

She's Got Looks that Kill

By Reg P. Wydeven
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Last week I wrote about Title IX and its tremendous impact on leveling the playing field for women in academic institutions, especially in the world of sports. The U.S. Supreme Court now affords whistleblowers protection under Title IX from being reprimanded by their employers if they claim gender-based discrimination exists at their school. While this was a huge victory for women's rights, the war is far from over.

Just ask Darlene Jespersen, who was fired from her job as a casino bartender because she refused to wear makeup. Jespersen worked for Harrah's Operating Co. in Reno, Nevada, for nearly 20 years and she received exemplary performance evaluations during her time there. Female beverage servers that worked at Harrah's were encouraged to wear makeup, but were not required.

That all changed in 2000, however, when the company announced its goal of a "brand standard of excellence." To carry out this goal, Harrah's implemented its "Personal Best" image policy that made it mandatory for female bartenders to use nail polish and wear their hair down and either "teased, curled or styled." The rule was later changed to include a requirement to wear makeup, which was defined as "foundation/concealer and/or face powder, as well as blush and mascara," plus lip color.

Meanwhile, male bartenders also had to comply with Harrah's new image standards by wearing their hair above the collar and keeping their nails clean and neatly trimmed. Men were forbidden to wear makeup, ponytails or nail polish.

Jespersen briefly tried to comply with Harrah's new policy by wearing makeup, but she soon stopped because she felt it "forced her to be feminine" and to become "dolled up" like a sex object.

Harrah's fired Jespersen in July of 2000 for failing to comply with the makeup requirements. Jespersen sued Harrah's, alleging their actions amounted to sex discrimination because their "Personal Best" image policy imposed an unequal burden on women. Jespersen claimed that because cosmetics are very expensive and require a significant amount of time to apply, it was harder for women to comply with Harrah's image policy than men.

The district court disagreed with Jespersen and granted Harrah's motion for summary judgment. Jespersen, therefore, appealed to the 9th Circuit Court of Appeals. In a 2-1 panel decision, the 9th Circuit agreed with the lower court and ruled in favor of Harrah's, dismissing Jespersen's claim that the image policy imposed an unfair burden on women.

With the backing of the American Civil Liberties Union, Jespersen is thinking of appealing her case to the U.S. Supreme Court. She may be joined there by Kimberly Cloutier, who was fired by Costco for refusing to remove her eyebrow ring. Cloutier claims her firing amounts to religious discrimination because she is a member of the Church of Body Modification.

This church was formed in 1999 and has about 1,000 members, all of whom participate in practices such as body piercing and tattooing. Costco claimed that Cloutier's beliefs are political or social, not religious. The 1st Circuit Court of Appeals agreed and ruled in Costco's favor. Cloutier already filed a petition asking the Supreme Court to review the case.

Apparently the women's rights movement needed these two setbacks about as badly as Kimberly Cloutier needed another hole in her head.

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