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'Personal Best' program is big step backward

By Lisa Carricaburu
The Salt Lake Tribune

Working women concerned about the gender wage gap, sexual harassment and other persistent workplace problems now have something even more basic to worry about.

A new federal appellate court ruling means women can be fired for refusing to wear makeup or for failing to tease, style or curl their hair.

Groups working to foster equity in the workplace are understandably enraged by a three-judge panel's 2-1 decision in a case before the 9th U.S. Circuit Court of Appeals, which has jurisdiction in California, Washington, Oregon, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii.

"This ruling would be right at home in the 19th century," says Riki Wilchins, executive director of the Washington, D.C.-based Gender Public Advocacy Coalition. "Women long ago won the right to be judged on the quality of their work, not whether they conform to some outdated standard of feminine attractiveness."

The case involves Darlene Jespersen, a longtime bartender at Harrah's Casino in Reno, Nev., who was fired in 2000 for failing to comply with the casino's "Personal Best" policy.

No one disputes the quality of Jespersen's work. The Dec. 28 ruling affirming a lower court's dismissal of the case on summary judgment notes the woman's supervisors repeatedly recognized her as "highly effective."

At issue is whether Harrah's grooming policy discriminated against Jespersen by requiring more of her than it did of male bartenders, and whether the casino illegally fired her for failure to conform to sex stereotypes.

The Personal Best program, according to court documents, actually required employees to meet with image consultants who made them over, then took "after" photographs by which their future compliance with the policy would be measured. The policy prohibited men from wearing makeup or nail polish and required them to wear their hair short and trim their fingernails. Women were required to wear stockings and nail polish and tease, curl or style their hair. Harrah's later amended the policy to require women to wear lipstick, mascara, blush and foundation.

Jespersen refused to wear makeup because it "forced

her to be feminine" and interfered with her ability to be an effective bartender, a job that sometimes demanded she deal with unruly customers.

The makeup "took away [her] credibility as an individual and as a person," according to court documents.

Judge A. Wallace Tashima, writing for the majority, said Jespersen provided no evidence to support her contention the policy placed more burden on women than men, despite her argument the burden is greater on women because cosmetics are costly and time-consuming to apply. He wrote that a legal standard preventing the firing of workers for failure to conform to sex stereotypes has not been applied in the context of grooming standards, "and we decline to do so here."

Yet in a dissenting opinion, Judge Sidney Thomas said Jespersen deserves to have her case heard by a jury. "A reasonable jury could easily conclude that having to wear . . . makeup . . . in addition to teasing, curling or styling one's hair every day, constitutes more of a burden than having to keep one's hair short and cut one's fingernails," he wrote.

Thomas got it right. It's remarkable we're even still debating whether a woman can be required to wear makeup and tease her hair as a condition of employment.

Jespersen, who intends to keep fighting, perhaps said it best to the *Las Vegas Sun* newspaper.

"We're not judged on our job performance," she said.

"I got fired over my face."

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