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ALERT
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Workplace Hairstyle Policies May Be Discriminatory, NYC Warns

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The New York City Commission on Human Rights (Commission) issued Guidance concerning racial discrimination based on an individual's natural hair or hairstyle. Released on February 18, 2019, the Guidance – a 10-page document entitled "NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair" (Guidance) – explains that grooming and appearance policies that ban, limit, or otherwise restrict an individual's natural hair or hairstyle may violate the New York City Human Rights Law (NYCHRL) because they are likely to disparately affect black people. Thus, the Commission contends that such policies, whether in a place of employment or public accommodation, are a form of race discrimination in violation of the NYCHRL. Employers should review their appearance and grooming policies to ensure compliance with the Guidance.

The Guidance advises that the NYCHRL protects an individual's right to maintain natural hair or hairstyles that are closely associated with racial, ethnic, or cultural identities, or are otherwise connected with a class of individuals protected under the NYCHRL, such as natural hair or hairstyles associated with or required by an individual's race, religion, disability, age, or gender. Accordingly, policies that ban, limit, or restrict such hair or hairstyles generally violate the NYCHRL.

Specifically, the Guidance notes that many hairstyles are closely linked to black individuals' racial, ethnic, or cultural identity. As such, these hairstyles cannot be banned, limited, or restricted by employers or places of public accommodation without violating the NYCHRL. This may include natural, treated, or untreated hairstyles, such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or keeping hair in an uncut or untrimmed state. While the Guidance focuses on racial discrimination in the black community, the Commission also notes that the NYCHRL's protections extend to other impacted groups including, but not limited to, Latin-x, Indo-Caribbean, Native American, Sikh, Muslim, Jewish, Nazirite, and/or Rastafarian communities, all of whom may have a religious, cultural, or racial connection with a particular hairstyle. In addition, the Commission identifies situations where grooming and appearance policies may give rise to discrimination based on disability (where a medical condition makes shaving painful), gender (where a male server is forced to cut his ponytail while female servers are not), and age (where a 60-year-old employee with gray hair is told to dye his hair to promote the company's image).

Discrimination in Employment

The NYCHRL, which covers employers with four (4) or more employees, prohibits discrimination in employment, whether such discrimination is a result of disparate treatment toward

members of a protected class or facially neutral policies that have a disparate impact on members of a protected class.

As discussed in the Guidance, disparate treatment discrimination occurs when an employer treats an individual less favorably than others because of a protected class. For example, a grooming policy that prohibits twists, locs, braids, cornrows, and Afros would violate the NYCHRL because the policy subjects black employees to disparate treatment, as these hairstyles are commonly associated with black individuals. Likewise, if an employer enacts a policy that prohibits the use of color/dye, extensions, and/or patterned or shaved hairstyles and enforces that policy against only black employees, for example, the employer would be in violation of the NYCHRL. Consequently, employers may not promulgate grooming and appearance policies that treat certain individuals less favorably than others because of their membership in a protected class or enforce grooming and appearance policies against only certain classes of employees.

The Commission also explains that discrimination may occur when a facially neutral policy has a disproportionate impact on members of a protected class. For example, while seemingly neutral, a policy prohibiting employees from maintaining uncut hair or wearing untrimmed beards would likely violate the NYCHRL because such a policy may disproportionally affect certain religious groups, such as Sikhs, Muslims, and Jews, whose religion may prohibit them from trimming their beards or hair. The Guidance specifically notes that employers may not ban, limit, or otherwise restrict natural hair or hairstyles to promote a certain corporate image or because of customer preference, as an employee's hairstyle generally has no bearing on the employee's ability to perform the essential functions of his or her job.

Where an employer has a legitimate health or safety concern – such as employees who work in restaurants or around heavy machinery – the employer must consider alternatives to address these concerns before imposing a ban or restriction on employees' hairstyles. For example, employers may require the use of hair ties, hair nets, head coverings, or alternative safety equipment that can accommodate different hairstyles.

The NYCHRL also prohibits discrimination in places of public accommodation, defined as "providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages, or privileges of any kind are extended, offered, sold, or otherwise available." N.Y.C. Admin Code § 8-107(4). Accordingly, places of public accommodation must also adhere to the grooming and appearance policy restrictions discussed above.

In light of the Commission's Guidance, New York City employers and places of public accommodation should contact counsel to review and revise their current grooming and appearance policies, standards, or norms to ensure compliance with the NYCHRL.

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