

NEW YORK PROHIBITS HAIR DISCRIMINATION IN THE WORKPLACE AND IN SCHOOLS

Hodgson Russ Labor & Employment Alert
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New York has now become the second state to ban “hair discrimination” in the workplace and in schools. On July 12, Governor Cuomo signed a bill to prohibit discriminatory treatment based on an individual’s hairstyle or hair texture. According to Governor Cuomo, “For much of our nation’s history, people of color - particularly women - have been marginalized and discriminated against simply because of their hair style or texture. By signing this bill into law, we are taking an important step toward correcting that history and ensuring people of color are protected from all forms of discrimination.” The bill specifically amends the Human Rights Law and the Dignity for All Students Act.

The New York Human Rights Law and the Dignity for All Students Act now define the term “race” to include “traits historically associated with race, including but not limited to, hair texture and protective hairstyles.” “Protective hairstyles” is defined to include, but is not limited to, hairstyles such as braids, locks, and twists. Interestingly, the legislation’s use of the phrase “traits historically associated with race” extends legal protections beyond hair discrimination to encompass other “traits” that are “historically associated” with race, though it is not altogether clear what else that phrase would encompass. The bill’s provisions are effective immediately.

The new legislation follows guidance issued earlier this year by the New York City Commission on Human Rights (NYCCHR) which indicates that the New York City Human Rights Law (NYCHRL) protects individuals’ right to maintain natural hair or hairstyles that are closely associated with racial, ethnic, or cultural identities in workplaces, schools, and public places.

The NYCCHR guidance provides the following examples of potential violations of the NYCHRL:

- Maintaining policies that ban or require the alteration of natural hair or hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, or locks.
- Applying facially neutral policies in a discriminatory manner, e.g., enforcing a grooming policy banning the use of color or patterned hairstyles against Black employees only.

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- Enacting policies that force employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations.
- Enacting a policy prohibiting hair that extends beyond a certain length from the scalp.
- Harassing, imposing unfair conditions, or otherwise discriminating against employees based on aspects of their appearance associated with their race, e.g., prohibiting a Black employee with locks from being in a customer-facing role unless they change their hairstyle.

Although the NYCCHR guidance applies only to New York City, it was cited with approval by the State legislators who sponsored this new New York State law. The legislators also identified the following news stories as recent examples of “hair discrimination”:

- A high school wrestler was forced to cut his hair or forfeit a wrestling match in New Jersey.
- A 6-year-old boy in Florida was turned away from a private Christian academy on his first day of school because his hair extended below his ears.
- A New Orleans-area girl was sent home at the start of the school year from a Catholic school for wearing braids.

Accordingly, employers and schools should review their grooming and appearance policies to ensure that they do not contain any provisions that would run afoul of this new legislation.

If you have any questions regarding this new legislation or its impact on employers or schools, please contact one of our Labor and Employment, Education, or Municipal attorneys.

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