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Features

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Grooming and Weight Standards for Law Enforcement

The Legal Issues

By
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Many law enforcement agencies have long had policies or regulations regarding the grooming, uniform or dress, and weight of their officers. These agencies recognize a legitimate need to require their officers to conform to grooming and weight standards, both from internal esprit de corps and public perception perspectives.

This article examines the constitutional and Federal statutory issues that arise when officers challenge these regulations. The article also provides guidance to law enforcement managers concerning the permissible scope of grooming and weight standards.

Rationally Based Grooming Standards

Since the 1976 Supreme Court decision in *Kelley* v. *Johnson*,[1] courts have shown deference to grooming standards challenged on constitutional grounds. In *Kelley*, the president of the Patrolmen's Benevolent Association challenged a police department regulation that required male members of the police force to maintain neat and trimmed hair at certain lengths and prohibited beards except for medical reasons.

The Supreme Court ruled that the police department demonstrated a rational connection between the grooming regulation and the promotion of safety of persons and property. Thus, the regulation was not in violation of the 14th amendment's due process liberty protections.[2]

The Court recognized that grooming standards and other restrictions, such as requirements that an officer salute the flag, wear a standard uniform, and refrain from

smoking in public, infringe an officer's freedom of choice in personal matters. However, the Court determined that a police department need only have a rational basis to constitutionally restrict an officer's freedom of choice in these areas.

The Court, in describing this deference to police agencies in such matters, stated:

> "Neither this Court...nor the District Court is in a position to weigh the police arguments in favor of and against a rule regulating hairstyles as a part of regulations governing a uniformed civilian service...This choice may be based on a desire to make police officers readily recognizable to members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself. Either one is a sufficiently rational justification...."[3]

Since *Kelley*, courts generally grant wide leeway to law enforcement agencies in determining the constitutionality of a wide variety of restrictions on their officers. However, agencies must ensure that the restrictions do not infringe on a fundamental constitutional protection, such as the right to privacy,[4] the right to travel,[5] or the first amendment rights of free speech[6] and association.[7] In addition to grooming standards, courts reviewing constitutional challenges to secondary employment limitations,[8] residency requirements,[9] sick leave rules,[10] and antinepotism regulations[11] generally require only that the department have a legitimate, nonarbitrary reason for the rule or regulation to survive constitutional scrutiny under the rational basis analysis.

An example of the deferential nature of this type of scrutiny is *Rathert* v. *Village of Peotone*.[12] In *Rathert*, the plaintiffs, two police officers in a small police department, had their ears pierced and wanted to wear ear studs when off duty. The chief officially reprimanded the plaintiffs and demoted one of them from sergeant to patrolman. The plaintiffs then sued under 42 U.S.C. Section 1983, claiming that the defendant's prohibition on ear studs violated their rights to liberty and due process under the 14th amendment and their 1st amendment right to freedom of association.

The U.S. Court of Appeals for the Seventh Circuit ruled that the officers' liberty due process claim was governed by *Kelley* and that the chief had ample reason to impose the ear stud prohibition on the officers. The court stated that the officers, who were members of a small community, were generally known and recognized on and off duty and that the ear studs held the department up to ridicule and had an adverse impact on police effectiveness and esprit de corps.[13]

The seventh circuit also dismissed the officers' freedom of association claim by finding that the right to wear ear studs did not prohibit them from associating with others. The court stated that the plaintiffs failed to identify any associational interest as police officers that warranted constitutional protection for them to wear ear studs.[14]

In addition to the rationale in *Rathert*, courts have uniformly upheld grooming standards for police on such grounds as the development of a "shared pride," easy recognition of police by the public, and safety of an officer in a struggle.[15] Law enforcement managers

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"...constitutional and Federal statutory issues arise when officers challenge [grooming and weight] regulations."

should understand, however, that these court decisions only determine the constitutionality of a challenged regulation, not the necessity or advisability of such rules.

Prohibited Grooming Standards

Although grooming standards have generally been upheld when challenged on a constitutional basis, certain grooming standards implicate protections provided by statutes designed to prevent discrimination based on race, gender, or handicapped status. For example, prohibitions on beards have been challenged by African-American males who suffer from a medical condition called pseudofolliculitis barbae (PFB), which causes men's faces to become infected if they shave.

Courts have ruled that police officers with PFB are protected under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2, and Federal statutes protecting persons with disabilities or handicaps from employment discrimination.[16] Departments considering a rule prohibiting beards should consider allowing for medical waivers for officers suffering from such conditions as PFB.

Another challenge that has been raised in grooming standards cases is potential gender discrimination, because men are often governed by one standard and women by another.[17] Courts have generally ruled that different standards for men and women do not violate title VII's gender discrimination prohibitions.[18] As long as the separate grooming standards are not overly burdensome on one sex and are enforced in an even-handed fashion, courts recognize that different grooming requirements for men and women may be lawful.[19]

For example, in *Wisclocki-Goin* v. *Mears*,[20] the plaintiff, a teacher in a juvenile detention center, was reprimanded and ultimately discharged in part for excessive makeup and for wearing her hair down. The plaintiff sued under title VII, alleging that these dress-code infractions were a pretext for illegal discrimination against women.

> ***"...courts generally grant wide leeway to law enforcement agencies in determining the constitutionality of a wide variety of restrictions...."***

The U.S. Court of Appeals for the Seventh Circuit rejected the plaintiff's disparate treatment claim under title VII, because she failed to demonstrate that similarly situated male employees were treated differently. The court found that the plaintiff's employer had even-handedly applied a separate and equally strict dress and grooming standard to male employees.[21]

The court also addressed the plaintiff's disparate impact claim and found that the dress code did not work a hardship on females or adversely affect their employment opportunities. In addition, the court concluded that the strict grooming requirements were reasonably related to the employer's business needs and legitimate interests in maintaining the public's confidence in the professionalism of these government employees.[22]

Weight Standards

Law enforcement agencies have established maximum body-weight standards for reasons similiar to those justifying grooming standards, but weight standards may also promote physical fitness and effective job performance.[23] Constitutional challenges to these weight standards are subjected to the same rational basis test as grooming standards, and courts generally find reasonable weight standards constitutional if departments implement the standards in a nonarbitrary manner.[24] In this regard, courts are likely to require departments imposing weight standards for the first time to phase them in over a reasonable period to allow overweight officers a medically safe time to comply.

Weight Standards and Handicap Discrimination

Mandated weight standards have encountered varying court interpretations when challenged on the basis that they violate the Americans with Disabilities Act or the Rehabilitation Act of 1973. However, most cases have found that overweight employees are not protected by these statutes.

For example, in *Tudyman* v. *United Airlines*,[25] the plaintiff was rejected for a position as a flight

attendant because he exceeded the airline's maximum weight for a man of his height. The plaintiff admitted that his weight condition was voluntary and self-imposed because he was an avid body builder with a low percentage of body fat and a high percentage of muscle. The plaintiff sued under the Rehabilitation Act of 1973, claiming that his rejection for the flight attendant position was illegally based on his handicap.

The U.S. District Court for the Central District of California rejected the plaintiff's claim and found that the plaintiff's condition did not meet the definition of a handicap. The court stated that because the plaintiff's condition was voluntary, it was not caused by a physiological disorder, such as a glandular condition, and also that his inability to be a flight attendant did not substantially limit his ability to work.[26]

However, more recently, the U.S. Court of Appeals for the First Circuit in *Cook* v. *State of R.I. Dept. of MHRH*[27] upheld a claim by a nurse that she was illegally rejected for employment as an institutional assistant because of her weight. The plaintiff had worked successfully in the same mental health institution as an institutional assistant on two prior occasions, but when she reapplied for the same position a third time, she was rejected. The institution concluded that her morbid obesity compromised her ability to evacuate patients in case of an emergency and put her at greater risk of developing serious ailments.

The plaintiff prevailed at trial on her Rehabilitation Act claim, and the first circuit upheld the jury verdict. It found that the plaintiff qualified for protection because she proved sufficiently that she was either perceived as having an impairment that substantially limited a major life activity or actually had such an impairment.

The court noted that the plaintiff produced expert testimony at trial that morbid obesity is a physiological disorder involving a dysfunction of both the metabolic system and the neurological appetite-suppressing signal system. The court explained that morbid obesity is considered to be anyone who is either twice his or her optimal weight or more than 100 pounds over his or her optimal weight. The court also found that the plaintiff was treated or perceived by the institution as if she had a physical impairment that substantially limited her ability to work and her mobility.[28]

> ***"Constitutional challenges to...weight standards are subjected to the same rational basis test as grooming standards...."***

Finally, the court concluded that the plaintiff was protected under the statute because she was otherwise qualified to work as an institutional assistant. The court stated that the institution relied on generalizations regarding an obese person's capabilities and failed to make a fact-specific and individualized inquiry as to whether she could perform the physical tasks or essential functions of the institutional assistant position.[29]

Although weight standards have been upheld by courts in the context of firefighter[30] and paramedic[31] positions, law enforcement managers should proceed carefully in this area in light of the *Cook* case. Managers who wish to impose mandatory weight standards must carefully and individually assess each officer's condition in light of medical information concerning the underlying basis for failure to meet the standards. If an officer does not have a medical condition that causes the obesity, that is, the condition is voluntary, disability statutes generally do not provide any protection against enforcement of weight standards.

When an officer fails to meet the standard because of morbid obesity or a physiological disorder, such as a glandular condition,[32] then a separate assessment must be made whether the officer can do the essential functions of the job with or without reasonable accommodation. This determination must be made on an individual basis, with reference to the need for the officer to perform the physical demands of the job safely, and might require medical expertise.[33]

Conclusion

Courts have granted law enforcement managers broad discretion in determining what grooming standards are appropriate for their department or agency. Grooming standards will be upheld when challenged on a constitutional basis as long as there is a legitimate,

nonarbitrary reason for the standard. Managers, however, should make certain that no-beard policies accommodate officers who suffer from PFB and that the standards are enforced in an even-handed fashion between men and women.

Managers who wish to enforce weight standards on their officers face greater challenges. Courts have recognized that obesity can be caused by medical conditions that may entitle an officer to protection under such statutes as the Rehabilitation Act of 1973 or the Americans with Disabilities Act. When an officer's obesity is medically caused, an individual assessment must be made as to whether the officer can safely perform the essential functions of the job. If obesity is voluntary and not caused by a physiological disorder, or the person cannot safely perform the essential functions of the job even with reasonable accommodation, neither the ADA nor the Rehabilitation Act protect against adverse personnel decisions for failure to meet reasonable weight standards.✦

Endnotes

[1] 425 U.S. 238 (1976).

[2] *Id.* at 247-248.

[3] *Id.* at 248.

[4] *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). *See, e.g., Kukla* v. *Village of Antioch*, 647 F.Supp. 799 (N.D. Ill. 1986) (cohabitation and sexual choice fall in the category of rights given intermediate scrutiny in public employee discharge cases. A police officer in a small department was lawfully disciplined for cohabitating with a dispatcher because there was a significant negative impact on the officer's effectiveness within the department.)

[5] *Dunn* v. *Blumstein*, 405 U.S. 330 (1972). *See, e.g., Grace* v. *City of Detroit*, 760 F.Supp. 646 (E.D. Mich. 1991)(requirement that applicants for city jobs be residents unlawfully burdens the constitutional right to travel, although once hired, the city's residency requirement is lawful) and *Perez* v. *Personnel Board of the City of Chicago*, 690 F.Supp. 670 (N.D. Ill. 1988).

[6] *Pickering* v. *Board of Education*, 391 U.S. 563 (1968); *Connick* v. *Myers*, 461 U.S. 138 (1983); and *Rankin* v. *McPherson*, 483 U.S. 378 (1987).

[7] *Roberts* v. *United States Jaycees*, 468 U.S. 609 (1984); *Rutan* v. *Republican Party of Illinois*, 497 U.S. 62 (1990); and *Click* v. *Copeland*, 970 F.2d 106 (5th Cir. 1992).

[8] *Decker* v. *City of Hampton*, 741 F.Supp. 1223 (E.D. Va. 1990); *Bowman* v. *Township of Pennsauken*, 709 F.Supp. 1329 (D.N.J. 1989); and *FOP, Lodge 73* v. *City of Evansville*, 559 N.E.2d 607 (Ind. 1990).

[9] *Hawks* v. *City of Pontiac*, 874 F.2d 347 (6th Cir. 1989); *Hawkinson* v. *Louisa County Civil Service Commission*, 431 N.W.2d 350 (Iowa 1988); and *Clinton Police Bargaining Unit* v. *City of Clinton*, 464 N.W.2d 875 (Iowa 1991). *But see NAACP* v. *Town of Harrison*, 940 F.2d 792 (3d Cir. 1991)(the town's residency rule disparately impacted minorities who did not meet the requirement. Though the policy could be justified under the Constitution, its application violated title VII.)

[10] *Crain* v. *Board of Police Commissioners of City of St. Louis*, 920 F.2d 1402 (8th Cir. 1990); *Hambsch* v. *Department of Treasury*, 796 F.2d 430 (D.C. Cir. 1986); and *Voorhees* v. *Shull*, 686 F.Supp 389 (E.D.N.Y. 1987).

[11] *Parsons* v. *County of Del Norte*, 728 F.2d 1234 (9th Cir.), *cert. denied*, 469 U.S. 846 (1984); *Collier* v. *Civil Service Commission*, 817 S.W.2d 404 (Tx. App. 1991); and *Parks* v. *Warner Robins, Georgia*, 841 F.Supp. 1205 (M.D. Ga. 1994).

[12] 903 F.2d 510 (7th Cir.), *cert. denied*, 498 U.S. 921 (1990).

[13] *Id.* at 516.

[14] *Id.* at 517.

[15] *Weaver* v. *Henderson*, 984 F.2d 11 (1st Cir. 1993)(policy banning facial hair on all Massachusetts State police except for undercover officers and those with a medical justification was lawful) and *Hottinger* v. *Pope County*, 971 F.2d 127 (8th Cir. 1992)(court held that ban on moustaches for emergency medical technicians was valid and that grooming standards must be upheld unless wholly irrational).

[16] *University of Maryland* v. *Boyd*, 612 A.2d 305 (Md. Ct. Spec. App. 1992)(termination of African-American police officer with PFB for violating the department's no-beard rule was illegal because the policy discriminated against African-Americans and PFB was a handicapping condition) and *Johnson* v. *Memphis Police Department*, 713 F.Supp. 244 (W.D. Tenn. 1989). *But see Fitzpatrick* v. *City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993) (disparate impact of no-beard rule on African-American firefighters was justified by business necessity of safely wearing respirators. Although PFB affected a major life activity under the Rehabilitation Act of 1973, firefighters with beards cannot perform the essential functions of the job, even with reasonable accommodations.)

[17] Courts have generally upheld grooming standards that are in conflict with a person's religious practices. *See Goldman* v. *Weinberger*, 475 U.S. 503 (1986)(Air Force officer prohibited from wearing yarmulke on duty); and *EEOC* v. *Sambo's of Georgia, Inc.*, 530 F.Supp. 86 (N.D. Ga. 1981)(restaurant chain's no-beard policy did not violate Sikh employee's title VII religious rights because clean-shavenness was a bona fide occupational qualification for manager of a restaurant). *But see* 10 U.S.C. Section 742, in which in 1987 Congress enacted a statute that allows a member of the Armed Forces to wear an item of religious apparel while in military uniform, unless the item would interfere with the performance of military duties or "the item is not neat and

conservative"; and the Religious Freedom Restoration Act, Public Law No. 103-141 (1993), 42 U.S.C. Section 2000bb, in which Congress seeks to reverse the Supreme Court decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), by requiring that government burdens on a person's exercise of religion must be justified by a "compelling governmental interest."

[18] *See, e.g., Bedker* v. *Domino's Pizza, Inc.*, 491 N.W.2d 275 (Mich. App. 1992)(an employer who requires males to keep their hair no longer than collar-length, but allows women to have long hair if it is held by a hair net, does not violate title VII) and *Longo* v. *Carlisle DeCoppet & Co.*, 537 F.2d 685 (2d Cir. 1976).

[19] *See, e.g., Craft* v. *Metromedia, Inc.*, 766 F.2d 1205 (8th Cir. 1985) (news anchorwoman, who was given suggestions on how to improve her appearance and ultimately demoted to reporter, not subjected to illegal discrimination, because employer enforced its appearance standards equally as to male and females.)

[20] 831 F.2d 1374 (7th Cir. 1987), *cert. denied*, 108 S.Ct. 1113 (1988).

[21] *Id.* at 1379.

[22] *Id.* at 1380.

[23] Courts have considered whether height and weight standards are in violation of title VII. *See generally Dothard* v. *Rawlinson*, 433 U.S. 321 (1977). However, many weight standards in police agencies are adjusted for height, sex, and body type to avoid disparate impact based on sex or ethnic origin. For a discussion of why gender-adjusted weight standards may not violate the 1991 amendment to title VII and its prohibition on the "norming" of test scores, *see* Sauls, "The Civil Rights Act of 1991—New Challenges for Employers," *FBI Law Enforcement Bulletin*, September 1992, pp. 25-32.

[24] *Johnson* v. *City of Tarpon Springs*, 758 F.Supp. 1473 (M.D. Fla. 1991) and *Hegwer* v. *Board of Civil Service Com'rs*, 7 Cal. Rptr.2d 389, 395, footnote 10 (Cal.App.2Dist. 1992).

[25] 608 F.Supp. 739 (C.D. Cal. 1984).

[26] *Id.* at 745-746.

[27] 10 F.3d 17 (1st Cir. 1993).

[28] *Id.* at 23.

[29] *Id.* at 27.

[30] *Armstrong* v. *City of Dallas*, 997 F.2d 62 (5th Cir. 1993) (removal of African-American firefighter from firefighting status based on his failure to adhere to weight guidelines was not discriminatory retaliation in violation of title VII) and *Smith* v. *Folmar*, 534 So.2d 309 (Ala. Civ. App. 1988)(firefighter was not denied due process or equal protection in imposition of weight standards on him).

[31] *Hegwer* v. *Board of Civil Service Com'rs*, 7 Cal.Rptr.2d 389 (Cal.App.2Dist. 1992) (overweight paramedic not illegally discriminated against based on her handicap status, because thyroid condition did not render her physically incapable of complying with the department's weight and body fat standards. In addition, the need for medically reasonable body fat and weight limitations for paramedics was not supported by stereotyped generalizations but by statistical studies establishing that obesity decreases the strength, agility, endurance, and speed of EMS workers) and *McMullen* v. *Civil Service Com'n*, 8 Cal.Rptr.2d 548 (Cal.App.2Dist. 1992).

[32] Obesity under Federal statutes does not constitute a qualifying disability absent proof of physiological causation, such as heart disease, diabetes, or systemic or metabolic factors. The Equal Employment Opportunity Commission in defining a disability under the Americans with Disabilities Act states: "It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments." Examples of the latter include such physical characteristics as "height, weight or muscle tone" that "are not the result of physiological disorder" 29 C.F.R. app. Section 1630.2(h)(1993). "Except in rare circumstances, obesity is not considered a disabling impairment." 29 C.F.R. app. Section 1630.2(j)(1993).

[33] For a comprehensive discussion of the ADA, *see* Higginbotham, "The Americans with Disabilities Act," *FBI Law Enforcement Bulletin*, August 1991, pp. 25-32. Many States also have disability protection statutes that differ from Federal statutes; however, only one State, Michigan, has specifically codified a prohibition against employment discrimination on the basis of weight. Mich. Comp. Laws Ann. Section 37.2102. *See, Cassista* v. *Community Foods, Inc.*, 22 Cal.Rptr.2d 287, 294, footnote 11 (Cal. 1993), for a review of State disability protection statutes and State court interpretations of the statutes.

Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

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