

## Federal Labour Court: Dress code discrimination (Lufthansa)

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### Headnote

Works agreements entered into by employers and works councils may include provisions requiring that employees wear uniforms. If a dress code calls for differences between various categories of employees, the principle of equal treatment under co-determination law requires that any such distinctions be objectively necessary to achieve the purpose intended by the code.

### Facts

The plaintiff is employed as a pilot by the defendant. The defendant's cabin crews are represented by bodies set up under a collective agreement pursuant to § 117(2) of the Works Constitution Act (*Betriebsverfassungsgesetz* – BetrVG). This collective agreement calls for compliance with the principle of equal treatment as required by co-determination law. A "Works Agreement concerning Uniforms" stipulates that cockpit personnel must wear a uniform while on duty. This uniform includes a "cockpit cap" that male pilots must also wear in public areas of airports, whereas such headgear is optional for female pilots. The uniforms of female pilots also do not include such "cockpit caps". The plaintiff was of the opinion that this difference in treatment was invalid. The defendant justified its regulations on the basis of the traditional image of pilots and the hair styles of female cockpit personnel.

### Decision

The Federal Labour Court granted the request for a declaratory judgment on 30 September 2014 (1 AZR 1083/12) to the effect that male pilots are under no

obligation to wear "cockpit caps", reasoning that different treatment for male and female employees was in violation of the principle of equal treatment under co-determination law and therefore illegal. According to the court, the purpose of the uniforms of cockpit personnel is to enable these employees to appear in public as prominent representatives of the airline against which action was brought. The court saw no justification for any difference in treatment on the basis of the purpose of the code and ruled that it was not necessary to make any decision as to whether there was any gender discrimination involved in this case.

### Comments

The Federal Labour Court's decision shows the limits of dress codes adopted through works agreements. Employers are normally free to use their managerial authority to impose dress codes. If a company has a works council, the works council has the right to be consulted when the dress code is drawn up pursuant to § 87(1) no.1 of the Works Constitution Act. Employers and their works councils must observe the principle of equal treatment called for under co-determination law if a dress code is included in a works agreement. This is stipulated in § 75 of the Works Constitution Act. This principle of equal treatment also allows for differences in dress codes if they can be objectively justified. In the case of headgear for male and female pilots, the situations of both are comparable, which means equal treatment is therefore necessary. In the present case, there is no objective reason that could justify unequal treatment. The necessity of taking into account the hair styles of female pilots cannot qualify as an objective reason for exempting female pilots from the obligation to wear pilot's caps since the problem of hair styles can also apply in the case of male pilots. It is not possible to

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discern any other objective reasons for unequal treatment. Pilot's caps are also not accessories that are typically only worn by men.

## Note

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