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## LawTalk Blog



# Denied employment for having a tattoo?

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At Andersons, we work with many clients who have suffered workplace discrimination for a variety of personal characteristics. Some of these characteristics include race, sexuality, age and gender. But can an employer or prospective employer discriminate on the basis of your appearance?

This question comes up more often than you might think. In 2015 the Supreme Court of the United States (arguably the highest court in the world) ruled in relation to a case of a Muslim woman denied employment at a fashion company because her head scarf and appearance did not meet the company's 'look policy'. The Court found that this discrimination by the fashion company violated the woman's civil rights.

Of course, our law is different to US law, but discrimination based on your appearance is prevalent in Australia. The general rule is that an employer is able to discriminate against a worker or prospective worker if they do not fit a certain look that the company is attempting to exude.

Workers with visible tattoos often experience discrimination that they think is unfair. But as the law presently stands, if you're thinking about getting a tattoo, be mindful that an employer is able to base their decisions about your employment prospects on the appearance of tattoos.

A young woman who had previously worked in an orthodontist's office and a health food store sought employment for an airline company. She had a small tattoo on the inside of her right ankle, no bigger than a 10 cent piece. She met all the criteria for employment with the airline company and was close to being offered the job – she certainly did not consider that the small symbol on her ankle would stand in the way of her prospective employment.

*"... the airline was able to discriminate against this woman based on her tattoo..."*

However, the airline was able to discriminate against this woman based on her tattoo because of their specific policy regarding the look of their employees. The airline submitted that numerous cultures and religions find tattoos confronting and offensive and the young woman was advised to reapply when the tattoo has been completely removed. The tattoo removal process can take up to 18 months and is not always successful.

The issue regarding this type of potential discrimination is obviously problematic. According to a study commenced by the National Health and Medical Research Council in 2012, 1 in 7 Australians has at least 1 tattoo on their body.

So it's important to remember that generally, physical appearance is not a protected attribute under the *Fair Work Act* and/or anti-discrimination law. There may be exceptions to the rule and all laws are subject to interpretation. If the wearing of tattoos is an expression of that person's race, colour, nationality, or ethnic origin then any requirement that has the effect of impairing your freedom of expression may constitute a breach under legislation like the *Racial Discrimination Act*, *Fair Work Act*, and *Equal Opportunity Act*.

A common example relates to Maori employees who wear tattoos with cultural pride. It is reasonable for those tattoos to be sufficiently connected to ethnic origin and any denial of employment, or any other form of discernment, could be considered discrimination on the grounds of race, or ethnicity.

These following places of employment have specific policies regarding tattoos:

- **Australian Army** – tattoos prohibited on the face, scalp, ears, neck and hands;
- **Australian Air Force** – tattoos prohibited on the face only;
- **Australian Navy** – tattoos prohibited on the face, scalp ears and neck;
- **Australian Federal Police** – tattoos prohibited on the face and 'common-sense should prevail' for tattoos on other parts of the body;
- **SA Metropolitan Fire Service** – visible tattoos must not be excessive or offensive...a full sleeve tattoo is potentially offensive.

So if you have been the victim of discrimination in the workplace, please contact today's blog writer [Michael Irvine](#). Research for this blog has been performed by PLT student [Matthew Rismondo](#).

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*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*