

THE LEGAL IMPLICATIONS OF IMAGE BASED DECISIONS IN TODAY'S ORGANIZATIONS

Amy Hanson, Argyros School of Business and Economics, Chapman University, One University Drive, Orange, CA 92866, (714) 628-7312, ahurley@chapman.edu

Cristina Giannantonio, Argyros School of Business and Economics, Chapman University, One University Drive, Orange, CA 92866, (714) 628-7320, giannant@chapman.edu

ABSTRACT

Recent court cases and settlements, most notably Abercrombie and Fitch, suggest that image discrimination is an emerging aspect of employment law. Image discrimination occurs when organizations attempt to hire applicants whose physical appearance is consistent with the company's organization image, its product image, and/or customer preferences. Discrimination on the basis of image or physical appearance has the potential to violate several employment laws.

While the role of physical attractiveness in employment decisions has received fairly strong research support, the role of image has received limited academic attention. A person's image is the totality of their personal appearance. Applicants, as well as organizational members, form perceptions about the importance of image, personal appearance, and physical attractiveness in the workplace. While these perceptions may reflect occupational and organizational stereotypes, they also become the basis for image norms. An *image norm* is the belief that individuals must present an image that is consistent with occupational, organizational, or industry standards in order to be hired or promoted.

The purpose of this paper is to examine the formation and operation of image norms from both an individual and an organizational perspective. The legal implications of image norms for human resource management are discussed in the context of image discrimination and appearance requirements.

INTRODUCTION

While image is not a federally protected characteristic, discrimination on the basis of image or physical appearance has the potential to violate several employment laws including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act. The increasing number of image discrimination lawsuits suggests that organizations and Human Resource managers will need to examine how physical attractiveness effects may impact their hiring and promotion decisions. Recent court cases and company settlements suggest that appearance requirements and policies should be examined to avoid image discrimination.

In the United States a few jurisdictions have outlawed discrimination based on physical appearance. For example, in Washington D.C. personal appearance is a protected class where personal appearance is defined as "the outward appearance of any person irrespective of sex with regard to bodily condition or characteristics, manner or style of dress, and manner or style of grooming including but not limited to hair styles and beards" [3].

Examining image effects may increase our understanding of the role of appearance in hiring and promotion employment decisions. It also allows for a situation where an individual may be physically

attractive, but they may not possess the appropriate image for a certain job or company. It is hypothesized that employment decisions may be based on a more general assessment of an individual's image, rather than an evaluation of any one specific physical characteristic. For example, while recruiters would not be expected to say "You are not pretty enough to work here", their evaluations of candidates may be influenced by their desire to hire applicants whose physical appearance is consistent with the company's organization image, its product image, and/or customer preferences.

Applicants, as well as organizational members, form perceptions about the importance of image, personal appearance, and physical attractiveness in the workplace. While these perceptions may reflect occupational and organizational stereotypes, they also become the basis for image norms. An *image norm* is the belief that individuals must present an image that is consistent with occupational, organizational, or industry standards, in order to be hired or promoted. Image discrimination may occur when employment decisions are based on image norms.

IMPLICATIONS FOR INDIVIDUALS

Both individuals and organizations need to consider the effects of image norms on employment decisions. Individuals need to consider the effects of image norms on their occupational and organizational choices. Individuals' beliefs about their own image, as well as the perceived demands for projecting a specific image in certain occupations, organizations, and industries may influence the decision to pursue or avoid different career paths. Occupations and organizations may not be pursued if the individual believes internal and external messages about the importance of projecting a certain image for entry or advancement into certain jobs and companies. Applicant pools and labor market participation rates may be unnecessarily restricted if candidates self select out of jobs and companies based on inaccurate image norms or inaccurate perceptions about their own image.

Image norms may also influence individuals' behavior during the job application process. Applicants may engage in numerous impression management techniques to enhance the perception that they meet the image norms required to work in certain jobs. Job incumbents may also engage in impression management techniques to increase their chances of promotion and advancement if they believe career success is dependent on meeting image requirements. Image norms may also play a role in the occupational and job choice decisions of individuals at several stages in their career. Individuals should examine the role of image norms throughout their careers.

IMPLICATIONS FOR ORGANIZATIONS

Organizations need to consider the effect of image norms on their selection and promotion decisions. This includes examining how image norms are directly and more subtly communicated. Image norms may explicitly operate within organizations if physical attractiveness standards are applied to hiring and promotion decisions. Image norms may also operate in a more subtle fashion. Hiring and promotion decisions should be examined for signals about the perceived importance of image for entry and advancement in the organization. In times of labor shortages, it would be unfortunate to lose qualified candidates and valued employees because of misperceptions about hiring and promotion standards. Unlike earlier career system models where individuals hoped to stay with one company for their lifetime of work, newer career system models suggest individuals may see changing careers as important to their career success [1] [2]. Because of this, organizations need to be very cognizant of the image they are portraying not just to potential applicants but also to current employees.

Organizations must examine their recruiting materials for potential sources of image norms. Messages about the importance of physical attractiveness and image may reside in seemingly neutral recruiting materials. Recruiters and other organizational representatives should be trained to be aware of the potentially biasing effects of image norms, and the myriad ways these messages can be communicated to potential job applicants. Finally, companies should consider how their organizational images reflect image norms; and whether these image norms are consistent with the impressions they want applicants and future employees to form of their organizations.

LEGAL IMPLICATIONS

Organizations need to consider the possible legal ramifications associated with image norms. While physical attractiveness is not a recognized Bona Fide Occupational Qualification, it appears that image norms may underlie image discrimination lawsuits. Image norms that are a pretext for engaging in discrimination based on sex, color, race, religion, or national origin seem likely to violate Title VII of the Civil Rights Act of 1964. Image norms may also violate the American with Disabilities Act. While unattractiveness has not been recognized as a disability under the ADA, image norms based on health or fitness may violate the provisions of the Act. Image norms concerned with youth and vitality may violate the Age Discrimination in Employment Act if candidates feel the work environment would not be comfortable for employees over the age of forty. Applicants may not pursue employment opportunities where they do not feel comfortable fitting in with younger, more attractive employees.

Organizations must consider the legal implications associated with enforcing dress and appearance policies. Policies regarding dress, grooming, jewelry, piercing and tattoos should be carefully drafted and reviewed by a legal firm to avoid disparate treatment or violate religious freedom. It is extremely important that personal appearance policies are applied to all employees equally. Of course organizations do have rights regarding personal appearance and image where issues of safety are concerned. For example, men and women with long hair can be required to pull their hair back and up in a manufacturing plant to avoid injury. Other examples include nurses no longer being allowed to wear artificial nails in hospitals due to the death of newborns from the fungus under their nails.

Employers may legally enforce a dress and appearance policy to promote their specific company image. However, managers should make every attempt to make reasonable accommodations to avoid the perception and reality of image discrimination. Image norms appear to have several legal implications in the context of image discrimination and appearance requirements. Recent court settlements suggest that image discrimination may have both financial and social reputation costs for companies and present legal challenges for organizations. An understanding of how image norms form and operate in firms offers one avenue for understanding image discrimination.

REFERENCES

- [1] Ackah, C. & Heaton, N. Human resource management careers: Different paths for men and women, *Career Development International*, 2003, 8:134-142.
- [2] Baruch, Y. Transforming careers: from linear to multidirectional career paths, *Career Development International*, 2004, 9: 58-73.
- [3] McDonald, J.J. Civil rights for the aesthetically challenged. *Employee Relations Law Journal*, 2003, 29: 118-129.