LABOR AND EMPLOYMENT LAW
INFORMATION MEMO
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How is My Hair? A Brief Review Of Hairstyle Discrimination In The Workplace

"How is my hair? Does it look OK?" With employees returning to onsite work, questions regarding employers' grooming and dress code policies are bound to crop up. When responding, employers should be cognizant of the fact that their dress code and grooming policies must comply with expanding legal protections against discrimination based on race-based hairstyles.

Why is this important? A study[1] conducted in 2019 by the CROWN Act Coalition found that 80% of Black women were more likely to agree that they had to change their hair from its natural state to fit in at the office. The study also found that Black women fear scrutiny and discrimination when expressing their natural beauty in the workplace, where they are 1.5 times more likely than other women to be sent home from the workplace because of their hair and 83% more likely to report being judged more harshly based on her physical appearance.

The results of the CROWN Act Coalition study made an impact. Recently, anti-hairstyle discrimination reform has increased at the federal, state and local levels. In March 2021, Congress reintroduced the Creating a Respectful and Open World for Natural Hair Act (CROWN Act)[2]. The CROWN act proposes to prohibit discrimination based on an individual's style or texture of hair by including an individual's style of hair in the definition of racial discrimination. This definition includes hair that is tightly coiled or tightly curled, locks, cornrows, twists, braids, Bantu knots, Afros and any other style of hair commonly associated with a race or national origin.

In the meantime, state governments have passed their own versions of the CROWN Act. These states include California, Colorado, Connecticut, Maryland, New York, New Jersey, Virginia, Washington and Delaware. Similar bills are pending in more than 20 additional states this year.

New York's law, which took effect in July 2019, amended the Human Rights Law to define "race" for certain specific purposes to include but not be limited to "ancestry, color, ethnic group identification and ethnic background, and to include traits historically associated with race, including but not limited to hair texture and protective hairstyles"; and defines "protective hairstyles" to include but not be limited to, braids, locks and twists. New York City employers should also be aware that the New York City Commission on Human Rights issued a Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, and specified in the guidance 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." Guidance on the NYCHRL version of the CROWN Act notes that employers are "assumed to know" the association between Black people and Black hairstyles. It protects both those with "natural hair," defined as "hair that is untreated by chemicals or heat or can be styled with or without extensions," and "treated hair." Other communities are also protected under NYCHRL, and guidance for this law notes that Sikh and Orthodox Jewish communities are examples of communities affected by discriminatory grooming policies and thus protected under this law.

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1 Crown Coalition, *The Crown Research Study* (last visited June 1, 2020).

2 The CROWN Act was first introduced in a previous session of Congress and was passed by the House of Representative in September 2020.

It is important for employers to understand that hair discrimination can manifest in different ways. Examples of possible instances of hair discrimination include but are not limited to: grooming policies requiring employees to alter their hair to conform to the company's appearance standards, including having to straighten or relax hair (i.e., use chemicals or heat); refusing to hire applicants, or firing current employees, for wearing their hair the way it naturally grows or in a protective hairstyle; grooming policies that expressly prohibit hairstyles commonly associated with African Americans such as Bantu knots, braids, dreadlocks, tight coils or curls, cornrows, Afros, weaves, wigs, head wraps and headdresses of cultural or religious significance; forcing Black employees to obtain supervisory approval before changing hairstyles, but not imposing the same requirement on others; policies excluding Black employees with locks from customer-facing roles unless they change their hairstyles; and asking a Jewish employee to cut their *payot* (sidelocks or sideburns in Hebrew) or shave their beard.

Employers should carefully review their dress code and grooming policies to make sure they do not contain prohibitions that discriminate against a particular racial group. As best practice, pertinent policies should not contain outright prohibitions on specific hairstyles historically associated with race, such as dreadlocks, twists or braids. Employers should consider adding clarifying language to their current grooming policies, specifically in instances where employers require a "business-like" or "professional" appearance. As always, ensuring human resources professionals and supervisors are adequately informed of implicit bias in this area is vitally important. It helps "detangle" the process of enforcing a company's dress code and grooming policy.

If you have any questions about the information presented in this memo, please contact Nihla Sikkander, any attorney in Bond's Labor and Employment practice or the Bond attorney with whom you are regularly in contact.

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