

## ***LEGALLY SPEAKING***

by Bob Dunlevey

### **MAKEUP OR MOVE OUT**

When Harrah's Casino in Reno required one of its best bartenders at its sports bar to wear makeup, stockings, nail polish and to have teased, curled or styled hair, it was just too much for Darlene Jespersen to take. Harrah's had implemented its "beverage department image transformation" program at 20 of its locations requiring the female beverage servers, among other things, to wear "foundation/concealer and/or face powder, blush, mascara and lip color. At the same time, the male beverage servers were prohibited from wearing make-up or nail polish and they were required to maintain short haircuts and neatly trimmed fingernails.

Harrah's gave Jespersen 30 days to makeup or move out and when she got fired she sued them for sex discrimination claiming unequal treatment. She said she felt uneasy wearing makeup. Harrah's claimed that these were distinctions based upon appearance, not based on sex, and therefore were not discriminatory. Harrah's won!

Not only did Harrah's have a specific policy regulating the shade of stockings and the color of nail polish, it required females to wear their hair down at all times – no exceptions. It even provided trainers known as "personal best image facilitators" to establish and impose the standards. Following training, each employee was photographed as an "appearance measurement tool" so that each employee could be held accountable by his or her personal manager. Was this discrimination based upon gender? Was this unfair, discriminatory treatment towards females? – after all the female servers had to do far more to "doll up" than did the males.

Or, was this sex-stereotyping which is prohibited by law? While it could have been any of these things, the United States Court of Appeals for the Ninth Circuit in San Francisco (where else could this case be heard?) found that this was not discriminatory and Jespersen's termination was upheld. The rationale, although somewhat shaky, was that the appearance standards did not create an "unequal burden" for females and, therefore, was not discriminatory.

So the lesson to learn from this case is that reasonable grooming and dress policies utilized by employers having employees interacting with the public can be imposed and certain distinctions can be made based upon the gender of the employee. But, remember the recent United Airlines case where female flight attendants challenged the employer's weight limitations which were stricter for them than for men. United lost the case before a federal court - in California as well. Thus, the second lesson to learn is that while an employer may impose makeup and panty hose requirements on female employees, for the overweight employees this may mean "control top" panty hose. For further advice on your grooming and dress policies, use your legal services plan – contact Bob Dunlevey at Dunlevey, Mahan & Furry (937) 223-6003.