

Miller Canfield, Employment Law Alliance Poll Shows Public Divided on Regulating Appearance in the Workplace

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The latest national survey released by the Employment Law Alliance (ELA), the world's largest network of employment and labor lawyers to which Miller Canfield belongs as the state representative, reveals a nation deeply divided over employers regulating appearance – from weight, clothing, hairstyles, and body piercing.

“Michigan is one of a few areas in the U.S. with appearance discrimination laws,” said Thomas P. Hustoles, employment law attorney at Miller, Canfield, Paddock and Stone, P.L.C. “Michigan’s Elliott-Larsen Civil Rights Act bans discrimination based on height and weight.”

The rash of recent national cases includes an Atlantic City casino that was sued over a requirement that cocktail waitresses undergo weekly weigh ins, and a \$40 million settlement involving a national, trendy clothing retailer accused of appearance-based personnel practices. One of the few published court opinions on the subject of weight discrimination was recorded in the Michigan Court of Appeals in the case of Lamoria v Health Care & Retirement Corp, a wrongful termination action alleging age and weight discrimination.

The recent “America at Work” poll questioned 1,000 American workers on their views on appearance-based discrimination. Here are the major findings of the poll, which has a confidence interval of +/- 3.1%.

- 39% said employers should have the right to deny employment to someone based on appearance, including weight, clothing, piercing, body art, or hair style.
- 33% said that in their own workplace workers who are physically attractive are more likely to be hired and promoted.
- 33% said workers who are unattractive, overweight, or generally look or dress unconventionally, should be given special government legal protection such as that given persons with disabilities.
- Of the 39% who said employers should have the right to deny employment based on looks, men outnumbered women 46% to 32%. And whites outnumbered non-whites 41% to 24%.

The workers were also asked if they had any relevant personal experience.

- 16% said they had been the victim of appearance-based discrimination.
- Of those, 38% said the discrimination was based on their overall appearance while 31% said it was their weight, and 14% said it was a reaction to their hairstyle.
- 33% of those saying they had been discriminated against said it was for some other reason.

“Employers and employees struggle with the tension between a company's desire to define its image through the appearance of its employees and an employee's desire to express individuality,” said Megan P. Norris , co-leader of Miller Canfield’s Labor and Employment Group. “Employers need to be mindful of legal restrictions against discrimination based on factors such as height and weight, but employees need to be equally mindful that they are often the face of the company and must present themselves in a way that is not inconsistent with their jobs.”

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The poll showed that roughly half the nation's employers have no policy or regulation that addresses employee personal appearance. "Employers need to take the same steps they have taken against other forms of discrimination in the workplace, such as sex and race discrimination – putting in place policies, training employees, preventing harassment – to make sure that weight or appearance discrimination does not occur," said Hustoles.

Hustoles also points out that in general, employers have the right to impose appearance standards, as long as there is a legitimate business need, such as maintaining the company's image.

This poll was conducted in March 2005 by the Media, PA market research firm of Reed, Haldy, McIntosh & Associates.

The Employment Law Alliance is the world's largest integrated, global practice network comprised of independent law firms distinguished for their practice in employment and labor law. Miller Canfield is the ELA representative for the state of Michigan. For further information, including access to the survey charts and graphs, visit www.employmentlawalliance.com.

The 340-attorney law firm of Miller, Canfield, Paddock and Stone, P.L.C. was established in Detroit in 1852 and has offices in Ann Arbor, Detroit, Grand Rapids, Howell, Kalamazoo, Lansing, Monroe, and Troy, Michigan. Other offices are located in New York City, Pensacola, Florida, Washington, D.C., Windsor, Ontario, and in Gdynia, Katowice, and Warsaw, Poland.