



Legislative Trends: Hairstyle Discrimination in the Workplace

Eye on Washington's series focuses on the latest HR regulatory trends taking place at the federal, state and local level. Topics include tax and HR compliance, Health Care Reform, payroll, benefits, leaves, reporting obligations and more.

Background

Laws prohibiting discrimination against a person based on their natural hairstyle attempt to address societal and racial biases against African Americans, their hair texture and protective hairstyles. Discrimination often takes the form of denial of employment and educational opportunities due to grooming policies that have a disparate impact on African Americans. Protective hairstyles include locs, braids, twists, afros, bantu knots or other hairstyles inherent to a specific race. Traits inherent to black hair are an expression of identity and culture as they represent history and carry emotional significance.

Historically, policies that prohibit natural hairstyles like afros, locs, knots, and others have been used to justify the removal of Black children from schools and Black adults from employment opportunities. Due to this, Black people are left to conform to Eurocentric grooming standards, investing time and money in altering their hairstyles, and/or risk facing consequences at work or school with their natural hair.

Many states within the United States do not afford protections for race-based hair discrimination even if the hairstyle is inherent to racial identity. As a result, Black men and women can be denied opportunities for employment or professional advancement without consequence, and Black children can be denied entry to school or educational opportunities or extracurricular activities because of their natural hair.

A recent study performed by Dove showed that a Black woman is 80 percent more likely to change her natural hair to meet societal norms or expectations at work. Further, the same study showed that Black women are one-and-a-half times more likely to be sent home, or know of a Black woman sent home, from the workplace because of their hair. A different study performed by Duke University found that participants viewed Black hairstyles such as afros, twists, or braids as less professional. The same Duke University study also determined that Black women with natural hairstyles are less likely to land job interviews than white women or Black women with straightened hair.



Eye on Washington

Legislative Update

What the Laws Do

The laws, otherwise known as the CROWN Act, prohibit discrimination based on hair texture and protective hairstyles. The CROWN Act is the official campaign led by the CROWN Coalition. The CROWN Coalition was founded by Dove, the National Urban League, Color of Change, and the Western Center on Law and Poverty to advance the CROWN Act. CROWN stands for Creating a Respectful and Open World for Natural Hair. These laws modify existing antidiscrimination laws by amending the definition of "race" to include "protective hairstyles and hair textures," to prohibit employers and schools from discriminating against candidates, employees or children, based on hairstyles inherent to their race.

Where the Laws Have Been Enacted

California was the first state to enact the CROWN Act, which went into effect on January 1, 2020. The law amended the Fair Employment and Housing Act (FEHA), which prohibits employers from discriminating against individuals due to their race and other protected categories. The California CROWN Act clarifies that the term "race" will now include traits historically associated with race, including hair texture and protective hairstyles such as braids, locs and twists.

Apart from California, there are twelve other states that have passed CROWN Acts, including Colorado, Connecticut, Delaware, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Virginia and Washington. In addition, there are more than twenty-eight local jurisdictions which have enacted laws including, but not limited to, New York City, NY; Broward County, FL; New Orleans, LA; Montgomery County, MD; Kansas City, MO; and multiple cities in Ohio.

Although there is no federal law prohibiting discrimination based on hairstyle, the past two congressional

sessions have produced federal bills proposing to amend federal antidiscrimination law to expressly prohibit hairstyle discrimination. They have passed in the House of Representatives, but were not voted on in the Senate.

Impact to Employers

The CROWN Act addresses racial discrimination in the workplace and schools, most specifically, when work and school grooming policies appear neutral on their face but have a negative effect on African Americans. Policies that come across as racially neutral, such as an employer policy that all employees must be cleanly groomed, may nonetheless adversely impact African Americans in that managers may interpret "cleanly groomed" differently due to conscious or unconscious biases and possibly discriminate against an employee with a natural hairstyle because they view that protective hairstyle as unkempt. Instead, employers may want to consider modifying such a policy to clarify what "cleanly groomed" means, and how employees are able to comply with a variety of hairstyles, including natural hairstyles.

Employers should consider reviewing policies and procedures for any language and practices that may have a disparate impact on African Americans and other minorities. For instance, policies that prohibit having twists, cornrows, or locs in the workplace, or refusing to hire a Black applicant or employee with braids because their hairstyle does not fit the image the company wants to project, discriminate against individuals based on their protective hairstyles.

Discriminatory workplace practices may also include an employer telling a candidate or an employee with an afro that they will not put them in a customer-facing role until they change their hairstyle, or when an employer transfers an employee in a customer-facing role to a non-customer-facing position because a customer complained about their protective hairstyle. It is important for employers to review company grooming policies and procedures with their HR and legal counsel to ensure that they do not have a detrimental

Eye on Washington

Legislative Update

impact on African Americans in the workplace -- whether someone is racially neutral or not, as more hairstyle-related, antidiscrimination laws come into effect.

The CROWN Act may present other implications for employers. Policies that prevent African Americans and minorities from participating in the workplace are damaging workplace diversity. Diversity in the workplace has many benefits,

including enhanced productivity as different workers with diverse backgrounds add more skills, abilities and focus-areas to the organization. Companies that fire and/or refuse to hire or promote, Black men and women because of their protective hairstyles are hindering growth and diversity. Having laws in place that prohibit discrimination, based on an individual's protective hairstyle, help keep workplace diversity thriving.

ADP Compliance Resources

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