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Legal Alert: Is Your Grooming Policy Discriminatory?

On February 18, 2019, the New York City Commission on Human Rights (the Commission) issued a legal enforcement guidance (the Guidance) related to race discrimination on the basis of hair. The Guidance explains that grooming and appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles that are associated with people who identify as Black may violate the New York City Human Rights Law (the NYCHRL) because those grooming policies would likely disparately affect Black People.[1] Therefore, the Commission affirms that such policies, whether in a place of employment or a public accommodation, are a form of race discrimination in violation of the NYCHRL.

Executive Summary

The Commission issued a Guidance related to race discrimination on the basis of hair. This Guidance is not law but recommended practice in order to avoid employment and race discrimination-based lawsuits. The Guidance states that grooming and appearance policies should not ban, limit, or restrict natural hair or hairstyles associated with Black People. All New York City employers and owners of public spaces should review their grooming policies to ensure they are not in violation of this Guidance.

What is Hair Discrimination?

Discrimination of the basis of hair is not specifically mentioned in New York City or New York State anti-discrimination laws. However, the Guidance explains the NYCHRL protects the rights of individuals to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities. The Guidance details that the protection provided by the NYCCHRL includes "treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

Discrimination in a Place of Employment

It is important to bear in mind that the Guidance is concerned about intentional as well as implicit forms of discrimination. Even if a grooming policy is written in a neutral manner, it may have an adverse impact if the only hairstyles prohibited are usually worn only by members of a particular race. A race-neutral grooming policy would also be unlawful if it is only enforced against Black People. Therefore, employers should ensure grooming and appearance policies are race-neutral and enforced uniformly. Furthermore, an employer cannot impose unfair conditions that discriminate against employees based on aspects of their appearance associated with their race. For example, an employer cannot deny a Black employee with locs a customer-based role unless she changes her hairstyle.

Although the Guidance acknowledges that an employer could have a legitimate health or safety concern for regulating hairstyles, the Guidance affirms that an employer must consider alternative means to address this concern before imposing a restriction or ban on certain hairstyles. Reasonable alternatives consist of hair nets, hair ties, head coverings, or other alternative safety equipment.

[1] The Guidance defines Black People to include those who identify as African, African American, Afro-Caribbean, Afro-Latinx or otherwise having African or Black Ancestry.

Discrimination in Place of Public Accommodation

The NYCHRL also prohibits discrimination in places of public accommodation. Therefore, places of public accommodation should also follow the Guidance. A place of public accommodation is 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."[2] Examples of public accommodations include: restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers.

What Not to Include in Grooming Policies

A grooming or appearance policy that prohibits natural hair and/or requires hairstyles to conform to the employer's expectations "constitutes direct evidence of disparate treatment based on race", which is a violation of the NYCHRL. Examples of policies to avoid are:

- A grooming policy that prohibits these hairstyles: twists, locs, braids, cornrows, Afros, Bantu knots, or fades, as those hairstyles are generally associated with Black People and therefore the policy would disparately affect Black People.
- A grooming policy requiring employees to alter the state of their hair to conform to the company's appearance standards, including having to straighten or relax hair, as this also would disparately affect people of color with curlier hair.
- A grooming policy banning hair that extends a certain number of inches from the scalp, as this has the effect of restricting Afros.

Overall, the Guidance takes a very broad view on what constitutes race discrimination on the basis of hair. As a result, any prohibition that disproportionately impacts a hair style associated with the Black community will be heavily scrutinized under the law.

What nonprofits should do now:

1. The NYCHRL applies to employers in New York City with at least 4 employees.
2. All employers with New York City should immediately review their grooming and appearance policies to ensure it does not include any of the items listed in the section further above titled "What Not to Include in Grooming Policies."

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

[2] *See* N.Y.C. Admin Code § 8-107(4).