Legal Update Article

New Jersey Bans Discrimination Based on Hair Type, Style

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One year after news broke nationwide of south New Jersey high school wrestler Andrew Johnson forced to choose between forfeiting a wrestling match or having his dreadlocks cut off, New Jersey has joined California and New York in banning discrimination on the basis of hair type and style.

The "Create a Respectful and Open Workplace for Natural Hair Act" (or CROWN Act) was signed by Governor Phil Murphy on December 19, 2019, and went into effect immediately. The CROWN Act amends the New Jersey Law Against Discrimination (LAD) to define discrimination due to race as including discrimination based upon "traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles" such as braids, locks, and twists.

The new law seeks to address both direct discrimination and disparate impact in the workplace, schools, and places of public accommodation.

Incidents Prompting Law

Johnson is not the only student whose story of adverse consequences due to hairstyle made news in recent years. In 2017, twin 15-year-old sisters in Massachusetts were given detention at their charter school for wearing their hair in braids. In 2018, an 11-year-old student in New Orleans was asked to leave class because her braided hair extension violated her Catholic school's appearance rules.

While these incidents have garnered wide media coverage with viral videos, claims of hair discrimination also have been prevalent in the workplace, where employees and job applicants in many states claim to have been terminated or not hired due to their choice of hairstyles.

The CROWN Act passed both the New Jersey Senate and Assembly with overwhelming support. About a dozen other states, including Florida, Illinois, and Pennsylvania, are considering similar legislation prohibiting discrimination based on hair type and style.

DCR Guidance

Now is a good time for employers to review the New Jersey Division on Civil Rights "Guidance on Race Discrimination Based on Hairstyle" released in September 2019, for insights on how the state agency and courts may apply the CROWN Act.

Employer grooming policies that expressly prohibit twists, braids, cornrows, Afros, locs, Bantu knots, and fades violate the new CROWN law. The DCR Guidance states:

> [The] LAD's prohibition on discrimination based on race encompasses discrimination that is ostensibly based on hairstyles that are inextricably intertwined with or closely associated with race. That means, for example, that the LAD generally prohibits employers, housing providers and places of public accommodation (including schools)

in New Jersey from enforcing grooming or appearance policies that ban, limit, or restrict hairstyles closely associated with Black people, including, but not limited to, twists, braids, cornrows, Afros, locs, Bantu knots, and fades.

The DCR Guidance notes, "Historically … discrimination has been rooted in white, European standards of beauty, and the accompanying stereotypical view that traditionally Black hairstyles are 'unprofessional' or 'unkempt.'" It observes that discrimination based upon hairstyles associated with a particular religion is similarly prohibited.

With respect to facially neutral policies that require employees to maintain a "professional," "neat," or "tidy" appearance, the DCR Guidance observes that such policies will violate the LAD if they are discriminatorily applied or selectively enforced against Black people. In other words, such facially neutral policies should not be enforced as "untidy" against Black employees with shoulder-length locs or braids if they are not enforced against other employees with shoulder-length hair. The risk with such grooming policies is that terms such as "professional," "neat," and "tidy" are subjective and in the eye of the beholder. Any indication that the grooming policy is being unevenly applied to one group of employees of a common background more than others, whether intentional or not, may be problematic.

The DCR Guidance also notes that grooming policies may not be justified by employers based upon a desire to project a certain "corporate image," because of concerns about "customer preference" or customer complaints, or because of speculative health or safety concerns. If health and safety concerns are reasons for a grooming policy, they must be "rooted in objective, factual evidence," not on generalized assumptions that the hairstyle would present a materially greater risk of harm to the employee or others. For example, is there a real risk that longer hair may get caught in machinery? Are hair nets necessary for food handlers? Even if the concern is legitimate, policies must be applied evenly.

Next Steps

Employers in New Jersey should review and revise any grooming and work appearance policies, particularly those addressing hairstyles, to ensure their language and application comply with the CROWN Act.

Please contact a Jackson Lewis attorney with any questions about this new law and its requirements.

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