Employers Should Review their Policies Regarding Hairstyles as the CROWN Act Movement Gains Momentum

Labor & Employment Law Update

on December 1, 2020

Have you seen the 2019 viral video and articles about the young African American wrestler being told by a Caucasian referee that he either had to cut off his locs or forfeit the match? Or the resulting public outcry and negative media attention the referee and school received?

Since 2019, CROWN Act legislation has been gaining momentum. The CROWN Act stands for "Creating a Respectful and Open World for Natural Hair" and is legislation that specifically prohibits discrimination in employment based on hair texture, protective hairstyles – including braids, locs, twists, and bantu knots – and other cultural hair stylings such as extensions, hair ornaments, and head wraps. The natural hair movement was created to counter the problem of minority employees, primarily African Americans, feeling compelled to change their natural hair styles or texture in order to abide by their workplace's view of professional appearance.

On October 23, 2020, Pittsburgh enacted a CROWN Act and in doing so followed several other states and cities, including California, New York, Washington State, Colorado, Maryland, Virginia, and New Jersey. In the Midwest, Illinois, Michigan and Ohio are currently considering passing CROWN Acts.

At the federal level, in September 2020, the U.S. House of Representatives passed a CROWN Act, which is now awaiting review by the Senate.

Even if a CROWN Act is not enacted in your state or locale, employers should proactively review their workplace rules regarding appearance and hair styling to limit their exposure to discrimination claims, including those based on race, religion, national origin and gender.

The U.S. Equal Employment Opportunity Commission has long taken the position that workplace rules about professional appearance that disproportionately affect employees in a protected class may give rise to Title VII discrimination claims. Employers should heed the following:

- Eliminate workplace rules restricting hairstyles whenever possible. Even neutral policies that require employees to keep hair neat, clean, kempt or tidy may be discriminatory if they are enforced in a way that prohibits employees who are minorities from wearing their hair naturally.
- Where it is necessary to have hairstyle policies, ensure that any restrictions are rooted in legitimate health and safety justifications that are backed by objective evidence. The policy cannot restrict hairstyles associated with different cultures due to a "corporate image," "customer preference," or unfounded and stereotypical concerns about health or cleanliness.
- Any policies addressing hairstyles should be in writing and distributed to all employees. The policy should expressly inform employees that they may request reasonable accommodations for hairstyles of religious significance.
- All policies should be enforced consistently amongst all employees. For example, if all employees must tie their hair back if it is longer than their shoulders, this rule should be applied across the board regardless of the employees' demographics (e.g. race, gender, national origin) and hair (e.g. locs, or fine blonde hair).
- Employers should train managers on anti-discrimination laws and company expectations regarding hairstyles and remind them that if in doubt to immediately involve HR.

In reviewing policies, changes to your policies and addressing any potentially problematic employee issues, make sure to work with trusted legal counsel, who is experienced in labor and employment law issues.

Employers Should Review their Policies Regarding Hairstyles as the CROWN Act Movement Gains Momentum