

MICHIGAN

Is it legal in Michigan to refuse service to someone in a Trump shirt?



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Key Points

Employees don't have the automatic right to refuse customers, but businesses can so long as they don't discriminate against religion, gender or other protected classes.

Many Michigan employees are at will and can be fired for any or no reason, said lawyer Deborah Gordon.

Private businesses do not owe employees or customers First Amendment rights in the same ways the government does, Gordon said.

Two employees at a Michigan Smoothie King are "no longer with the business" after social media posts of them refusing to serve a customer wearing pro-Donald Trump clothing on Sunday, March 1, went viral.

In a [statement to social media on March 2](#), Smoothie King wrote: "The franchise owner has taken immediate action and the two employees involved are no longer with the business," referring to "an incident involving a guest who was refused service at a franchised location in Michigan" on Sunday, March 2.

The interaction [surfaced by right wing accounts on X](#) shows a man in a Trump hoodie arguing with an employee. The woman filming the video claims the employee looked at the couple and told her, "We don't feel comfortable serving you because of my husband's hoodie."

In a [video appearing to be posted by the employee](#), the employee asks the customers to leave, saying: "We're not serving Trump supporters. You have a great day." When the couple claims the employees are discriminating against them, one employee in the video can be heard saying, "Trump discriminates us."

As the videos and news about the situation went viral, it begs the question of what rights employees and businesses have to refuse service to customers, and what rights customers have to express themselves.

Is it legal to refuse service to someone based on the clothes they wear? Is it legal to wear clothing with political messages anywhere and everywhere? Here's what Michigan law and the U.S. Supreme Court says.

Can my employer fire me for refusing to serve a customer?

If you are an at-will employee in Michigan, you can be fired for any reason or no reason at any time, though there are some specific exemptions, said [lawyer Deborah Gordon](#), who specializes in employment and civil rights.

Just-cause employees, such as employees in unions, usually have more rights through their contracts and often require just cause to be fired, though refusing to serve someone in a specific shirt could be just cause, Gordon said.

"People can wear whatever shirt they want," Gordon said. "And if you work for someone else, and you refuse to serve a customer because of your personal opinion, yes, that's very much going to be a terminable offense, even if you are just cause."

Gordon said the only entity to which you have the right to free speech is the government, of which private companies are not a part. An employee's right to free speech, such as refusing to serve a customer for their free speech, is not protected at a private business.

"The employee cannot decide who he or she is going to serve," Gordon said. "I'm sure there are exceptions to that if somebody is conducting themselves in a bad way

and so on and so forth, but merely wearing a shirt that says 'Trump' or any other candidate's name is not going to do it."

Can a restaurant ban Trump shirts?

Yes. Private businesses can have any kind of dress code as long as it doesn't discriminate based on [protected classes](#), such as race, gender, national origin or religion.

"A private company serving smoothies doesn't owe anybody First Amendment rights of any kind," Gordon said. "There are protected classes, but your ability to wear different T-shirts is not one of them."

People have the right to walk around outside in public spaces in a T-shirt saying whatever they want, Gordon said, with exceptions for [unprotected speech](#) — like obscenity, defamation and incitement. And private businesses can ban shirts they don't like, as long as enforcement is consistent and they don't discriminate on the basis of a protected class.

"I don't know of any employers that are going to say, 'I'm not going to serve somebody that's wearing a Trump shirt,' but if they are a private entity, I believe they could do it ... because they are not the government," Gordon said.

The government couldn't ban someone from wearing a blue shirt out in public, but a private restaurant can require suit jackets to enter or ban denim as long as the requirements are across the board and not in a protected class. A private business could not ban employees or customers from wearing religious clothing, according to the [U.S. Equal Opportunity Employment Commission](#).

What has the Supreme Court said about private businesses refusing to serve customers?

In [303 Creative v. Elenis](#) (2023), the Supreme Court ruled companies can refuse to provide services with a message they disagree with to protect the First Amendment

rights of the business, but cannot refuse customers based on their race, gender, sexual orientation or other protected characteristics.

In this case, a website designer argued that making a website for a same-sex couple went against her First Amendment rights. The court ruled 6-3 in her favor. The website designer can refuse to make the website as long as she would refuse to make the website for anyone, not just a specific kind of couple, according to an [American Civil Liberties Union article that explains the decision](#).

"The decision in 303 Creative does not mean that a caterer, florist, or baker can refuse to provide food, flowers, or a cake for a wedding merely because the participants are of the same sex and the vendor objects to the implicit message providing those services sends," according to the ACLU article. "Instead, it is only when a public accommodations law compels speech that a business owner objects to providing for anyone — and does so in order to excise disfavored ideas, that it violates the First Amendment."

For example, if a T-shirt maker objects to making a T-shirt that says "Support Gay Marriage," the T-shirt maker has the right to refuse to make that T-shirt for a gay customer "where his objection is to the message, not the identity of the customer," according to an ACLU explainer of the 303 Creative v. Elenis.

"If the T-shirt manufacturer would not make a shirt with those words for anyone, it need not make one for a particular customer because they are gay," according to the ACLU article.

The ACLU article [noted it disagreed with the decision in 303 Creative v. Elenis \(2023\)](#), saying the First Amendment does not allow businesses, even those with expressive services, to discriminate based on identity.

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