

Checklist: Can My Company Ban That?

Topics:

PERSONAL APPEARANCE

OFF-DUTY CONDUCT

SOCIAL MEDIA

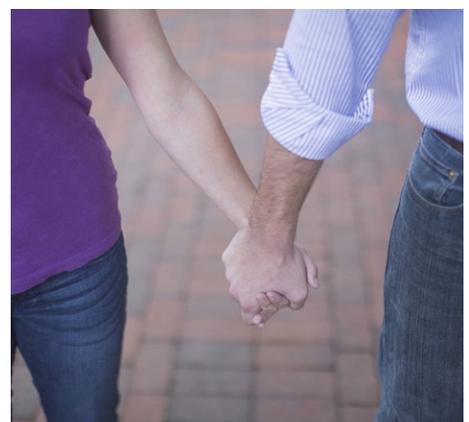
CELL PHONE USE

SMOKING & E-CIGARETTES

WEAPONS

WORKPLACE DATING

FOREIGN LANGUAGES



Michelle Antonucci
michelle.antonucci@adp.com
781-697-6619

1. Personal Appearance



Typically, personal appearance policies address appropriate versus inappropriate dress, restrictions on body art and piercings, and grooming and hygiene issues. Consider these guidelines when developing your policy:

- ✔ **Base the policy on your business needs.** Explain the business reasons for adopting the policy and consider your company culture.
- ✔ **Evaluate possible restrictions.** You might decide to have different rules for employees who have contact with the public versus those who don't.
- ✔ **Consider nondiscrimination laws.** Some sincerely held religious practices involve head scarves, facial hair, tattoos, or piercings, and a reasonable accommodation may be required.
- ✔ **Provide examples of appropriate and inappropriate clothing.** Provide examples consistent with your company's culture and brand.
- ✔ **Train supervisors.** Train supervisors on how to handle situations in which dress code violations are a result of an employee's sincerely held religious beliefs or due to other protected reasons.

2. Off-Duty Conduct



There are a number of states that expressly protect legal off-duty conduct, such as smoking or the consumption of alcohol. Disciplining or taking any other negative action against an employee for legal off-duty conduct is sometimes referred to as “lifestyle discrimination.”

-  **Avoid discipline for off-duty conduct.** Even in states that do not expressly prohibit lifestyle discrimination, avoid disciplining or terminating employees for legal off-duty conduct.
-  **Address performance issues.** If an employee’s off-duty conduct is impacting performance, address it from a performance perspective. Follow your company’s disciplinary action and performance improvement protocol.

3. Social Media



Under Section 7 of the National Labor Relations Act (NLRA), employees have the right to act together to improve wages and working conditions and to discuss wages, benefits, and other terms and conditions of employment. Restrictions on social media cannot infringe on these rights. Here are some additional guidelines to consider:

-  **Craft policies carefully.** You may generally advise employees that they cannot use social media to engage in actions that would otherwise be impermissible (e.g., misusing confidential business information, infringing on intellectual property rights, or harassing another employee). Word these policies carefully to ensure they do not infringe on Section 7 rights.
-  **Evaluate situations carefully.** When deciding whether to terminate, discipline, or take any other employment action against an employee for social media postings, carefully consider whether the employee's activity is protected under the NLRA.
-  **Don't access employees' personal accounts.** There are a number of states that expressly prohibit employers from asking employees, and applicants, for login information to their personal social media accounts. Regardless of your state, avoid requesting this information.
-  **Continue to monitor** NLRB developments. Guidance is evolving in this area. Stay on top of the [National Labor Relations Board](#) (NLRB)'s current position.

4. Cell Phone Use



Cell phones and other mobile devices in the workplace can cause distractions and raise privacy and security concerns. For this reason, many employers choose to address the following in a written policy:

-  **Acceptable use.** Many employers permit occasional use at work, provided it doesn't interfere with the employee's productivity. Consider developing rules on when and where mobile devices may be used and ask employees to silence their phones during meetings, or in locations where incoming calls or texts can cause disruption.
-  **Company and personal devices.** Determine whether or not employees are allowed to use company-issued devices for personal reasons. Additionally, provide security guidelines for employees who use their own devices to access company email and other company information.
-  **Cell phone use while driving.** For safety reasons, provide employees who drive with guidance on how they should handle calls and other work-related tasks while on the road, such as using a hands-free device or safely pulling over to make and receive calls.

5. Smoking & e-Cigarettes



Many states ban smoking tobacco in the workplace, certain outdoor spaces, and within a certain distance from building entrances. Some states also expressly cover e-cigarettes. Regardless of your location, you are free to prohibit smoking in the workplace and on company property.

-  **Clearly communicate smoking bans.** Distribute your smoking policy to employees and post no smoking signs on company property.
-  **Review your state law.** Remember that many state laws prohibit smoking within a certain distance of entrances and ventilation systems. Make sure your policy is consistent with state and local smoking restrictions.
-  **Update policies to address e-cigarettes.** Due to e-cigarettes' growing popularity, employers may want to update their smoking policies to expressly prohibit the use of e-cigarettes in the workplace.

6. Weapons

To help prevent workplace violence, many employers have weapons-free workplace policies. While there is no federal law regulating weapons at private workplaces, some states have laws designed to protect gun owners. Consider the following:

-  **Keep state laws in mind.** Some states permit employees to store firearms in their locked privately owned vehicle parked on company property (known as “parking lot laws”).
-  **Prohibit weapons in the workplace.** Parking lot laws do not require employers to allow employees to bring firearms into the workplace or company-provided vehicles. Prohibit employees from bringing weapons into company buildings, offices, and worksites.
-  **Develop a workplace violence policy.** Make it clear that threats or violent acts in the workplace are prohibited and avoid discriminating or retaliating against workplace violence victims.

7. Workplace Dating



While it may be difficult to enforce an outright ban on employees becoming romantically involved, there are certain measures you can take to limit negative consequences. Consider the following:

-  **Avoid conflicts of interest.** Discourage workers from entering relationships when there might be a conflict of interest, such as a supervisor-employee relationship.
-  **Consider your approach.** Some employers require employees to disclose their relationship to the company. Other employers choose to take a more of a hands-off approach, responding only if the relationship negatively affects the workplace.
-  **Implement an anti-harassment policy.** Provide examples of prohibited conduct, address consequences for violating the policy, and establish a clear procedure for employees to raise concerns.
-  **Develop an effective complaint process.** Encourage employees to promptly report inappropriate conduct, whether they are a victim or a witness. If an employee is not comfortable reporting an incident to their supervisor, make sure the employee has the contact information for an HR representative or another manager trained on how to respond.

8. Foreign Languages

Generally, policies requiring employees to speak only English at all times violate Title VII of the Civil Rights Act. While it is not a best practice to have an English-only policy, rules that require employees to speak only English at certain times may be allowed as long as certain conditions are met.



Evaluate business necessity. When considering an English-only policy, assess whether it's reasonably necessary. The Equal Employment Opportunity Commission says an English-only policy may be permitted:

1. When communicating with customers or coworkers who only speak English;
2. During emergencies or other situations when workers must speak a common language to promote safety;
3. During cooperative work assignments where the rule is needed to promote efficiency.



Avoid singling out specific languages. English-only policies cannot prohibit employees from speaking certain languages.



Draft policies carefully. If you do choose to develop English-only policies, draft them carefully and apply them in accordance with the law.

Contact Michelle Antonucci
michelle.antonucci@adp.com
781-697-6619

This content provides practical information concerning the subject matter covered and is provided with the understanding that ADP is not rendering legal advice or other professional services. ADP does not give legal advice as part of its services. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. This material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable law in your jurisdiction and consult experienced counsel for legal advice.

©2015 ADP, LLC. All Rights Reserved. ADP, the ADP Logo and HR411 are registered trademarks of ADP, LLC.