California Amendments on Hairstyle-Related Discrimination Will Likely Have Broader Effect

Labor & Employment Law Update

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The state of California recently passed legislation that amends the definition of race under the California Fair Employment and Housing Act (the California State statute that prohibits employment discrimination, among other things) to include "traits historically associated with race, including but not limited to, hair texture and protective hairstyles." The legislation defines "protective hairstyles" to include, without limitation, hairstyles such as "braids, locks, and twists." In passing this legislation, California's Legislature made clear that the amendment was directed toward addressing persistent, racist norms that certain hairstyles associated with black people are inferior or unprofessional. The amendment is effective January 1, 2020, and several other states are considering similar measures.

Along similar lines, the New York City Commission on Human Rights issued lengthy legal enforcement guidance relating to hair grooming policies earlier this year. The NYC Commission's guidance provides an extensive discussion of natural hair textures and hairstyles associated with black people, and the various ways in which discrimination based on hair textures and hairstyles has occurred in the past and present.

All of this is significant to employers, nation-wide, because even though the jurisdictions that have expressly recognized hairstyle discrimination as a form of race discrimination are limited, courts and governmental agencies across the country are likely to accept hairstyle discrimination as a cognizable theory of discrimination–particularly as more and more light is shed on this issue through actions like those of the California Legislature and the NYC Commission.

With that in mind, employers must ensure that their managers and decision-makers are aware of this issue, and trained to ensure that discrimination based on hair textures and hairstyles associated with particular races, religions, and other legally-protected categories of employees does not occur. It is also critical for employers to examine their grooming and dress code policies that cover hairstyles to ensure that such policies are strongly rooted in non-speculative safety and health concerns. Such policies must not have a tendency to

discriminate against natural or other hairstyles commonly associated with black people or any other racial or cultural group (e.g., twists, braids, cornrows, Afros, and hair kept in an otherwise natural state). In particular, employers should not impose a "neat and orderly" hair grooming policy if such a policy prohibits, for example, twists or cornrows, under the presumption that such hairstyles are inherently messy or unkempt.

The take-away for employers is, as the NYC Commission stated, that an "employee's hair texture or hairstyle generally has no bearing on their ability to perform the essential functions of a job."

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