CALIFORNIA AND NEW YORK BAN WORKPLACE HAIR DISCRIMINATION, WHILE NEW JERSEY AND MICHIGAN PROPOSE THE SAME

The New York City Commission on Human Rights published Legal Enforcement Guidance prohibiting discriminatory workplace hair policies in February.

In June, bills were introduced in the New Jersey legislature prohibiting discrimination based on hair type, texture or style.

This month, both California and New York State signed into law legislation expressly prohibiting workplace policies that disproportionately disadvantage people of color based on their hair. A similar bill was recently introduced in Michigan.

THE BOTTOM LINE

California, New York State and New York City have implemented prohibitions on workplace policies that restrict haircuts, hairstyles or hair textures that are linked to a particular racial group. California and New York employers should take a close look at their workplace policies to ensure compliance with the new laws and guidance requiring that any bans, limits or restrictions on hair be race-neutral and have no disproportionate impact on any legally protected group. New Jersey and Michigan employers should watch for any developments regarding proposed bills addressing hair discrimination in those states and ensure compliance with the same.

CALIFORNIA AND NEW YORK BAN DISCRIMINATORY HAIR POLICIES

California has enacted the Create a Respectful and Open Workplace for Natural Hair Act (the California CROWN Act) amending the California Fair Employment and Housing Act by expanding the definition of race to include traits historically associated with race, including but not limited to hair texture and "protective hairstyles," thereby prohibiting workplace discrimination based on those traits. "Protective hairstyles" include braids, locks and twists.

New York also enacted a nearly identical law expanding the New York Human Rights Law's definition of race (the New York Act).

The California CROWN Act becomes effective January 1, 2020, and the New York law has been effective since its enactment on July 12, 2019.

A California Senate Judiciary Committee's Executive Summary makes clear that the California CROWN Act does not prohibit grooming policies in workplaces, "[s]o long as those rules are imposed for valid, non-discriminatory reasons, have no disparate impact and are uniformly applied." A race-neutral requirement that hair be "neat and clean," on its face, does not violate the statute.

The California CROWN Act and the New York Act also protect traits historically associated with race other than hair, although the laws do not provide examples of those traits. Additionally, the California and New York laws amend those states' education laws to prohibit discrimination based on traits historically associated with race in the schools covered by those laws.

NEW YORK CITY LEGAL ENFORCEMENT GUIDANCE ON RACE DISCRIMINATION ON THE BASIS OF HAIR

The New York City Commission on Human Rights (the Commission)

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released Legal Enforcement Guidance on Race Discrimination on the Basis of Hair (the Hair Guidance). Noting that hairstyle and haircut are personal choices often inseparable from identity, the Commission stated that employer "grooming or appearance policies that ban, limit or otherwise restrict natural hair or hairstyles associated with Black people" (defined as including "those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry"), including twists, braids, cornrows, Afros, Bantu knots, fades and/or locks, are generally prohibited under the New York City Human Rights Law (NYCHRL).

Under the Hair Guidance, policies that restrict those hairstyles in the workplace violate the NYCHRL, because such policies specifically disadvantage black people and contribute to discrimination through stereotyping. The Commission noted that any workplace restriction on hair that is linked to a specific racial, ethnic or cultural group would typically violate the NYCHRL.

According to the Hair Guidance, the NYCHRL also prohibits:

- Requiring employees to change their hair to conform to certain standards (for example, by straightening it);
- Limiting the distance hair can extend from the scalp (and thereby placing restrictions on Afros);
- Enforcing grooming or appearance policies only against a group protected by the NYCHRL, even if those policies do not target hair associated with a particular group;
- Harassing, placing conditions on or discriminating against employees due to aspects of their appearance associated with race (for example, turning down "a Black applicant with cornrows because her hairstyle does not fit the 'image' the employer is trying to project for sales representatives"); and
- Other restrictions on hair associated with black people.

Employers who seek to place restrictions on hair due to a legitimate health or safety concern must consider alternatives (such as hair ties or hairnets) before proposing such restrictions. The NYCHRL's provisions also extend to places of public accommodation, such as schools.

Action Steps

Under the Hair Guidance, NYC employers should examine their workplace standards with an eye to making sure they are inclusive, non-discriminatory, and not disproportionately weighed against a protected group.

UPDATES IN NEW JERSEY AND MICHIGAN

In addition, New Jersey legislators introduced bills that closely resemble the California CROWN Act and the New York Act. The New Jersey bills would amend the New Jersey Law Against Discrimination (which covers housing, employment and education) to include "traits historically associated with race, including but not limited to hair texture, hair type and protective hairstyles," including braids, locks and twists. If the New Jersey legislature passes these bills, they would be effective upon enactment.

On July 17, a Michigan legislator introduced a similar bill amending the Michigan Civil Rights Act to protect hair texture and protective styles as traits historically associated with race.

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