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Following Lead of Other States, Discrimination Based on Certain Hairstyles Is Now Unlawful in New Jersey

In September, the New Jersey Division of Civil Rights (DCR) issued enforcement guidance stating that the New Jersey Law Against Discrimination (NJLAD) prohibits discrimination based on hairstyles closely associated with a particular race or religion.

The DCR is charged with enforcing the NJLAD and "preventing and eliminating discrimination in the State of New Jersey." The DCR's guidance makes clear that the NJLAD's prohibitions on discrimination encompass discrimination that is "ostensibly based on something that is inextricably intertwined with or closely associated with" a protected characteristic. As such, the NJLAD prohibits employers from refusing to hire or otherwise treating "a Black person differently because they wear their hair in a style that is closely associated with being Black." The DCR's guidance cautions employers that singling out hairstyles of employees and applicants that are closely associated with Black racial, cultural and ethnic identity, including but not limited to natural hair, twists, braids, cornrows, Afros, locs (otherwise known as the less acceptable term "dreadlocks"), Bantu knots and fades, will constitute direct evidence of race discrimination in violation of the NJLAD.

The DCR's guidance provides examples of policies and practices that may evidence disparate treatment because of an employee's hairstyle and, accordingly, unlawful race discrimination. For example, employers may not enforce grooming or appearance policies that ban, limit or restrict "hairstyles closely associated with Black racial, cultural and ethnic identity." Even facially neutral policies requiring employees to maintain a "professional" or "tidy" appearance may violate the NJLAD if employers apply such policies discriminatorily or enforce them selectively.

Likewise, according to the guidance, employers may not "justify policies that explicitly or in practice, ban, limit, or restrict natural hair or hairstyles associated with Black people based on 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." Employers with policies restricting hairstyles due to health and safety concerns must be able to show that the policy is "rooted in objective, factual evidence — not generalized assumptions — that the hairstyle in question would actually present a materially enhanced risk of harm to the wearer or to others." Even if the policy is "rooted in objective, factual evidence," the guidance requires employers to consider whether a legitimate health or safety risk can be mitigated using an alternative method such as hair ties, hairnets or other head coverings rather than restricting hairstyles.

While the focus of the DCR's guidance is discrimination based on hairstyles "closely associated with Black people," it specifies that the analysis also applies to discrimination based on hairstyles that are "inextricably intertwined with or closely associated with" other protected characteristics, such as religion. For example, the guidance states that the NJLAD's prohibition on discrimination based on religion also includes discrimination because of a person's religious hairstyle or garb, such as payot (sidelocks) worn by Orthodox Jewish males, hijabs worn by Muslim women and the uncut hair of Sikhs.

New Jersey is not the first state to take measures aimed at eliminating discrimination based on hairstyles. As we previously reported, in February, the New York City Human Rights Commission issued similar guidance. Also earlier this year, California enacted the Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act, becoming the first state to enact legislation specifically aimed at banning discrimination based on hairstyles associated with race. New York State followed suit by amending the New York State Human Rights Law to add "traits historically associated with race, including but not limited to hair texture and protective hairstyles" to the statutory definition of the term "race."

Employers should review their appearance, grooming and dress code policies to ensure such policies do not contain any restriction that may conflict with the law in their jurisdiction. Employers should also train supervisors and managers not to make any adverse decision against an applicant or employee based on hairstyles associated with racial, cultural, ethnic or religious identity.

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