



FEBRUARY 20, 2019

NYC Commission on Human Rights Issues Guidance on Race Discrimination on the Basis of Hair

This week, the NYC Commission on Human Rights (the “Commission”) issued legal enforcement guidance on race discrimination on the basis of hair. The legal enforcement guidance states that the New York City Human Rights Law (“NYCHRL”) protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities, and focuses on policies addressing natural hair or hairstyles most commonly associated with Black people. These hairstyles include “treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.” The Commission defines “Black people” to include those who identify as African, African American, Afro-Caribbean, Afro-Latinx/a/o or otherwise having African or Black ancestry.

The Commission affirms that grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people generally violate the NYCHRL’s anti-discrimination provisions. Black hairstyles are protected racial characteristics under the NYCHRL because they are an inherent part of Black identity. Covered employers that enact grooming or appearance policies that ban or require the alteration of natural hair or hairstyles associated with Black communities may face liability under the NYCHRL because these policies subject Black employees to disparate treatment. Discrimination can also come in the form of facially neutral grooming policies related to characteristics that may not necessarily be associated with a protected class but that are discriminatorily applied.

Finally, employers may not ban, limit, or otherwise restrict natural hair or hairstyles associated with Black communities to promote a certain corporate image, because of customer preference, or under the guise of speculative health or safety concerns. Where an employer does have a legitimate health or safety concern, it must consider alternative ways to meet that concern prior to imposing a ban or

restriction on employees' hairstyles. The Commission states that a number of options exist that may address such concerns related to hair, including the use of hair ties, hair nets, head coverings, as well as alternative safety equipment that can accommodate various hair textures and hair styles.

Examples of Violations

- A grooming policy requiring employees to alter the state of their hair to conform to the company's appearance standards, including having to straighten or relax hair (i.e., use chemical or heat);
- A grooming policy banning hair that extends a certain number of inches from the scalp, thereby limiting Afros;
- Forcing Black people to obtain supervisory approval prior to changing hairstyles, but not imposing the same requirement on other people; and
- Refusing to hire a Black applicant with cornrows because her hairstyle does not fit the "image" the employer is trying to project for sales representatives.

Takeaway for Employers

New York City covered employers should proactively take steps to ensure their existing grooming and appearance policies comply with the legal enforcement guidance.

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If you have any questions regarding the legal enforcement guidance, please do not hesitate to contact us.

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