

Banning Visible Political, Philosophical or Religious Signs in the European Workplace – Does Your Policy Need Updating?

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The highest court of the European Union recently issued two judgments allowing employers to ban the visible wearing of political, philosophical or religious signs at the workplace (Judgment of the Court of Justice of the European Union in case [C-157/15](#) and in case [C-188/15](#)). If you have a policy in place for your EU-based employees that touches upon the wearing of political, philosophical or religious signs, you should verify whether that policy is in line with this latest interpretation of the principle of equal treatment.

On 14 March 2017, the European Court of Justice ruled that “an internal rule of an undertaking which prohibits the visible wearing of any political, philosophical or religious sign does not constitute direct discrimination”. The two cases concerned the dismissal of two women for wearing the Islamic headscarf, which was prohibited by the employer. The Court decided that wearing the Islamic headscarf could be banned without constituting discrimination, but only as part of a general policy barring all religious and political symbols. Furthermore, that policy must have a legitimate aim such as, for example, pursuing neutrality in the relation with customers. Lastly, such a policy must be achieved through appropriate and necessary means.

However, if the employer has not adopted a policy barring political, philosophical or religious signs, customers cannot demand employees to remove their headscarf. The Court ruled in this respect that the willingness of an employer to take account of the wishes of a customer no longer to have the services provided by an employee wearing a headscarf is not a legitimate aim. As a consequence, this would constitute discrimination.

In the U.S., federal and state anti-discrimination statutes would yield a somewhat different result. In general, a U.S. employer would be required not to maintain any policy barring the display of certain religious signs, even to the extent that such display would be inconsistent with an employer’s branding or image. For example, recent federal court cases have held that an employer’s prohibition of head scarves or even certain hairstyles violates U.S. federal law barring discrimination on the basis of religion. Similar to the EU, U.S. courts have also held that customer preference is not a legitimate basis to justify what otherwise would be discriminatory.

If you need additional guidance, an employment attorney will be able to provide guidance both on EU and U.S. aspects of dress code policies in the workplace.