



**Wood** LLP

# Tax Alert



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### Can 1.3 Million Walmart Workers Deduct 'Uniforms' On Their Taxes?

Some Walmart employees are unhappy about their [new look](#) or at least that it is required. As Walmart explains, the new look means “collared navy blue or white shirts, khaki or black pants, capris, skirts or skorts.” Workers were already supposed to wear khaki trousers or skirts. But if they don't have the correct shirts, they'll have to go out of pocket. A vest is supplied by Walmart.

Some workers call the outfit a uniform, but the company speaks of a “dress code.” Nomenclature may not matter, although some lawyers are debating the point. If uniforms are required by Walmart, the [cost and maintenance of the uniform is considered to be a business expense](#) of the employer. Apparently, employers can require employees to pay for uniforms, but not if it drops their wages below the federal minimum wage.

A [Department of Labor wage and hour opinion](#) distinguishes between ordinary basic street clothing (not uniforms) and a specific type and style of clothing. A tuxedo or skirt and blouse or jacket of a specific color sounds like a uniform. But Walmart arguably just has a dress code.



(Photo credit: Wikipedia)

With [1.3 million U.S. workers](#) the cost of the outfits could add up. However, as Walmart appears to have put the cost on employees, that may make some of them think about their own taxes. Can employees deduct the cost of their business attire on their taxes? It depends.

Long before increasingly casual trends made “business attire” a confusing term, lawyers and other business and professional people have argued that suits and other corporate attire are just like uniforms. Therefore, the argument goes, the cost ought to be tax deductible. Uniformly (sorry), such arguments fail. The tax code allows deducting the cost and upkeep of work clothes that meet two requirements:

- You must wear them as a condition of your employment.
- The clothes must not be suitable for everyday wear.

The clothing must be *specifically required* by your employer, but the second requirement is the key. The clothing must not be *suitable* for taking the place of your regular clothing.

Examples of workers who may be able to deduct the cost and upkeep of work clothes are: delivery workers, firefighters, health care workers, law enforcement officers, letter carriers, professional athletes, and transportation workers (air, rail, bus, etc.). Musicians and entertainers can deduct the cost of theatrical clothing and accessories that are not suitable for everyday wear. How about a white cap, white shirt or white jacket, white bib overalls, and standard work shoes a painter is required by his union to wear on the job?

Nope, it is not distinctive. Similarly, blue work clothes worn by a welder are not deductible even if the foreman requires them. However, required protective clothing like safety boots, safety glasses, hard hats, and work gloves are OK. If you are on full-time active duty in the armed forces, you generally cannot claim [deductions for military uniforms](#). However, reservists can deduct the unreimbursed cost of uniforms if military regulations restrict wearing it except on duty.

While these tax rules are pretty circumscribed, someone is always pushing the envelope. For example, consider a salesman or TV personality who is required to look just so, like the TV anchor in [Hamper v. Commissioner](#). She claimed approximately \$20,000 a year for clothing. She argued that as a TV anchor, she was *required* to maintain a specified appearance under the standards of the Women's Wardrobe Guidelines.

These guidelines say the "ideal in selecting an outfit for on-air use should be the selection of 'standard business wear', typical of that which one might wear on any business day in a normal office setting anywhere in the USA." Was that enough for a tax deduction? Not to the IRS. So Ms. Hamper went to Tax Court.

Unfortunately, if business clothes are *suitable* for general wear, there's no deduction even if these particular clothes would not have been purchased but for the employment. There are exceptions where clothing was useful only in the business environment, if:

- The clothing is required or essential in the taxpayer's employment;
- The clothing is not suitable for general or personal wear; and
- The clothing is not so worn.

For this TV anchor, none of these applied. She claimed she was required to dress so conservatively that it made the clothing unsuitable for every day. She wore the business clothing only at work, she claimed, and she even kept it separate from her personal clothing. But the IRS and Tax Court said it still wasn't deductible.

It's worth noting that Ms. Hamper got a little aggressive on her returns, and that didn't help her case. What do I mean by aggressive? She deducted lounge wear, a robe, sportswear, lingerie, thong underwear, an Ohio State jersey, jewelry, running shoes, dry cleaning, business gifts, cable TV, contact lenses, cosmetics, gym memberships, haircuts, Internet access, self-defense classes, and her subscriptions to Cosmopolitan, Glamour, Newsweek, and Nickelodeon.

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