. If the employer can demonstrate that making the accommodation of permitting the beard will pose a danger to the applicant or others (e.g., if the person would be required to frequently wear a face mask), the no facial hair requirement may stand. Similarly, appearance requirements which differentiate based upon sex may also pose a problem. For example, the U.S. Supreme Court has cited an employer’s requirement that female employees wear makeup, jewelry and have their hair styled was evidence of the employer’s intent to discriminate based upon sex. Additionally, an employer’s rejection of an applicant based upon appearance which was due to religious reasons would be reviewed by balancing the importance of enforcing an appearance requirement against the importance of the appearance issue to the employee’s religious beliefs. Courts have generally upheld the employer’s interest where the appearance requirement is related to safety or health.

Employers are clearly permitted to impose appearance-related criteria which are gender neutral. For example, an employer may legitimately reject male and female applicants who do not maintain clean personal hygiene, do not wear proper business attire or do not keep their shoes polished and clothes pressed. Similarly, employers may reject both male and female applicants who dye their hair in unnatural colors or wear rings in parts of their bodies other than their ears. In addition, employers may establish sex-specific grooming requirements as a condition of hire, provided such requirements are enforced for both genders and that the requirements do not burden one sex more than another. For example, a requirement that men wear their hair above the collar is enforceable as part of grooming requirements that address both sexes. Similarly, courts have held that an employer can refuse to consider men who wear earrings or appear in dresses or skirts.

Some employers may wish to take the relative attractiveness of an applicant into account when making a hiring decision. Particularly where a position involves dealing with the public, an employer can use attractiveness as a criterion in hiring.

Nonetheless, given the subjectivity of attractiveness as a basis for a hiring decision, the employer must use extreme caution to avoid claims of employment discrimination by rejected applicants. Thus, it is unwise for an employer to make attractiveness the sole or predominant criterion for a hiring decision.

*By Janet E. Lanyon*