# Tattoos and Piercings in the Workplace

Tattoos, Crayola-coloured hair, and prolific facial piercings were once a look reserved for punks, goths, and other subculture groups, but these body modifications have become commonplace in mainstream Canadian culture. For example, approximately one in five Canadians has a tattoo.

Despite the growing popularity and public acceptance of tattoos, many workplaces still prefer that their employees do not have visible tattoos or piercings beyond their ears. But as an increasingly tattooed and pierced generation comes to dominate the workforce, so too do their sensibilities about acceptable presentation and self-expression.

This raises the question: Do employers have the right to discriminate based on body modifications such as tattoos and piercings when hiring employees?

## Appearances and Hiring in Canada

Given Canadian culture’s growing celebration of differences, it may surprise you to learn that, when it comes to hiring, **employers have the right not to hire someone because they are tattooed or heavily pierced**. So long as the tattoos or piercings are not part of an ethnic, religious, or tribal custom, the Human Rights Act and the Charter of Rights and Freedoms do not apply to employers’ hiring choices with regard to body modifications.

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However, once an employee is hired, employers do not have the same right to impose strict rules regarding visible tattoos and piercings.

Employers do have the right to exercise their own discretion when asking their employees to remove piercings or cover up tattoos. However, significantly restrictive rules concerning piercings and tattoos should have a reasonable business purpose. Therefore, employers should ask themselves if their rules relate to the achievement of their company’s purpose.

Recent decisions from Ontario and Quebec judges have begun to clarify the limits of employers’ discretion when setting workplace policies concerning tattoos and piercings.

In 2013, the Ottawa Hospital changed its dress code to require all staff (including those who did not work directly with patients) to cover all “large” tattoos. The new policy also required that staff remove “excessive body piercings.” The Ottawa Hospital argued that patients were less comfortable with tattooed and heavily pierced health-care workers and that this could lead to stress and negative health outcomes. Although the hospital argued that these measures were to ensure better patient health, the arbitrator found that the new regulations were too restrictive. Moreover, the arbitrator could find no evidence to support the supposed link between hospital workers’ body modifications and patients’ health outcomes, and the policy was subsequently found to be unenforceable.

The Ottawa Hospital decision was consistent with a 2011 arbitrator decision that found an Ontario Provincial Police policy requiring all 9,000 of its police officers to cover visible tattoos was too broad to be enforceable.

Going further back, in 2009, a Quebec judge determined a daycare’s prohibition on visible tattoos to be unreasonable. The judge granted that, although it was fair for the daycare to prohibit visible tattoos with inappropriate images for children, their insistence that an employee with a butterfly on her arm wear long sleeves in the summer was unfair.

## Tattoo and Piercing Workplace Policies

Employers should consider whether having employees with visible tattoos and/or piercings is likely to negatively impact their business interests.

Naturally, an employer does not want their employees’ appearance to be upsetting or off-putting to their clients or customers. It is fair for employers to require employees to cover tattoos that are inappropriate, such as tattoos that depict hateful messages, graphic violence, or sexuality. Asking an employee to cover offensive tattoos is fine, but sweeping prohibitions on tattoos and piercings may be found to be unreasonable if brought to court.

Workplace tattoo and piercing policies should

* Be applied consistently across race and gender
* Never discriminate based on religious or ethnic beliefs
* Distinguish between employee roles (that is, those who do and do not interact with customers or clients)