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ABSTRACT

Since the deregulation of the airline industry, flight attendants have become the friendly faces and hallmark of airline brands across the globe. However, airlines went to unconstitutional heights to ensure that flight attendants looked, behaved, and acted in compliance with conservative and outdated notions about gender and sexuality. Piece by piece, the airline industry’s strict and misogynist policies that regulated female flight attendants’ appearance were declared a violation of Title VII of the Civil Rights Act; however, the sexist policies and attitudes maintain a pervasive and insidious presence in the modern airline industry.

Moreover, the airline industry’s dress and appearance policies aim to reinforce traditional and binary gender distinctions. Although Title VII has provided legal protection against workplace discrimination based on sex, courts and legislatures were divided on Title VII’s application to individuals who diverged from traditional and binary gender distinctions. However, the Supreme Court’s landmark ruling in Bostock v. Clayton County ended this split by interpreting Title VII to protect employees against discrimination based on sexuality and gender identity. When paired with society’s increasing acceptance of gender fluidity and individual autonomy, Bostock has the potential to render gendered dress codes obsolete and unconstitutional.

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The airline industry’s sexist history paired with its strict, traditional, and gendered dress and appearance policies makes it a prime defendant in a Title VII suit to test the applicability of *Bostock* to gendered employment policies.

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I. FLIGHT BOARDING: INTRODUCTION

The once-coveted profession of an airline “stewardess” has evolved in name, uniform, and stereotype since commercial airplanes first took flight. Airlines promised passengers a first-class experience by hiring young, female flight attendants who were required to wear miniskirts and maintain a specific weight to achieve the desired allure and sex appeal.1 However, the passage of Title VII of the Civil Rights Act forced the airline industry to rebrand because it invalidated several airline policies on the basis of sex discrimination.2 Thus, the sexualized image of the stewardess descended and the emergence of the flight attendant took off.3

Despite undergoing significant reform, the airline industry continues to hold onto its sexist and discriminatory baggage. Airlines continue to highly regulate the dress and appearance of

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flight attendants through mandatory dress and appearance policies. This Comment argues that the remnants of the airline industry’s overtly sexist and discriminatory past have contributed to the alarming prevalence of sexual harassment of flight attendants today by enforcing dress and appearance policies that work to covertly subordinate flight attendants.

Not only do these outdated policies contribute to increased incidents of sexual harassment, these binary policies illegally harm flight attendants who do not conform to traditional gender stereotypes. Mandating flight attendants to conform to strict conceptions of gender and sex stereotypes merely functions to perpetuate traditional norms and behaviors that ultimately “devalue women, feminized men, and sexual minorities.” This Comment argues that the Supreme Court’s 2020 landmark ruling in Bostock v. Clayton County heralds a potential end to sex-differentiated dress and appearance standards by interpreting Title VII to prohibit employer discrimination based on sexuality and gender identity. In anticipation of litigation, airlines should revise their dress and appearance policies to promote an inclusive workplace that cares about the well-being of flight attendants.

This Comment first delves into the pervasively sexist past of the airline industry in Part II. The following Section discusses the impact that the passage of Title VII had on the airline industry and how it ultimately ushered in the modern era of flight attendants. Part III first analyzes the legal process of asserting a Title VII claim and how those processes apply to airline policies regarding dress and appearance. Further, Part III then discusses the application, or lack thereof, of Title VII to workplace discrimination based on sexuality and gender identity. Part III concludes by summarizing the shortcomings of modern airline dress and appearance standards, both in the United States and abroad. Part IV argues that the airline industry’s history of imposing sexist dress and appearance policies contributes to the

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6 Id.

alarming rates of sexual harassment in the air. This Comment goes on to argue in Part V that sex-specific dress and appearance standards, which are now unconstitutional under the Supreme Court’s interpretation of Title VII in *Bostock v. Clayton County*,\(^8\) also harm flight attendants who do not conform to conventional gender norms. Finally, this Comment warns employers about the harms of sex-specific employment policies and recommends change.

II. TAKE OFF: THE SEXUALIZATION OF STEWARDESSES

After the federal government initially regulated the airline industry in 1938, and subsequently deregulated the industry in 1978, airline competition hinged on the in-flight experience.\(^9\) Airlines sought to attract passengers by offering luxurious accommodations served by attractive, attentive, and available stewardesses.\(^10\) Passengers and airlines expected stewardesses to serve drinks and food, attend to the needs of anxious or unruly passengers, and execute safety protocols under time constraints.\(^11\) Additionally, airlines required stewardesses to adhere to strict beauty standards while effortlessly performing their official duties.\(^12\) To fulfill customers’ expectations, stewardesses attended “charm farms” that sculpted stewardesses into the ideal image of poise and beauty.\(^13\) In addition to receiving technical training in safety protocols, service routines, and airline information, stewardesses were sculpted into the airline’s ideal stewardess in both behavior and appearance.\(^14\)

A. GLAMORIZATION AND EXPLOITATION

Airlines carefully devised and advertised the ideal stewardess that struck the perfect balance of sex appeal, poise, and mystique.\(^15\) Sexualized slogans included National Airlines’ “Fly Me”

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\(^8\) See id.


\(^10\) See BARRY, supra note 1, at 42.

\(^11\) See id. at 6–7.

\(^12\) See id. at 37 (“Glamour, on the other hand, was an ongoing performance that demanded a lot of work to produce, but succeeded ultimately only when the labor was unrecognizable as such to the audience.”).

\(^13\) Id. at 46; see also Bruce Handy, *Glamour with Altitude*, VANITY FAIR, Oct. 2002, at 215, 218–20.

\(^14\) See BARRY, supra note 1, at 46.

\(^15\) See LaGrave, supra note 3; BARRY, supra note 1, at 45.
campaign, Continental’s hint to “other attractions aboard” accompanied by a photo of a stewardess from the waist below, and United’s promise of “extra care” with the possibility of marriage. The survival of Southwest Airlines depended upon its marketing strategy entitled the “love” campaign. This campaign infiltrated every aspect of the business from in-flight cocktails and snacks, its stock exchange abbreviation, and its stewardesses’ appearance and behavior. Southwest described the ideal stewardess: “She is charming and goes through life with great flair and exuberance . . . yet she is quite efficient and approaches all her tasks with care and attention.”

Sexually insinuating marketing campaigns were brought to life by employer-mandated provocative uniforms with plunging necklines, shrinking hemlines, and platform shoes. Southwest achieved its “love” image by hiring personable women who were “great-looking in hot pants.” To that end, Southwest recruited stewardesses in their early twenties who weighed between 100 and 135 pounds. To complete the look, stewardesses wore bright orange hot-pants, a low-cut top, and go-go boots while serving “love potions” and “love bites” to mostly business class, white men. American Airlines required their stewardesses to embody “American Beauty” by wearing a mini-dress in either red, white, or blue. The now-closed Braniff Airline promoted an in-flight “air strip” where stewardesses would change into more revealing uniforms throughout the flight.

16 BARRY, supra note 1, at 176–79.
18 See Guinto, supra note 17.
19 Id.
20 See BARRY, supra note 1, at 179.
21 Id.
22 Id.
23 Id. at 16, 179.
24 Id. at 181.
The allure of glamour and luxury came at the expense of the respect and autonomy of stewardesses. Airlines required stewardesses to perform their professional duties while exuding charm, beauty, and sexiness. Airlines ruthlessly controlled the weight of stewardesses, required stewardesses to remain unmarried and childless, forced stewardesses to retire in their early thirties, and rigidly enforced dress and appearance policies. Further, these airline policies “amounted to an invitation for unprecedented sexual harassment.” Thus, stewardesses had to fend off unwanted physical and verbal advances by passengers to perform their official job duties. The airline industry’s sexually charged advertising is a prime example of how male business executives exploit women’s appearance to generate personal profit.

III. TURBULENCE: TITLE VII AND THE EMERGENCE OF THE FLIGHT ATTENDANT

The passage of Title VII of the Civil Rights Act of 1964 provided flight attendants with the legal authority to demand equality in the workplace. Title VII broadly prohibits employment practices that “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Although principally passed to combat racial discrimination, Title VII was soon wielded by female flight attendants, who were among the first class of individuals to use it to challenge workplace sex discrimination. To successfully challenge the airline industry’s sexist policies, flight attendants

27 See Barry, supra note 1, at 45 (“We may well wonder how a stewardess was supposed to lift, bend, and fetch repeatedly and spend hours on her feet, yet never let a hint of sweat soil her uniform, allow her make-up to smudge or her hair to muss.”).
28 See id. at 24–25; Handy, supra note 13, at 220.
29 Barry, supra note 1, at 174.
30 Id. at 45.
32 Barry, supra note 1, at 145.
34 See Barry, supra note 1, at 145.
learned how to navigate the judicially created airways of Title VII.³⁵

A. Title VII Challenge on Dress Code and Appearance Policies

I. Flight Attendant’s Burden

There are two distinct approaches to stage a sex discrimination claim under Title VII: disparate impact and disparate treatment.³⁶ Disparate impact applies when the employer implements a facially neutral policy, but the policy disproportionately affects one sex more than the other.³⁷ Disparate treatment applies when the employer explicitly treats employees of one sex differently than members of the opposite sex.³⁸ Challenges to gendered dress code and appearance standards utilize the disparate treatment approach because these employment policies explicitly prescribe different standards for the sexes to abide by in order to receive and maintain employment.³⁹ The flight attendant’s prima facie case must demonstrate that (1) the flight attendant was a member of a protected class; (2) the flight attendant was qualified for the employment position in question; (3) the flight attendant was rejected or fired from the position; and (4) after the rejection or termination, the position remained open and the employer sought applications from persons with similar qualifications or the employer filled the position with someone of the opposite sex.⁴⁰ Under either approach, the plaintiff bears the ultimate burden of proving that the employment practice is discriminatory by a preponderance of the evidence.⁴¹

The evidence presented to the court will guide the court’s analysis of the claim.⁴² In a disparate treatment case, the plain-
tiff can offer direct or indirect evidence of discriminatory treatment.43 When the plaintiff offers direct evidence of discriminatory practices, courts traditionally concentrate on the individual harm suffered by the plaintiff.44 Direct evidence can include overt statements made by the employer or supervisor, employment records, or employment statistics.45 In contrast, when the plaintiff has indirect evidence of the employer’s discriminatory practices, the court tends to shift the focus to harms suffered by the group as a whole.46 Indirect evidence can include inferences of discrimination drawn by timing, ambiguous statements, and comparative evidence.47 However, courts have confused the necessity of individual harm versus group harm, which has resulted in an unworkable standard that often undermines the plaintiff’s pursuit of equality and Title VII’s purpose of providing equal employment opportunities.48

2. Airline Industry’s Defenses

After the plaintiff successfully establishes a prima facie case, the burden of production shifts to the employer to justify its discriminatory employment practice.49 An employer can attempt to justify its discriminatory practice by articulating a legitimate, nondiscriminatory reason for the discriminatory impact or asserting Title VII’s bona fide occupational qualification (BFOQ) statutory defense to discriminatory treatment.50 A legitimate, nondiscriminatory reason may include seniority, education, prior experiences, or performance.51 If an employer asserts a legitimate, nondiscriminatory reason for the employment practice or decision, the plaintiff must rebut the employer’s defense by showing that the employer’s explanation is a pretext for discrimination or that discrimination was a motivating factor for the practice.52

If the employer raises Title VII’s BFOQ statutory defense, the employer sustains a heavy burden to defend the discriminatory

43 Levi, supra note 40, at 376.
44 See id.
45 See McCarthy, supra note 36, at 952; Bishop et al., supra note 41, at 373.
46 See Levi, supra note 40, at 376.
47 See id.; McCarthy, supra note 36, at 952.
51 See Bishop et al., supra note 41, at 378.
52 See McCarthy, supra note 36, at 952–53.
policy because the BFOQ provision is interpreted narrowly.\textsuperscript{53} To prevail on a BFOQ defense, the employer must prove that the discriminatory practice is strongly connected to the essence of the business and the employee’s ability to perform their job duties.\textsuperscript{54} The BFOQ defense is strongest when a privacy interest is involved.\textsuperscript{55} Courts generally reject customer preference of a particular sex as a valid BFOQ.\textsuperscript{56} Further, courts will determine whether the employer had reasonable alternatives to accommodate the employee’s request, which can be shown through evidence of comparative treatment of employees of the opposite sex, the employer’s reaction to the employee’s expression of civil rights, and the employer’s “general policy and practice with respect to minority employment.”\textsuperscript{57}

3. Initial Judicial Interpretation of Title VII’s Application to Employer Appearance Standards and Dress-Code Policies

Courts generally uphold gendered dress and appearance standards provided that employers implement policies that apply to both sexes, do not impose an unequal burden on one sex, do not apply to an immutable characteristic, and do not perpetuate harmful gender stereotypes.\textsuperscript{58} The Supreme Court “expanded the traditional definition of ‘sex’” in \textit{Price Waterhouse v. Hopkins} by holding that “noncompliance with gender stereotypes” constitutes sex discrimination.\textsuperscript{59} In \textit{Price Waterhouse}, the employer denied a promotion to a female employee for being too “macho” and “tough-talking.”\textsuperscript{60} Various partners at the firm suggested that the plaintiff take a class in charm school, “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” to increase her

\textsuperscript{53} See 29 C.F.R. § 1604.2(a) (1972) (“[T]he bona fide occupational qualification exception as to sex should be interpreted narrowly.”); Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 387 (5th Cir. 1971) (stating that the bona fide occupational qualification cannot be applied in a way that permits “the exception to swallow the rule”); McCarthy, \textit{supra} note 36, at 954.


\textsuperscript{55} Bishop et al., \textit{supra} note 41, at 374–75.

\textsuperscript{56} \textit{See}, e.g., Diaz, 442 F.2d at 389.

\textsuperscript{57} McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804–05 (1973).


\textsuperscript{59} Bishop et al., \textit{supra} note 41, at 404.

\textsuperscript{60} \textit{Price Waterhouse}, 490 U.S. at 235.
chances of being promoted to partner. The Court found that “an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender.”

Moreover, Title VII has also been extended to prohibit sex-plus discrimination. Sex-plus discrimination occurs when the employer discriminates against an employee because of sex plus another characteristic. In *Phillips v. Martin Marietta Corp.*, the employment policy at issue denied employment opportunities to women with preschool-aged children. The Supreme Court held that the policy contradicted Title VII’s goal of providing equal employment opportunity “irrespective” of sex by applying different employment practices to men and women with preschool-aged children. In his concurring opinion, Justice Marshall opined that “ancient canards about the proper role of women” and “characterizations of the proper domestic roles of the sexes” are unacceptable reasons to restrict employment opportunities. Other common scenarios where plaintiffs assert sex-plus discrimination include employment decisions based on sex plus race, marital status, and age.

**B. Title VII’s Application to Sexist Airline Policies**

Case by case, Title VII challenges chipped away at the airline industry’s sexist and discriminatory policies. Stewardesses became fed up with airlines controlling their weight, mandating their marital status, disallowing pregnancy, and forcing retirement in their early thirties. Thus, stewardesses joined together to successfully challenge some of the airline industry’s discriminatory policies in courts all over the country, and began the ongoing process of dismantling the industry’s exploitation of women.

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61 *Id.*
62 *Id.* at 250.
63 *See* Phillips v. Martin Marietta Corp., 400 U.S. 542, 544 (1971) (per curiam); Bishop et al., *supra* note 41, at 408.
64 *See* Bishop et al., *supra* note 41, at 408.
65 *See* Phillips, 400 U.S. at 544.
66 *Id.*
67 *Id.* at 545 (Marshall, J., concurring).
68 *See* Bishop et al., *supra* note 41, at 408–10.
70 *See* Julian, *supra* note 2, at 288–96.
1. From Stewardess to Flight Attendant: Female-Only Policies

The foremost tactical challenge to combat sexism in the airline industry was to confront the airline industry’s insistence that ensuring the care and safety of passengers was an inherently feminine profession.71 The airline industry’s female-only policies took advantage of and perpetuated the idea that women have innate “nurturing instincts and domestic skills to serve.”72 These portrayals ultimately subordinated women by disregarding their intensive merit training, minimizing their workplace competency, and diminishing the respect stewardesses deserved.73

Courts firmly held that the female-only policies were a prime example of the sex discrimination Title VII aimed to prohibit.74 Moreover, courts refused to give credence to the airline industry’s reliance on female sexuality in their lucrative marketing campaigns.75 The courts reiterated that the BFOQ defense should be interpreted narrowly; thus, discriminatory policies should warrant skepticism and scrutiny.76 Courts held that the primary duty of stewardesses was “to transport passengers safely and quickly from one point to another,” which was not dependent upon sex.77 Thus, an airline could only justify the discriminatory policy by showing that “the essence of the business operation would be undermined by not hiring members of one sex exclusively.”78

Airlines attempted to justify the female-only policies by persistently arguing that women perform flight attendant duties more efficiently, passengers prefer female flight attendants, and the airline brand depended upon hiring only female flight attendants.79 However, the courts found that these justifications were only “tangential” to the essence of the business and would

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71 See Steinem, supra note 25.
72 Barry, supra note 1, at 12.
73 See Bartlett, supra note 26, at 2547; see also Steinem, supra note 25 (detailing how flight attendants had to know “first aid, evacuation procedures for as many as seventy-five kinds of planes, underwater rescue, emergency signaling, hijacking precautions . . . not to mention how to handle passengers and fend off some.”).
75 See Diaz, 442 F.2d at 389; Wilson, 517 F. Supp. at 303.
76 See Diaz, 442 F.2d at 387 (citing 29 C.F.R. § 1604.1(a) (1972)).
77 Wilson, 517 F. Supp. at 302; see also Diaz, 442 F.2d at 388.
78 Diaz, 442 F.2d at 388.
79 See id.; Wilson, 517 F. Supp. at 293.
have no effect on the primary operation of airlines. Furthermore, the courts refused to defer to the airlines’ business reliance on exploiting female sexuality. For example, Southwest Airlines defended its sex discrimination on the grounds that “attractive female flight attendants and ticket agents personify the airline’s sexy image and fulfill its public promise to take passengers skyward with ‘love.’” Southwest’s argument was unavailing, and the court held that “sex does not become a BFOQ merely because an employer chooses to exploit female sexuality as a marketing tool, or to better insure profitability.”

The airline industry also focused on placing blame upon passengers for its discriminatory practices, but the courts did not view alleged customer preference for female flight attendants as a valid excuse. In Diaz, the airline argued that customers preferred female flight attendants because women were better able to provide the “non-mechanical aspects of the job,” such as soothing passengers. However, courts only take customer preference into account when the preference “is based on the company’s inability to perform the primary function or service it offers.” Because non-mechanical aspects of the job are not essential to a flight attendant’s duties, the preferences of customers did not alter the court’s analysis. In sum, these cases demonstrate that courts have historically declined to give effect to the preferences and prejudices of private individuals. Further, the preferences and prejudices of private individuals cannot vindicate the airlines’ continuing discriminatory policies based on sex and sex stereotypes. Thus, the era of the sexy stewardess concluded, and the gender-neutral era of the flight

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80 Diaz, 442 F.2d at 388 (“No one has suggested that having male stewards will so seriously affect the operation of an airline as to jeopardize or even minimize its ability to provide safe transportation from one place to another.”).
81 See Wilson, 517 F. Supp. at 303.
82 See id. at 293; see also discussion supra Part II regarding Southwest’s love campaign.
83 Wilson, 517 F. Supp. at 303.
84 See Diaz, 442 F.2d at 389.
85 Id. at 388.
86 Id. at 389.
87 See id.
88 Id.; Wilson, 517 F. Supp. at 303.
89 See Diaz, 442 F.2d at 389 (“While we recognize that the public’s expectation of finding one sex in a particular role may cause some initial difficulty, it would be totally anomalous if we were to allow the preferences and prejudices of the customers to determine whether the sex discrimination was valid.”).
attendant emerged.90 Although Title VII allowed flight attendants to invalidate sexist female-only policies, the airline industry continued to enforce other employment policies that disadvantaged women.91

2. Appearance of Availability: No-Marriage and No-Children Policies

Airlines nurtured the image of sexually available female flight attendants by imposing no-marriage policies and routinely grounding flight attendants upon pregnancy.92 The airline industry’s reliance on female flight attendants’ sexual availability inhibited female flight attendants from advancing in their careers by guaranteeing that “few stewardesses would fly long enough to expect promotions, significant raises, or other longer-term job benefits.”93 These impediments led to Sprogis v. United Air Lines, Inc.94 and Burwell v. Eastern Air Lines, Inc.95

In Sprogis, the Seventh Circuit struck down United’s no-marriage rule by deciding that the policy targeted female flight attendants because of their sex.96 The court adopted the Equal Employment Opportunity Commission’s (EEOC) interpretation of Title VII by stating: “It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.”97 Further, the court was unpersuaded by the airline’s assertion that marital status was a valid BFOQ.98 The court found that sexist reasonings of the industry and passengers underpinned the policy rather than reasonable requirements needed to fulfill work duties.99 The court concluded that the policy wrongly excluded and “punishe[d] a large class of prospective, otherwise

90 See LaGrave, supra note 3.
91 See LaGrave, supra note 4.
92 See Barry, supra note 1, at 205 (“A visibly pregnant flight attendant, however, obviously undermined the fantasy of stewardesses’ sexual availability that the airlines worked so hard to promote . . .”).
93 Id. at 26.
94 See 444 F.2d 1194, 1196 (7th Cir. 1971).
95 See 633 F.2d 361, 363 (4th Cir. 1980) (per curiam).
96 See Sprogis, 444 F.2d at 1198.
97 Id. (quoting 29 C.F.R. § 1604.4(a) (1972)).
98 See id.
99 See id. at 1199 (“United was led to impose the requirement after it received complaints from husbands about their wives’ working schedules and the irregularity of their working hours.”).
qualified and competent employees where an individualized response could adequately dispose of any real employment conflicts.”

In Burwell v. Eastern Air Lines, Inc., flight attendants tackled airline pregnancy policies mandating a flight attendant to take pregnancy leave upon learning of her pregnancy, removing a flight attendant’s seniority status upon being transferred to ground positions, and stipulating different treatment of pregnancy under the employer’s medical insurance plans. Although the court noted that the policy appeared facially neutral, the policy targeted a single class of employees and harshly restricted a subset of employees’ employment opportunities. Similar to the court in Sprogis, the court held that the policy denied pregnant flight attendants individualized treatment. Although these cases represent another win for flight attendants and gender equality, the airline industry continued to enforce other employment policies that fostered a sexist workplace.

3. Embodiment of Sex Appeal: Weight Policies

In addition to dress codes, the airline industry crafted an unhealthy standard of beauty that dictated who the airline employed and how flight attendants lived their private lives. Airlines made certain that passengers were served by “thin, attractive women” by forcing flight attendants to abide by weight regulations. The Ninth Circuit in Gerdom v. Continental Airlines, Inc. found that an airline’s stringent weight requirement merely “typifie[d] the . . . prevailing pattern in the airline industry of restricting job opportunities and imposing special conditions on the basis of gender stereotypes.”

Further, the Ninth Circuit in Frank v. United Airlines, Inc. solidified this ruling by dismissing the airline industry’s weak justifications for harmful weight policies—even though the airline imposed weight requirements for both female and male flight attendants. See Barry, supra note 1, at 172–73.

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100 Id.
101 See 633 F.2d 361, 363 (4th Cir. 1980) (per curiam).
102 See id. at 369.
103 See id. at 375 (“[P]regnant stewardesses can and should be evaluated on an individual basis.”).
104 See Barry, supra note 1, at 172–73.
105 See id.
106 Gerdom v. Cont’l Airlines, Inc. 692 F.2d 602, 603 (9th Cir. 2014). For example, a stewardess that stood at five feet, two inches was not permitted to weigh more than 114 pounds. See id. at 604.
107 Id. at 606.
attendants. However, the airline’s policy required female flight attendants to weigh between fourteen and twenty-five pounds less than male flight attendants of the same age and height. The court noted that women represented 85% of flight attendants; therefore, the consistent and widespread difference in treatment between men and women amounted to facial sex discrimination. Further, the court held that the policy could not be upheld as a BFOQ because the airline defendant made no showing that “disproportionately thinner female than male flight attendants bears a relation to flight attendants’ ability” to perform their job duties, but that if anything, the policy “inhibited the job performance of female flight attendants.” Thus, the airline industry could not legally justify different weight requirements for men and women because the policy did not relate to any legitimate employment duty.

4. A White Appearance: Intersection of Sex and Race

Moreover, the role of flight attendant was exclusively a profession for white women until growing public pressure forced the airline industry to hire women of color. The airline industry did not explicitly exclude black women from the flight attendant profession, but it integrated racial biases in hiring practices. For example, flight attendant applicants were asked whether their hands were “soft and white” during the interview screening process. After being subjected to heightened pressure from politicians, civil rights groups, and lawsuits, the U.S. commercial airline industry employed Ruth Carol Taylor as the first black female flight attendant in 1957. A survey conducted in 1971 revealed that only 6% of flight attendants were non-

108 See Frank v. United Airlines, Inc., 216 F.3d 845, 848 (9th Cir. 2000) (noting that female flight attendants often tried to comply with the weight requirements by “severely restricting their caloric intake, using diuretics, and purging”).
109 See id.
110 See id. at 848, 853–54.
111 Id. at 855.
112 See id.
113 See BARRY, supra note 1, at 115 (“Only under persistent pressure from aspiring African American stewardesses, national civil rights groups, government officials, and a few high-profile politicians did airlines even begin to consider hiring black women.”).
114 See id. at 114.
115 Id. at 115.
116 See id. at 115–16.
white, but today racial minorities make up almost 40% of flight attendants.

Although racial minorities are now given an equal opportunity to become flight attendants, employers are legally permitted to create appearance standards that require women of color to abide by white beauty standards. For example, in Rogers v. American Airlines, Inc., a female flight attendant challenged American Airlines’ policy banning braided hairstyles as discrimination against black women. The court held that a policy that equally prohibits a hairstyle for members of all races and sexes does not violate Title VII even if the style is more often adorned by members of a specific group. Although some courts fail to recognize the intersection between race and sex in appearance standards, many states have passed laws that prohibit discrimination based on an individual’s hair texture or hairstyle if it is associated with a particular race or ethnicity. Further, Congress has introduced the Creating a Respectful and Open World for Natural Hair Act of 2021 (CROWN Act), which if passed, would broadly prohibit discrimination based on “the person’s hair texture or hairstyle.” This disturbing intersection between sexism and racism in the airline industry indicates that the airline industry must seriously reconsider and reform appearance policies to achieve a more inclusive work environment.

C. Title VII’s Protection for LGBTQ+ Flight Attendants

Although Title VII enabled female flight attendants to cabin a portion of the widespread sex discrimination in the airline industry, flight attendants who experience discrimination based on sexual orientation or gender identity continue to endure an ongoing battle to achieve workplace equality under Title VII.

1. Judicial Shortcomings

The unequal burdens test, initially introduced by the Ninth Circuit in Frank v. United Airlines, Inc., has become the promi-
ent approach to analyzing sex-differentiated appearance policies and highlights the judicial shortcomings that hinder workplace equality. The case of Jespersen v. Harrah’s Operating Co. best exemplifies the judicial limits of Title VII regarding dress codes and appearance policies. Although the employer in that case implemented a gender-neutral dress code, a female bartender challenged the employer’s “Personal Best” appearance policy that she found personally burdensome and demeaning to her identity. The employer required female bartenders to be “well groomed, appealing to the eye, [and] be firm and body toned.” The female bartenders achieved this image by wearing face powder, blush, mascara, and lipstick “worn at all times,” in addition to meeting the requirement that their hair must be “teased, curled, or styled every day.” In contrast, the employer required male bartenders to maintain short hair and prohibited male bartenders from wearing facial makeup and nail polish.

Despite the fact that the appearance policy resulted in more time and costs for female bartenders, the court found that the policy applied equal burdens to both sexes and thus did not violate Title VII. The court also insisted that the plaintiff show the presence of a group harm rather than the plaintiff’s personal objections to the “Personal Best” policy. The court found the complaint to be merely the “subjective reaction of a single employee,” and essentially required the plaintiff to show that the employer’s policy created a harm affecting all female bartenders. Thus, the court allowed an individual employee to be discriminated against for her failure to conform to gender stereotypes because the court found that the appearance policy did not harm all employees.

124 See Frank v. United Airlines, Inc., 216 F.3d 845, 855 (9th Cir. 2000); Zalesne, supra note 5, at 556–37.
125 See Levi, supra note 40, at 356 (referring to the judicial application of Title VII to sex-differentiated dress codes as the “Title VII blind spot”).
126 Jespersen v. Harrah’s Operating Co., 444 F.3d 1104, 1107–08 (9th Cir. 2006).
127 Id. at 1107.
128 Id.
129 See id.
130 See id. at 1111.
131 See id. at 1113.
132 Id.
133 See id.; Levi, supra note 40, at 357 (‘‘Title VII . . . does not require a showing of group harm. It only requires that an individual be able to demonstrate that he
The judicial presumption that gendered dress codes are permissible under Title VII places an onerous burden upon the plaintiff to show “beyond the mere fact of differential treatment, some additional disparity or harm.” The judicial focus on unequal burdens and community standards ignores the antiquated notions that gendered dress codes and appearance standards are founded upon, and the humiliation and feeling of inferiority that can result from forcing individuals to conform to a false identity. The community standards and unequal burdens test that courts purport to apply in the name of equality actually reflects the “discriminatory” and “prejudicial” nature of gender stereotypes. Gender-differentiated dress codes and appearance standards reflect “by definition an employer’s insistence on conformity to sex stereotypes,” but courts remain comfortable with validating the legality of gendered employment policies.

2. Diverging Paths Among State Legislatures and Courts

Almost every state has enacted an antidiscrimination statute mimicking Title VII that prohibits employers from discriminating because of sex. Additionally, a growing number of states have enacted statutes prohibiting employers from discriminating because of sexuality or gender identity. Although some states extended protections to trans employees, antidiscrimination laws proved limited and provided trans employees with “scant power to fight appearance standards under the law.”

or she has been affected personally on the basis of gender—not that all men or all women are similarly affected by differential treatment.”)

134 Levi, supra note 40, at 353.
135 See id. at 363.
136 Id.
138 A state that does not include a general prohibition of sex discrimination is Georgia, the home of Delta Airlines; it only prohibits sex discrimination in regard to pay. See Ga. Code Ann. § 34-5-3 (West 2022).
140 McCarthy, supra note 36, at 942.
Before the Supreme Court interpreted Title VII to include discrimination based on sexual orientation and gender identity, courts were divided on whether Title VII protected trans individuals from workplace discrimination. Courts reasoned that the plain meaning of “sex” precluded Title VII from protecting trans employees. In Ulane v. Eastern Airlines, Inc., the Seventh Circuit overturned the lower court’s expansion of Title VII that protected a pilot—a decorated military veteran, ranking officer at the airline, and flight instructor—who was fired after completing sex-confirmation surgery. The court ruled that “a prohibition against discrimination based on an individual’s sex is not synonymous with a prohibition against discrimination based on an individual’s sexual identity disorder or discontent with the sex into which they were born.” Thus, the court in Ulane, like many other courts, effectively legalized discrimination against employees because of gender identity.

Nevertheless, LGBTQ+ employees did receive some success by utilizing Price Waterhouse’s sex-stereotyping argument. Some courts articulated that Title VII’s reference to sex implicitly includes discrimination based on an employee’s failure to conform to gender norms associated with their perceived gender. Additionally, the EEOC’s acceptance of employment discrimination complaints based on sexual orientation or gender identity in 2013 gave employees the power to challenge discriminatory practices. The change in the EEOC’s policy, occurring seven years before the Supreme Court’s ruling in Bostock, resulted in ten times more complaints alleging employment discrimination based on sexual orientation or gender identity in states without antidiscrimination protections for sexual orientation or gender

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141 See Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1738 (2020).
142 See, e.g., Ulane v. E. Airlines, Inc., 742 F.2d 1081, 1087 (7th Cir. 1984) (“Title VII is not so expansive in scope as to prohibit discrimination against transsexuals . . .”).
143 See id. at 1082–83.
144 Id. at 1085.
145 See id.; see also Holloway v. Arthur Anderson & Co., 566 F.2d 659, 664 (9th Cir. 1977); Sommers v. Budget Mktg., Inc., 667 F.2d 748, 750 (8th Cir. 1982) (per curiam).
146 See discussion supra Part III for Price Waterhouse’s sex-stereotyping argument.
147 See Smith v. City of Salem, 378 F.3d 566, 573 (6th Cir. 2004).
identity, and two times more complaints in states with antidiscrimination statutes in place. 

3. The Powerful Implication of Bostock v. Clayton County

Despite the fact that workplace harassment and discriminatory discharge are cited in nearly half of all issues alleged in sexual orientation and gender identity complaints filed with the EEOC in recent years, Title VII noticeably lacked comprehensive and uniform protection for LGBTQ+ employees. Further, the varying and restrictive interpretations of Title VII by lower courts likely discouraged LGBTQ+ employees from filing complaints to challenge discriminatory workplace policies. However, the Supreme Court’s landmark ruling in Bostock erased the judicially imposed limits on Title VII and changed the landscape of Title VII claims for LGBTQ+ employees.

Bostock extended Title VII to protect employees from workplace discrimination based on their sexual orientation and gender identity. The Supreme Court in Bostock emphatically stated: “An individual’s homosexuality or transgender status is not relevant to employment decisions.” The Court supported its decision by highlighting that when an employer discriminates against an individual based on gender identity or sexual orientation, the employer inescapably and impermissibly discriminates because of sex. The Court went on to state that employment decisions that discriminate against employees because of sexual orientation and gender identity enforce sex-based rules. For example, an employer who discriminates based on gender identity “unavoidably discriminates against persons with one sex identified at birth and another today.”

Therefore, after Bostock, an employer who treats an employee less favorably because of the employee’s sex, sexual orientation,
or gender identity is liable under Title VII. Most importantly, this ruling provides LGBTQ+ employees a legal tool to secure workplace equality and live their authentic lives. Additionally, Bostock, along with the increase of EEOC complaints regarding workplace discrimination based on sexual orientation and gender identity, suggests that employers will be held accountable for workplace discrimination and are now legally obligated to create more-inclusive workplace environments to comply with Title VII.

D. Modern Airline Standards

1. Airline Standards in the United States

Although the passage of Title VII forced the airline industry to undergo significant reform, the airline industry continues to impose sex stereotypes on flight attendants through dress and appearance policies. All major airlines in the United States aim to convey a clean and professional image through required uniforms and appearance standards. United proclaims the importance of conveying “a professional and positive image each day” because the flight attendant’s appearance is “one of the first things noticed by customers and . . . leaves a lasting impression.” However, these appearance and uniform policies disproportionately burden flight attendants who do not conform to normative sex stereotypes and consequently perpetuate workplace inequality.

Airlines continue to place more stringent standards upon female flight attendants than male flight attendants. The unequal burden airlines impose upon female flight attendants is evidenced by the sheer length of the dress code and appearance policies for females as compared with males. For example,

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158 See id. at 1744 (“[A]n employer who intentionally fires an individual homosexual or transgender employee in part because of that individual’s sex violates the law [Title VII] . . .”).
159 See id.
160 See Baumle et al., supra note 148, at 1143 (“Our preliminary results suggest that a more visible federal enforcement of Title VII laws . . . could result in more favorable workplace environments for LGBT individuals residing in states without state-level protection.”).
161 See LaGrave, supra note 4.
162 See id.
164 See Levi, supra note 40, at 364.
American Airlines’ uniform and appearance standards for female flight attendants are twice the length of men’s standards, and United’s standards for female flight attendants are four pages longer than its standards for male flight attendants.\(^\text{165}\) These dress and appearance policies minimize “women’s self-presentation according to someone else’s judgment about when women should be sexy or businesslike and what sexy and businesslike, for women, mean.”\(^\text{166}\) These policies require women to exert more time, effort, and money on their appearance to keep their job, which ultimately objectifies and subordinates women in the workplace by perpetuating the characterization of female flight attendants as sexual objects.\(^\text{167}\)

Moreover, airline dress and appearance standards unduly restrict flight attendants’ individuality and gender expression.\(^\text{168}\) As a general matter, flight attendants are not allowed to adorn visible tattoos; body piercings besides ear piercings; “extreme” nail polish colors, nail art, or chipped nail polish; “[e]ccentric, exaggerated or trendy” makeup; unnatural hair colors; or excessive jewelry.\(^\text{169}\) Further, male flight attendants are generally not permitted to wear nail polish, and Southwest allows male flight attendants to wear only bronzer or concealer if makeup is worn at all.\(^\text{170}\)

Although airlines, such as American Airlines, permit flight attendants to wear the gender uniform collection in which they identify, airlines do not allow flight attendants to mix female and male dress standards.\(^\text{171}\) Also, American Airlines states that the name displayed on the flight attendant’s name tag must be derived from the flight attendant’s legal name or must receive preapproval from a manager for a different name.\(^\text{172}\)

\(^\text{166}\) Bartlett, supra note 26, at 2547.
\(^\text{167}\) See id. (“Substantively, women’s dress and appearance expectations objectify women and construct them as inferior, submissive, and less competent than men.”).
\(^\text{168}\) Id. at 2546.
\(^\text{170}\) See AM. AIRLINES, supra note 165, at 10; UNITED, supra note 163; Sw., supra note 169.
\(^\text{171}\) See AM. AIRLINES, supra note 165, at 5.
\(^\text{172}\) Id. at 7.
some airlines have promised to revise their appearance and dress-code policies to be more modernized and gender inclusive, most promises have proved meaningless.\textsuperscript{173} For example, Alaska Airlines claims that giving flight attendants the opportunity to order their uniforms online will give employees greater ease in conforming to gender stereotypes that do not match their gender identity.\textsuperscript{174} These dress and appearance policies demonstrate how the airline industry “perpetuates the existence of traditional gender identity and behavioral norms” and punishes those who deviate from those outdated stereotypes.\textsuperscript{175}

2. \textit{International Airline Standards}

Foreign airlines are slowly catching up to modern and inclusive dress and appearance standards but largely remain stuck in a sexist past.\textsuperscript{176} Historically, foreign airlines also created and relied upon sexualized marketing campaigns, such as Air France’s “Have You Ever Done It the French Way?” campaign and Air Jamaica’s “We Make You Feel Good All Over” campaign.\textsuperscript{177} Flight attendants all over the world complain about provocative and uncomfortable uniforms, such as Qantas Airline’s uniforms that were revealed via fashion runway on a Victoria’s Secret model.\textsuperscript{178} British Airways did not allow female flight attendants on certain crews to wear pants until 2016, and several other foreign airlines continue to require female flight attendants to wear skirts.\textsuperscript{179} Further, a number of foreign airlines, such as Vir-


\textsuperscript{175} Zalesne, \textit{supra} note 5, at 537.

\textsuperscript{176} LaGrave, \textit{supra} note 4.

\textsuperscript{177} BARRY, \textit{supra} note 1, at 178.


\textsuperscript{179} See Alexandra Ilyashov, British Airways’ Female Crew Members Can Finally Wear Pants, REFINERY29 (Feb. 9, 2016, 9:30 AM), https://www.refinery29.com/en-us/2016/02/102874/british-airways-flight-attendant-uniform [https://perma.cc/K3CT-TJPC].
gin Australia, require female flight attendants to wear high heels and makeup while working. 180

Some foreign airlines’ strict dress and appearance standards reflect regional or cultural ideals about femininity. 181 For example, Singapore Airlines’ brand revolves around the “Singapore Girl,” who reflects “timeless beauty,” dresses in a traditional Asian sarong kebaya, and wears one of five preapproved hairstyles. 182 Emirates, a Dubai-based airline, requires female flight attendants to wear “Emirates red” lipstick and a red hat adorned with a white scarf, which is “reminiscent of a veil, worn by many Muslim women for religious purposes.” 183 In 2015, Air India grounded 130 flight attendants, mostly female, for exceeding the airline’s weight requirement after being given only six months to lose weight. 184

However, some foreign airlines are setting new trends for flight attendant dress and appearance policies. Virgin Atlantic became the first major British airline to retire its makeup requirement for female flight attendants to give them “more choice over how they express themselves at work.” 185 A Ukrainian airline sought to “divert from the conventional ‘skirt and heels’ uniform of female flight attendants in favor of comfort.” 186 The airline allows flight attendants to wear loose-fitting pantsuits with Nike sneakers, which “inspires the idea of comfort


181 See LaGrave, supra note 4.


183 LaGrave, supra note 4.


and movement.”\textsuperscript{187} Thus, redesigning flight attendants’ uniforms may be the first step to shifting attitudes towards gender stereotypes and workplace equality in airlines all over the world in a positive direction.\textsuperscript{188}

IV. COFFEE, TEA OR ME: THE PREVALENCE OF THE SEXUAL HARASSMENT OF FLIGHT ATTENDANTS

The sexually charged depiction of flight attendants promoted and disseminated by airlines resulted in a proliferation of unrealistic sexual fantasies starring flight attendants.\textsuperscript{189} However, these sexualized depictions throughout history have had pervasive and concrete effects on flight attendants.\textsuperscript{190} The harsh consequences of the airline industry’s sexualization and exploitation of female flight attendants are illuminated in the disturbing accounts of flight attendants experiencing sexual harassment while at work and the alarming rates of sexual harassment in the flight attendant profession.\textsuperscript{191}

A. SEXUAL HARASSMENT IN THE WORKPLACE

The EEOC defines workplace sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct . . . is used as the basis for employment decisions . . . or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.\textsuperscript{192}

\textsuperscript{187} Id.

\textsuperscript{188} See id.; LaGrave, supra note 4.


\textsuperscript{190} See Ellsworth, supra note 189; Barry, supra note 1, at 174.


\textsuperscript{192} 29 C.F.R. § 1604.11(a) (2022) (emphasis added).
Further, the Supreme Court has confirmed that Title VII guarantees “employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult.”193

However, the Court in Meritor Savings Bank, FSB v. Vinson also held that the “gravamen” of a sexual harassment claim is proving that the sexual conduct is “unwelcome.”194 When determining whether sexual conduct is unwelcome, the Court held that the complainant’s speech and dress are “obviously relevant” to the determination of unwelcomeness.195 Thus, a complainant’s dress and speech can be weaponized against the complainant to rationalize the wrongful conduct of others. The Meritor Court failed to recognize that sexual harassment is not about how a victim is dressed but is instead about the harasser asserting control over the victim.196 Thus, employer-mandated, sexualized uniforms can be weaponized in court to prove that female employees somehow assent to sexual harassment by abiding by their employer’s policies.

The Court also ignored the interactions between employees and employers in specific workplace conditions.197 “Workplace environments in which sexualized images, comments, and behavior toward women are tolerated” create an environment that is more likely to subject employees to sexual harassment.198 Thus, employers who foster workplaces where employees are subjected to sexualization produce a safe place for harassers because the harassers feel as though the employer’s exploitation and sexualization of female employees condones and even encourages customers to sexually harass employees.199

B. The Prevalence of the Sexual Harassment of Flight Attendants

Flight attendants are a class of employees who experience high rates of sexual harassment while on the job.200 Women represent 80% of flight attendants across the United States.201

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194 Id. at 68 (citing 29 CFR § 1604.11(a) (1985)).
195 Id. at 69.
197 See id. at 150.
198 Id.
199 See id. at 151.
200 Ass’n of Flight Attendants, supra note 191.
2018 alone, one in three flight attendants experienced verbal sexual harassment, while one in five flight attendants suffered physical sexual harassment.\textsuperscript{202} Flight attendants have described the verbal sexual harassment they have been subjected to as “nasty, unwanted, lewd, crude, inappropriate, uncomfortable, sexual, suggestive, and dirty.”\textsuperscript{203} Further, flight attendants report being subjected to “explicit sexual fantasies, propositions, request[s] for sexual ‘favors’ and pornographic videos and pictures.”\textsuperscript{204} Flight attendants also complain of being inappropriately touched both above and under their uniform, being cornered, and receiving unwanted hugs and kisses.\textsuperscript{205}

Not only do flight attendants experience sexual harassment by passengers, flight attendants are also sexually harassed by their coworkers who take advantage of the power imbalance created by the airline industry’s history of sexism.\textsuperscript{206} Although women represent 80% of flight attendants, women represent less than 10% of pilots in the United States.\textsuperscript{207} There are countless stories of male pilots sexually harassing flight attendants.\textsuperscript{208} In several accounts by flight attendants with American Airlines, flight attendants reported pilots sending inappropriate messages, forcing themselves into their hotel rooms during layovers, drugging and raping flight attendants while on layovers, and threatening the flight attendants when they fought back.\textsuperscript{209} After reporting their sexual assaults, American Airlines flight attendants reported experiencing retaliation, intimidation, and complete lack of action by their employers.\textsuperscript{210}

\textsuperscript{202} Ass’n of Flight Attendants, supra note 191.  
\textsuperscript{203} Id.  
\textsuperscript{204} Id.  
\textsuperscript{205} Id.  
\textsuperscript{206} See Press Release, Barbara Comstock, Rep., House of Representatives, Frankel, Comstock Request Action to Combat Sexual Harassment in Airline Industry, (May 24, 2018) (on file with author) (“It is perhaps not surprising that sexual harassment is prevalent given the industry’s past objectification of flight attendants.”).  
\textsuperscript{207} WOMEN IN AVIATION INT’L, supra note 201.  
\textsuperscript{208} See, e.g., Kate Beckman, 12 Flight Attendants Open Up About Being Harassed by Pilots and Other Coworkers, COSMOPOLITAN (Feb. 8, 2018), https://www.cosmopolitan.com/career/a16639463/flight-attendants-sexually-harassed-by-pilots/ [https://perma.cc/6TUM-9VXG].  
\textsuperscript{210} See id.
In another account, a United Airlines pilot posted inappropriate photos of a flight attendant to the internet without her consent, captioning the photos with references to the airline’s tagline stating “a new reason to ‘Fly the Friendly Skies!’”  Although the flight attendant informed the airline of the pilot’s conduct by verbally complaining, filing formal human-resource complaints, and providing evidence of the pilot’s actions, the airline took no measures to discipline the pilot, which led the flight attendant to take a leave of absence from work.  Despite the fact that the pilot was eventually criminally convicted of stalking the flight attendant, United Airlines allowed the pilot to retire with full benefits while he serves his prison sentence.

Notwithstanding the startling statistics and accounts of sexual harassment in the airline industry, only 7% of flight attendants who experience verbal or physical sexual harassment report the incident to their employer or authorities.  The lack of reporting is likely due to the difficulty of reporting incidents of sexual harassment while in the air and the perceived lack of action and accountability of airline employers.  If an incident of sexual harassment occurs in-flight, the flight crew is notified, law enforcement on the ground is contacted, the plane may be grounded due to the severity of the assault, and the ground law enforcement awaits to respond to the report when the plane lands.  Therefore, the potentiality of delays and the burdensome process of reporting assault often deters flight attendants from speaking out.  There is no federal law mandating the reporting and recording of sexual harassment incidents that occur in the air, which also contributes to the estimated 90% of sexual harassment cases that go unreported.

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212 See id.

213 See id.

214 See Johnson, supra note 209; Ass’n of Flight Attendants, supra note 191.


217 See Bullock, supra note 215.

218 Justin Bachman, Sexual Misconduct on Airlines Gets Its #MeToo Moment—or Does It?, BLOOMBERG (May 10, 2019, 2:00 AM), https://www.bloomberg.com/
Further, 68% of flight attendants believe that the airline industry has failed to adequately address sexual harassment.\(^{219}\) Flight attendants embraced the #MeToo Movement and garnered attention from Congress, resulting in the establishment of the National In-Flight Sexual Assault Task Force.\(^{220}\) This Task Force has the responsibility to “provide recommendations . . . on best practices and protocols for air carriers relating to training, reporting, and data collection” concerning sexual harassment.\(^{221}\) Congress also passed a Resolution requiring airlines to implement policies and procedures to address sexual misconduct, train personnel on appropriate and effective responses to sexual harassment, and hold individuals who perpetuate sexual misconduct accountable.\(^{222}\) However, Congress has faced criticism from the flight attendant community for “putting the task force squarely in the pocket of airline management” instead of the hands of flight attendants themselves.\(^{223}\)

C. The Airline Industry’s Sexist Past Contributes to the Prevalence of Sexual Harassment

The airline industry’s ceaseless regulation of flight attendants’ dress and appearance, from its overt sexist history to its seemingly harmless contemporary policies, perpetuates the objectification and inferiority of flight attendants, and thus contributes to the prevalence of sexual harassment. Although the airline industry’s dress and appearance standards have evolved from miniskirts and go-go boots, current dress-code policies represent the sexist past of the airline industry and reinforce the inferiority and objectification of women.\(^{224}\) This characterization of flight attendants as an inferior sexual object results in alarming

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\(^{219}\) Ass’n of Flight Attendants, supra note 191.


\(^{222}\) See H.R. 302, 115th Cong. § 338(1)–(2) (2017) (enacted).

\(^{223}\) Bachman, supra note 218.

\(^{224}\) Levi, supra note 40, at 361.
rates of sexual harassment, which is a direct legacy of the industry’s sexist history.225

As demonstrated in this Comment, the airline industry historically and continually offers flight attendants as an attraction to passengers through dress and appearance policies.226 These dress-code policies are merely another mechanism to control women’s bodies, police gender stereotypes, and financially benefit those exerting the control.227 Dress and appearance standards are utilized by airline employers to exert control over flight attendants in ways that “belittle, stymie, or totally impede women’s ability to make their own decisions.”228 These restrictions over flight attendants’ dress and appearance prevent employees from asserting power in the workplace, which would otherwise threaten the employer’s control and associated financial benefits.229

The airline industry’s tolerance of sexual harassment also undermines flight attendants’ ability to perform their job duties and ensure the safety of passengers.230 Workplace sexual harassment undermines the authoritative legitimacy of women in the workplace, which affects their ability to demand respect and enforce airline policies during emergencies.231 Flight attendants—and women in general—are forced to fight back continually against discrimination and misogyny in the workplace while also fending off harassers, sexist employment policies, and systems that fail to provide flight attendants adequate protection.232


227 See Wu, supra note 31, at 175.

228 Id. at 169.

229 See id. at 170; Beiner, supra note 196, at 150.

230 See Bullock, supra note 215.


232 See Nelson, supra note 231 (“Our union was formed to give women a voice and to beat back discrimination and misogyny faced on the job.”).
The airline industry’s dress and appearance policies are incompatible with Title VII by relying on antiquated stereotypes of female sexuality and placing flight attendants at direct risk of being sexually harassed. By initially crafting flight attendants as sexually available and subsequently fostering that image through mandatory and overt dress and appearance policies, the airline industry has proved that it is tolerant of sexual harassment and sex discrimination, in spite of empty press statements to the contrary. Despite the stark differences between stewardesses and flight attendants, the modern airline industry’s subtle and unspoken sex discrimination is “easily ignored or rationalized” by employers, passengers, and courts and thus more difficult to uncover and address.

V. SWITCHING FLIGHTS: AIRLINE INDUSTRY DRESS-CODE POLICIES POST-BOSTOCK

The airline industry’s sex-differentiated dress and appearance policies not only contribute to high rates of sexual harassment, but also cause harm to flight attendants who do not conform to conventional gender norms and stereotypes. Although courts have differed on the application of Title VII to sexuality and gender identity, the Supreme Court’s ruling in Bostock v. Clayton County guaranteed employees protection from employment discrimination because of sexuality and gender identity. A nonbinary flight attendant’s complaint regarding Alaska Airlines’ sex-specific dress and appearance policies highlights the harms of sex-specific dress codes to trans and nonbinary individ-

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233 See Werner, supra note 225, at 167 (“These standards defy the true intent of Title VII by forcing employees to carry on sexual stereotypes which subject them to sexual harassment.”).

234 See Beiner, supra note 196, at 150 (“Workplace environments in which sexualized images, comments, and behavior toward women are tolerated are more likely to be those in which women are sexually harassed.”); see, e.g., Leslie Josephs, United Airlines CEO Calls For ‘Zero Tolerance’ of Sexual Harassment, CNBC, https://www.cnbc.com/2017/12/11/united-airlines-ceo-calls-for-zero-tolerance-of-sexual-harassment.html [https://perma.cc/SB66-TFQD] (Dec. 11, 2017, 2:37 PM); Making Respect Real: Continued Work to Prevent and Address Sexual Misconduct, ALASKA AIRLINES (Nov. 9, 2018), https://blog.alaskaair.com/values/people/sexual-harassment-prevention/ [https://perma.cc/8QPQ-S8XN].


uals, and also foreshadows the fragility of sex-specific employment policies under Bostock’s interpretation of Title VII.238

A. LGBTQ+ Flight Attendant’s Dress Code and Appearance Policy Complaint

On June 4, 2021, the American Civil Liberties Union (ACLU) raised concerns about the legality of Alaska Airlines’ uniform policy.239 The ACLU sent a letter on behalf of a nonbinary flight attendant who was forced to wear either the male or female uniform kit while on duty, which did not reflect the flight attendant’s gender identity.240 At the heart of the complaint, the flight attendant shared: “I don’t want to be forced into a binary uniform that excludes me and leads to me being misgendered at work.”241 By being forced to present as a specific gender at work, the flight attendant experienced anxiety, insomnia, depression, and panic attacks, which often resulted in the flight attendant being unable to work.242

Alaska Airlines’ uniform policy “demeans employees who do not conform to gender stereotypes and materially interferes with their ability to do their jobs under equal terms and conditions as other employees.”243 The uniform policy forces flight attendants to conform to “rigid gender stereotypes” by prescribing male and female uniform kits that contain significant differences and cannot be combined.244 The letter highlighted that “people wearing the ‘male’ uniform are not allowed to wear pieces from the ‘female’ uniform, such as the scarf or skirt,” and vice versa.245 The letter also highlighted the variances between the male and female uniform kits, such as: only permitting concealer for those choosing the male uniform kit, requiring men

240 Id.
241 Id., supra note 238.
242 ACLU Letter, supra note 239, at 2.
243 Id.
244 Id. at 1.
245 Id.
with long hair to pull their hair back at all times while females can wear long hair down, and allowing women to wear more jewelry than men.\textsuperscript{246}

In addition to state antidiscrimination claims, the ACLU argued that the uniform policy discriminates on the basis of sex in violation of Title VII because the uniform policy applies different rules to different sexes.\textsuperscript{247} Relying on \textit{Bostock} and \textit{Price Waterhouse}, the ACLU contended that the uniform policy’s rigid gender classifications reflect “stereotypical notions regarding masculinity and femininity,” which is impermissible under Title VII.\textsuperscript{248} The letter acknowledged that \textit{Bostock} abrogates prior precedent regarding gender-differentiated dress and appearance standards, such as \textit{Jespersen}, and plainly disallows employers from imposing gender stereotypes on employees.\textsuperscript{249}

Alaska Airlines responded to the ACLU complaint by reiterating the airline’s support for the LGBTQ+ community and diversity.\textsuperscript{250} In response to the letter, Alaska Airlines shared that employees will now be able to order uniforms online, which will allegedly give employees more ease in uniform choice, and announced a gender-neutral hair policy that permits all flight attendants to wear their hair down.\textsuperscript{251} The airline also emphasized that flight attendants can choose to wear the uniform kit that aligns with their gender identity.\textsuperscript{252} However, the airline’s brief response blatantly ignored the ACLU’s point that the binary uniform policy rigidly forces employees to conform to gender stereotypes about masculinity and femininity and the fact that some flight attendants may not neatly identify as either male or female.\textsuperscript{253} Without modification, Alaska Airlines’ dress and appearance policies may be found in violation of Title VII under \textit{Bostock}’s interpretation.\textsuperscript{254}

\textbf{B. LIKELIHOOD OF SUCCESS UNDER TITLE VII POST-\textit{Bostock}}

If Alaska Airlines’ dress and appearance policy is challenged in court, it is likely that the dress-code policy will be found un-

\begin{itemize}
\item 246 \textit{See id.} at 2.
\item 247 \textit{See id.} at 5.
\item 248 \textit{Id.} at 6.
\item 249 \textit{See id.} at 5 n.3; \textit{see also} discussion \textit{supra} Part III.
\item 250 \textit{See Alaska Airlines, supra} note 174.
\item 251 \textit{See id.}
\item 252 \textit{See id.}
\item 253 \textit{See ACLU Letter, supra} note 239, at 4–5.
\item 254 \textit{Id.} at 6.
\end{itemize}
constitutional and could signal the end of employer-mandated, sex-differentiated dress and appearance policies. After Bostock, forcing employees to dress in accordance with gender stereotypes is not only harmful to individual workers, but also violates federal law under Title VII. Sex-differentiated dress and appearance policies facially treat employees differently based on sex and punish employees for not following the policies assigned to a specific sex. Thus, the policies discriminate based on sex because the employee’s sex is the determinative factor in the employment decision.

1. The Flight Attendant’s Burden

In establishing a prima facie case, the flight attendant will likely assert that the employer’s sex-differentiated dress and appearance policies constitute disparate treatment under Title VII. A disparate treatment claim is appropriate because the policy explicitly classifies employees and imposes different standards on employees based on sex. When demonstrating the harm the policies impose on the employee, Bostock seemingly shifted the judicial focus away from group-based harms and focused on individual harms. The Court stated:

Title VII liability is not limited to employers who, through the sum of all of their employment actions, treat the class of men differently than the class of women. Instead, the law makes each instance of discriminating against an individual employee because of that individual’s sex an independent violation of Title VII.

Thus, Bostock simplified the flight attendant’s burden by only requiring the flight attendant to prove that the sex-differentiated policy harms the flight attendant as an individual.

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255 See id.
256 See Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1753 (2020); discussion supra Part III.
257 See ACLU Letter, supra note 239, at 5 (“Policies such as the Alaska Airlines uniform policy, under which a woman faces discipline or disadvantage for dressing in a manner that would be permitted if she were a man . . . discriminate ‘but for’ the employee’s sex within the meaning of Title VII.”).
259 See McCarthy, supra note 36, at 952.
260 See id.; Herald, supra note 39, at 317.
261 See Bostock, 140 S. Ct. at 1741.
262 Id. at 1742.
263 See id.
2. The Airline’s Defenses

In response to the flight attendant’s disparate treatment claim, the airline must prove that the sex-differentiated dress and appearance policies are justified as a BFOQ. However, the employer will face a steep uphill battle to justify its discriminatory policies. Courts have repeatedly agreed with the EEOC that the BFOQ exception to Title VII’s prohibition of sex discrimination should be construed narrowly. Thus, the employer must prove that the sex-differentiated dress and appearance polices are necessary to the essence of the airline business and a flight attendant’s ability to perform their duties.

Courts have determined that a flight attendant’s primary job duty is to transport passengers safely from one destination to another. A flight attendant’s ability to assist passengers, instruct on airline safety, and serve food and drinks is in no way correlated to whether the flight attendant is wearing pants or makeup. In truth, the dress and appearance policies inhibit the flight attendants from doing their jobs because some feel uncomfortable conforming to a gender stereotype they do not identify with or they are being harassed while working. Further, courts have held that the appearance of flight attendants is not connected to the essence of the business, but is instead merely “tangential” to the essence of the business and does not jeopardize the airline’s primary business function of safely and quickly transporting passengers. Thus, dress and appearance standards are not correlated to flight attendants’ ability to perform their job, but are instead correlated to the employer’s insistence on flight attendants conforming to stereotypes about how men and women should appear.

The airline will likely argue that the dress and appearance standards are justified because airline customers prefer flight at-

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264 Bishop et al., supra note 41, at 373.
265 See 29 C.F.R. § 1604.2(a) (1972); Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 387 (5th Cir. 1971).
267 See id. at 302; Diaz, 442 F.2d 385 at 388.
268 See Wilson, 517 F. Supp. at 302.
269 See ACLU Letter, supra note 239, at 2 (detailing how the flight attendant “often faces panic attacks leading up to a scheduled shift as a flight attendant, which has resulted in them trading out of a shift or calling out sick on multiple occasions”); discussion supra Part IV.
270 See Wilson, 517 F. Supp. at 302.
271 See Blount, supra note 258, at 244–45.
tendants to look a specific way. However, courts have repeatedly rejected customer preference as a valid BFOQ unless a valid privacy interest is involved. Further, EEOC regulations provide that customer or employer preferences are generally not valid BFOQ defenses under Title VII. Allowing airlines to justify sex-differentiated dress and appearance standards because of the possible prejudices of customers and employers cannot be accepted by courts because it would result in “no principled limit” of the BFOQ defense by allowing employers “freely to discriminate” against employees based on gender identity, which contradicts Title VII.

3. Potential Judicial Application of Title VII to Dress and Appearance Policies Post-Bostock

The status of the unequal burdens test after Bostock is questionable. Although courts have tended to focus on group-based harms, such as in Jespersen, Bostock expressly focuses on harms suffered by the individual. Therefore, it appears that Bostock compels courts to focus on the harm suffered by the individual rather than harms suffered by the group as a whole, which defeats the purpose of the unequal burdens test employed by some courts. Bostock also undermines the unequal burdens test because the Court held that “an employer cannot escape liability by demonstrating that it treats males and females comparably as groups.” Thus, Bostock renders previous judicial analyses of dress and appearance standards obsolete because Bostock highlights individual harm rather than comparing group harms. Under Bostock, courts should simply determine whether the policy differentiates employees based on sex, whether the employee bringing the action has suffered harm from the policy, and then finally, whether the policy is unconstitutional under Title VII.

When a court applies this analysis to the ACLU letter concerning Alaska Airlines, the flight attendant should prevail. Alaska Airlines’ dress and appearance policy creates a clear and inflex-

272 See Wilson, 517 F. Supp. at 302.
273 See Bishop et al., supra note 41, at 374.
275 Wilson, 517 F. Supp. at 304.
277 See Blount, supra note 258, at 238–39.
278 See Bostock, 140 S. Ct. at 1744.
279 See id. at 1741.
ble division between male and female flight attendants. The nonbinary flight attendant is disadvantaged for not conforming to the employer’s binary dress and appearance policies, which constitutes sex discrimination under Bostock’s interpretation of Title VII. Next, the flight attendant should be able to provide evidence of individual harm because the ACLU letter stated that the flight attendant feels that “their gender identity and expression aren’t valued or accepted, and as a result feel[s] forced to present as ‘male’ at work.” The letter further stated that the flight attendant’s mental health deteriorated as a result of the dress and appearance policies, and they purposefully missed work due to the distress the policy caused.

Although Alaska Airlines touts to be a “leader” in diversity and inclusivity, the airline clearly has more progress to make. The airline has dismissed the flight attendant’s request to provide accommodations for nonbinary flight attendants in dress and appearance policies, and while the airline permits the flight attendant to dress in accordance with their gender identity while acting as a flight attendant instructor, the airline continually rejects the request to extend the accommodation to flight attendants while in-flight. As illustrated above, the employer will most likely be unsuccessful in asserting a BFOQ defense because an alleged customer preference on the appearance of employees is not permissible under Title VII. Alaska Airlines should not, and legally cannot, force its flight attendants to conform to gender stereotypes, and courts should agree.

VI. LANDING: CONCLUSION

A. Why Airlines Should Care About the Effects of Gendered Dress Code and Appearance Policies

Although employer-mandated dress and appearance policies may appear trivial, the policies have a substantial impact on individual autonomy and gender equality. Many individuals may not find dress and appearance standards objectionable because

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280 See ACLU Letter, supra note 239, at 1–2.
281 See id. at 5.
282 Id. at 2.
283 See id.
284 Alaska Airlines, supra note 174.
285 See ACLU Letter, supra note 239, at 1–3.
288 See Zalesne, supra note 5, at 536.
many individuals naturally conform to gender norms. Yet for some individuals, sex-specific dress codes have detrimental effects on their identity and future. Some individuals continue to conform to gender stereotypes out of fear of “being marginalized . . . or being totally rejected and ostracized for failing to conform.” However, forced conformity through sex-specific dress and appearance policies has gradual and harmful effects on marginalized individuals by barring them from expressing their true identity.

The trans community in particular has high rates of unemployment and income disparities. Further, a lower socioeconomic class and high rate of unemployment increase the likelihood of suicidal ideation and attempts in the trans community. Gender-related discrimination, such as feeling unsafe in gendered spaces and nonaffirmation of an individual’s gender identity, further increases the likelihood of suicidal ideation and attempts in the trans community. Thus, studies show that individuals whose gender identity or appearance is “less congruent with established social norms may face ostracization and/or victimization . . . and these experiences may leave them at increased risk of suicide.” These studies prove that gendered workplace policies are not trivial but instead could have devastating and irreversible effects on an individual’s life. Employers can help prevent these devastating effects of gendered dress and appearance policies by simply showing meaningful support, which is proved to decrease suicidal ideation and attempts.

Gendered dress and appearance policies also inhibit societal progress by reinforcing sex stereotypes and prejudices. The goal of gendered dress and appearance policies is to dictate the way employees act and dress in the workplace, while at the same time enforcing gender norms. However, these policies have been shown to have negative effects on marginalized individuals, particularly trans individuals, who face high rates of unemployment and income disparities. Studies have also shown that gender-related discrimination, such as feeling unsafe in gendered spaces and nonaffirmation of an individual’s gender identity, increases the likelihood of suicidal ideation and attempts in the trans community.

It is clear that gendered workplace policies are not trivial and can have devastating and irreversible effects on an individual’s life. Employers can help prevent these effects by showing meaningful support and creating a more inclusive workplace environment.

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290 See Zalesne, supra note 5, at 559.
291 Wu, supra note 31, at 171.
295 See id. at 342.
296 Id. at 349.
297 Id. at 350.
298 See id. at 348.
299 See Zalesne, supra note 5, at 536; Wu, supra note 31, at 172.
time perpetuating outdated stereotypes about masculinity and femininity.\(^{300}\) Gendered dress and appearance policies inhibit social equality by forcing individuals to live inauthentic lives and portraying women as subordinate.\(^{301}\) Thus, gendered dress and appearance standards “perpetuate[ ] a set of gender norms that feminize women and masculinize men, thereby punishing men for displaying devalued characteristics of femaleness and femininity.”\(^{302}\) The repetitive enforcement of biased gender stereotypes triggers larger biases, which “grind out the substantial distinctions between genders over time.”\(^{303}\)

Further, future airline passengers are moving past distinctions between the sexes and instead care about how employers treat employees.\(^{304}\) Generation Z comprises a third of the population, has hundreds of billions of dollars in spending power, and is adapted to a gender-fluid world.\(^{305}\) Dress that may have once been deemed offensive is now common and unobjectionable because notions about gender have changed, the law has progressed to provide more protection for individuality, and people increasingly acknowledge the importance of living an authentic life.\(^{306}\) Therefore, employers should change employment policies and put the well-being and individual abilities of their employees above the insistence of conforming to antiquated gender norms because society as a whole has changed and continues to progress.\(^{307}\)

**B. HOW AIRLINES CAN CREATE AN INCLUSIVE AND NONDISCRIMINATORY WORKPLACE ENVIRONMENT**

The airline industry should strive to create gender-neutral dress and appearance policies that promote diversity, inclusivity, and professionalism. It is entirely possible for employers to create a gender-neutral dress and appearance policy in which employees can “comfortably, capably, competently, and confidently

\(^{300}\) See Wu, *supra* note 31, at 191.


\(^{302}\) Zalesne, *supra* note 5, at 556 (internal citation omitted).

\(^{303}\) Herald, *supra* note 39, at 331.


\(^{305}\) See *id*.


Employers should strive to be aware of the gender stereotypes they are enforcing through dress and appearance policies, understand the harm gender stereotypes cause, enact meaningful change, and continually revisit their policies. If airlines do not make the required changes to their employment policies, airlines may eventually be obligated to change their policies by courts. Until then, employers should prepare for litigation, policies being declared in violation of Title VII, and flight attendants leaving the profession. A redesign of airlines’ dress and appearance policies symbolizes more than a rebrand; it could symbolize flight attendants feeling safe at work by cleansing the flight cabin of sexism and discrimination.

Airlines should create genderless dress and appearance policies that erase binary divisions between the sexes, thus creating an inclusive and supportive workplace that cherishes the individual merits and autonomy of flight attendants. First and foremost, airlines must eliminate binary policies by creating one comprehensive policy that applies to all employees and utilizes gender-neutral language. Instead of crafting sex-specific uniform kits, airlines could offer a policy for in-flight standards and another section for off-duty standards. The in-flight standards can list all the clothing items that are currently permitted, but instead of mandating what pieces may be worn together, simply state that the in-flight uniform should consist of a button-down shirt, sweater, or dress; a jacket or vest; a pair of slacks or a skirt; and loafers or heels. The off-duty standards could simply state that the employee must maintain a business-casual appearance.

308 Hanley & MacWilliamson, supra note 137, at 147.
309 See Herald, supra note 39, at 302.
311 See Hanley & MacWilliamson, supra note 137, at 148 (“A genderless dress code confirms that all employees, no matter their gender, are held to the same standards and equally permitted to professionally express their identity in their workplace.”).
and not wear clothing with “offensive language or inappropriate
designs.” The policy can also mandate that uniforms be well-
tailored and clean to maintain a professional image.

In regards to appearance standards, the airlines should only
require that flight attendants maintain clean personal hygiene,
long hair be tied back during service, and dangle jewelry not
exceed a certain length. Finally, the policy can state that the
employee should “exercise good judgment and dress in a man-
ner consistent with the company’s professional standards.” These genderless and broad standards will ensure that employ-
ees can express their authentic identity; allow employees to be
comfortable and empowered while performing their job duties;
facilitate a trusting relationship between employers and employ-
ees; and eliminate the possibility of discrimination on the basis
of gender identity, race, religion, and disability. With these
guidelines, airlines can simultaneously achieve a professional ap-
pearance and maintain a successful business while also valuing
the individual autonomy, well-being, and legal rights of flight
attendants. Without change, flight attendants will continue to
face sexual harassment at alarming rates, feel uncomfortable
and unsupported in their work environment, and be compelled
to bring Title VII suits against the airline industry for its uncon-
stitutional insistence that flight attendants conform to outdated
gender stereotypes.

316 See Workplace Dress Codes and Transgender and Non-Binary Employees, HUM. RTS. CAMPAIGN F OUND., https://www.thehrfoundation.org/professional-resources/workplace-dress-codes-and-transgender-employees [https://perma.cc/64QQ-83QX].
317 Valbrune, supra note 312; see also INCLUDED HEALTH, supra note 313 (“Place trust in their employee’s sense of judgement (which empowers employees and leads to better collaboration and work!)”).
318 See Pope, supra note 314.