California’s New Hairstyle Antidiscrimination Law May Signal the Beginning of a National Trend

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Signaling a growing movement to align culturally inclusive practices with legal protections, California has become the first state to expressly ban discrimination based on hairstyle and hair texture associated with a person’s race. On July 3, 2019, Governor Gavin Newsome signed into law Senate Bill No. 188, the Create a Respectful and Open Workplace for Natural Hair Act (CROWN Act).

Effective January 1, 2020, the new law amends provisions of the California Fair Employment and Housing Act (FEHA) and the California Education Code prohibiting discrimination based on race. As previously reported, the CROWN Act expands the definition of race to include traits historically associated with race, including hair texture and protective hairstyles. Protective hairstyles include braids, dreadlocks, twists, and other unspecified hairstyles associated with race.

The declaratory section of the law provides the state legislature’s justification for the expanded definition. The legislature asserts that, historically, traits associated with African Americans such as dark skin, kinky and curly hair, and other traits were perceived as a “badge of inferiority.” Furthermore, “professionalism” has been “closely linked to European features and mannerisms,” requiring those who do not fall within “Eurocentric norms” to change their appearances. The legislature concludes that “[w]orkplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group.”

Although this is the first state law specifically addressing hair texture and hairstyles, the Equal Employment Opportunity Commission (EEOC) already takes the position that race discrimination may include unfavorable treatment of an employee because of personal characteristics associated with race, such as hair texture, skin color, facial hair, facial features, and other physical traits. However, in 2016, the U.S. Court of Appeals for the Eleventh Circuit rejected the EEOC’s position in Equal Employment Opportunity Commission v. Catastrophe Management Solutions. In that case, the court held that Title VII protection extends only to immutable traits of race, and that dreadlocks are not an immutable trait of black persons. The court ruled that mutable, or changeable, characteristics, such as hairstyle and facial hair, even if associated culturally with a protected class, are not protected characteristics. The Supreme Court of the United States declined to hear the plaintiff’s appeal.

New York State and Other Jurisdictions
While no federal law explicitly prohibits personal appearance discrimination, some state and local legislators are picking up the mantle of providing protection for workers in this area. On July 12, 2019, Governor Andrew Cuomo signed into law S.6209A, a bill prohibiting racial discrimination based on "natural hair or hairstyles" making New York the second state, after California, to do so. The measure amends New York's Human Rights Law and the anti-bullying law known as the Dignity for All Students Act, and adds "traits historically associated with race, including but not limited to hair texture and protective hairstyles" to their coverage.

New York's state law follows efforts in New York City. In February 2019, the New York City Commission on Human Rights issued legal enforcement guidance stating that the New York City Human Rights Law "protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities" including "the right to maintain . . . locs, cornrows, twists, braids, Bantu knots, fades, [or] Afros."

In doing so, the commission claimed it was the first city to formalize such rules, although other cities such as Chicago have enforced their laws in a similar way. The antidiscrimination statutes in the District of Columbia and in Madison, Wisconsin, both include "physical appearance" within their lists of protected categories, which some interpret as including natural hair or protective hairstyles.

On July 9, 2019, a bill was introduced in the New Jersey Senate and Assembly that would amend the New Jersey Law Against Discrimination to provide greater protection for individual hairstyles and prohibit hair discrimination in the workplace, in housing, and in schools. Finally, and most recently, on July 17, 2019, Michigan lawmakers introduced House Bill No. 4811, which would add language to the state's Elliott-Larsen Civil Rights Act to include hair texture and protective hairstyles as "traits historically associated with race."

Key Takeaways

Given California's and New York's laws, the efforts underway in other jurisdictions, and companies' goals to provide increased focus on inclusive workplace practices, employers may want to consider the following:

1. Reviewing and updating antidiscrimination and grooming/appearance policies in employee handbooks to ensure that they appropriately address hair textures and hairstyles associated with race

2. Addressing accommodation issues related to employees who are unable to adhere to appearance standards due to sincerely held religious beliefs

3. Reviewing model policies and customizing them to the workplace.

4. Providing training for hiring managers to ensure that job applicants are not unfavorably rated because of hairstyles associated with race

5. Identifying resources, such as workplace affinity groups, that may support company efforts to create more inclusive environments for current employees, including those who wish to wear culturally reflective or protective hairstyles

6. Revisiting workforce diversity and inclusion training programs to reinforce nondiscriminatory concepts of "professional" appearance and counter existing biases or stereotypes surrounding hairstyles in the workplace