

## Management Implications of Tattoos, Piercings, and Other “Body Art”

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Tattoos, piercings, branding, and skin stretching—collectively called “body art”—are nothing new. They’ve existed for over 5,000 years and are ubiquitous in some regions and cultures of the world. In the United States, popularity of “body art” among young adults has soared in recent years and what was once associated with criminals, drug addicts and gang members, is now a common sight on college campuses, in shopping malls, community centers, *and at the workplace*.

Today nearly 50 percent of Americans age 18 to 35 have at least one tattoo or body piercing—a figure that’s doubled since 2006, according to the American Academy of Dermatology. Body art crosses the socio-economic spectrum and markings are becoming larger and more exposed. Young people claim body art is a form of “personal expression,” chosen or designed to represent something about the bearer. For the urgent care operator, this rising incidence of “body art” poses some interesting legal, management, and marketing questions.

Consider the following scenarios:

- A young man applying for a back office lead position has all the “right stuff”—licensed paramedic with solid work experience training medical assistants, eager to take on evening and weekend shifts, and an extraverted personality. Yet far more apparent than his qualifications are the “sleeve” tattoos that completely cover both arms. The urgent care center appeals to a conservative suburban clientele—*soccer moms*—so the physician-owner is rightly concerned that the paramedic’s appearance may intimidate or put off some of her patients. Is appearance alone a sufficient reason to pass over the applicant? Skilled people are hard to find—is there any solution, such as asking him to wear a long-sleeve shirt all seasons of the year?
- A front office associate with five years tenure—a mediocre but generally reliable employee—shows up to work one day with a small gold loop in her right nostril. The center operator is displeased but doesn’t say anything because he doesn’t want to upset her. He figures it’s a passing “phase.” The employee is not from an ethnic or cultural background associated with such adornments. Rather, she boasts that she’s “expressing her individuality.” A few weeks later the same employee shows up with a cross tattooed on her forearm and a few months after that, she has inserted gauge plugs to stretch her earlobes. The center medical director—whose religious affiliation classifies such “expression” as prohibited “self-mutilation”—is clearly uncomfortable with her changing appearance, the negative perceptions he believes it creates for patients, and the permissive “message” he thinks it sends to fellow employees. Did he miss an opportunity to say something early on? Is it too late to ask her to remove or cover the piercings? She’s never been a strong performer—can he fire and replace her with someone whose appearance better reflects his aspirations for the center’s “brand?”

When it comes to both official policies and less obvious prejudices or stereotyping which may exist only in the minds of individual managers, one primary theme dominates the workplace—that *employees should present a “professional appearance” representative of the urgent care center’s owners and providers*. Whether or not one agrees, the fact remains that feelings on this issue run strong and must be addressed by urgent care operators.

### Legal Implications for the Urgent Care Operator

Many urgent care operators are concerned that visible tattoos and body piercings such as nose rings and tongue studs may offend some of their patients and employees. Federal law prohibits discrimination in the workplace based on race, skin color, religion, sex, national origin, disability, veteran’s status, age, and genetic information. While tattoos and piercings may be examples of employee “self-expression,” they generally are not recognized as indications of religious or racial expression and, therefore, are *not protected* under federal anti-discrimination laws.

As a general rule, employers have a lot of discretion in setting appearance standards that have a basis in social norms. Policies against employees having tattoos or piercings on the face, neck, hands, or uncovered arms are allowable and

not considered to be discriminatory in nature. If, however, those policies differ between the sexes such as allowing “body art” for men but not for women, there may be valid grounds for a discrimination action. For instance, one employer was found to have an illegal gender-based discriminatory policy when it allowed male employees to have tattooed forearms, but discharged a female employee for getting the same. To be illegal, this type of policy must be clearly gender biased and not related to the content of the tattoo. A visible tattoo which is deemed to be vulgar, obscene, or hate oriented (such as a swastika) can be legally discriminated against in any circumstance.

Tattoos which appear on the neck, hands, or face (regardless of their content) may be easier for employers to single out and disallow due to the historic and deep rooted meanings associated with these tattoo placements. Public perception is that such tattoos are indicative of “unsavory behavior” like gang affiliation, drug use, or former imprisonment. Even if the tattooed individual does not fall into one of these categories, the employer can reasonably argue that members of the community will infer that they do and that the center’s reputation will be harmed if represented by such employees.

### **Drafting a Human Resources Policy**

While tattoos and piercings have gained acceptance in some business settings and regions of the country, they are less likely to be tolerated in more traditional workplaces like medical practices and specifically, urgent care centers. Patients presenting for an immediate medical problem need to quickly attain a high level of confidence in a center’s providers and staff. Anything that signals a “less-than-professional” experience or detracts from a patient’s positive perceptions must be addressed by the center operator to maintain patient loyalty and positive word-of-mouth.

To protect against charges of discrimination, urgent care operators should not impose standards that do not have this legitimate business justification. When drafting a formal policy, one of three options is possible:

- Most employers with policies dealing with tattoos and body piercings limit restrictions to employees who have contact with the public, and then only require that the tattoos and piercings *not be visible*.
- Other employers limit tattoos and piercings to “tasteful” adornments. While this approach may seem more flexible, it also requires case-by-case interpretation, increasing the possibility for inconsistency in implementation.
- A few employers flatly refuse to hire people who have tattoos or piercings. This policy may be legal, but it also will be viewed as “out-of-touch” by many younger applicants and may discourage them from seeking jobs with those practices.

Key is that the policy be clearly worded, written, communicated to all new and existing employees—and then *enforced in a timely, consistent manner*. Requiring Heather to cover her neck tattoo but allowing Tia’s 10 earrings, or waiting six months to say something about Mike’s new “self-expression”—particularly at a time his job performance has declined—will be taken as “singling out,” “picking on,” or “discriminating against” an employee and may open the center to liability.

Every day the urgent care center operator should be cognizant of the appearance of staff and if deviations from appearance standards occur, corrective action must be immediate—even if it entails sending an employee home to change or cover-up. It’s becoming fairly common in restaurant, retail, hotel and other service settings to see workers adorned with band-aids, bandages, sweatbands and other devices to conceal visible tattoos and piercings—even if inexperienced bystanders wrongly presume the employee has been “injured.”

### **Conclusion**

“Times they are a changing” and urgent care operators today are stuck in a conundrum of compliance with a growing list of employment regulations, creating an “inclusive” workplace that attracts and engages capable talent, while also cultivating and protecting the “brand image” that will spur repeat business and positive word of mouth. Although urgent care operators cannot control the fads and fancies of younger generations, they can “balance” the law, morale and patient experience through clear, fair, and consistently-enforced human resources policies.