

THE LAW SAYS I HAVE TO DO *WHAT?*

QUESTION: One of our employees, Spike, has a gigantic tattoo down his arm that says “white pride.” Spike has worked for us for several months, but his supervisor had never seen the tattoo because Spike has been wearing long sleeves all winter. Now that it has started getting hot out, Spike wore short sleeves yesterday and the tattoo was the topic of gossip throughout the warehouse. Almost all of Spike’s co-workers, many of them people of color, complained immediately to his supervisor about the tattoo because they found it highly offensive. Some employees even said they are afraid to be around Spike now that they are aware of his pro-white stance.

Spike’s supervisor informed him that he would have to wear long sleeves to cover up the tattoo while at work. Spike responded that he has a constitutional right to freedom of speech and expression, and that: “No one, not even my boss...” could make him wear a long sleeve shirt just to appease the “political correctness” of others.

Spike went on to argue that the company does not have a dress code and does not prohibit employees from sporting tattoos, so asking him to conceal his tattoo is unfair and arbitrary.

Can we require Spike to cover up his tattoo, even if we don’t have a dress code or other written policy prohibiting employees from having tattoos?

ANSWER: You may -- and should -- require Spike to keep his tattoo concealed while at work.

Spike is generally correct that he has a constitutionally protected right to (as he put it) free speech and free expression. However, Spike’s rights in this regard are not unlimited. Employers have an obligation to protect employees from harassment and discrimination in the workplace based on protected class status. Race, color and national origin are all protected classes under state and federal employment laws. Based on negative historical use of the term “white pride” as a phrase that embodies a viewpoint that the white race is superior to others, a reasonable person might interpret the words of Spike’s tattoo as offensive -- to anyone, not just to those who are not white.

It would certainly be a good idea for your company to adopt a dress code. But dress code or not, all employers should ban racially offensive apparel, materials and tattoos in the workplace. So as an employer, you must protect employees from being subjected to Spike’s offensive tattoo by requiring him to wear a long-sleeved shirt over it or by otherwise concealing it.

QUESTION: Today, one of the employees I supervise returned from his lunch break with a bloody nose. It also appeared that the employee was doing absolutely nothing to control the bleeding, and the blood was coming out steadily enough that it started to puddle in a large stain on the employee's shirt in the center of his chest.

I wasn't sure whether I should say anything to the employee or not, because obviously, the employee's nose bleed could be a symptom of a disability, and I wanted to be careful not to violate any disability laws. On the other hand, small droplets of the employee's blood were starting to transfer from his shirt to surfaces on the equipment other employees are expected to use, and dozens of large drops of blood covered the floor.

I quietly and politely suggested that the employee take a break to check on his nose bleed. The employee refused, so I simply walked away and did not mention it to him again. Was I wrong to say anything about his nosebleed?

ANSWER: Employers have an obligation to keep the workplace free of health hazards. Thus, employers should respond to the presence of blood and other "biohazards" at work swiftly and reasonably to satisfy their obligation to prevent injury to others in the workplace. In addition, training is available from the Oregon Occupational Safety and Health Administration on handling bloodborne pathogens.

Despite the fact that you were nervous about questioning the employee with the profusely bloody nose, and were laudably trying to be conscientious of the employee's rights in the event the bloody nose was a symptom of a disability, you nevertheless should have demanded that he leave the work area and seek medical attention to remove the threat of blood contaminating a work surface or exposing co-workers to any threats related to blood contaminating work areas.

State and federal disability laws, which protect qualified individuals with a disability from discrimination based on the disability, are not unreasonably compromised if an employer is motivated by a reasonable concern for the immediate health and safety of other employees.

For more information on these and other issues concerning Oregon employers, including seminars taught by BOLI's Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0828.