CLIENT NEWS BRIEF

New Law Clarifies Anti-Discrimination Laws Include Hair Discrimination

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The California Legislature recently passed Senate Bill (SB) 188, known as the CROWN Act, which amends the definition of "race" contained in state anti-discrimination laws under both the Fair Employment and Housing Act and the Education Code to include "hair texture and protective hairstyles." The new law does not mean that public agencies have to change their dress codes unless specific hair texture and hairstyles are specified in their policy. Rather, the new law clarifies that dress codes may be considered discriminatory if they explicitly or implicitly affect individuals who have their hair textured or styled in a manner historically associated with their race. For example, a public agency could not have a policy restricting Black workers or students from wearing dreadlocks, twists, or braids. Further, a public agency could not enforce a policy demanding "professional" or "clean and tidy" hair that effectively limits workers or students from wearing dreadlocks, twists, or braids.

Courts and administrative agencies have routinely and clearly established that public agencies have a management prerogative to impose non-discriminatory employee dress code policies. Indeed, in the K-12 school context, there is a heightened importance associated with standards for professional appearance because employees' behavior is often imitated or modeled by students. Similarly, courts have held that school districts may impose viewpoint neutral and content neutral dress code policies for students as long as they are implemented in a consistent and equal manner among all students.

The California Legislature passed the CROWN Act to provide clarity in light of recent federal case law declining to extend anti-discrimination protections based on hairstyles or textures commonly associated with a protected class. Because hair can be changed (i.e., is mutable), federal courts have refused to equate hairstyle with race, with a limited exception for afros, and thus limited Title VII race discrimination claims to only protect against "immutable characteristics." In contrast, the legislative analysis for SB 188 notes that discrimination is often not based on the immutable nature of a trait but is instead based on the trait's connection with an identity associated with a protected characteristic.

Importantly, the new law reaffirms a public agency's control over dress code policies for employees and students. These dress code policies will be lawful so long as they are imposed in a valid and non-discriminatory manner with no disparate impact on individuals based on their dress and appearance's association with a protected characteristic. Public agencies should review their existing dress code enforcement practices to ensure compliance with SB 188. In addition, public agencies may consider conducting implicit bias training and refocus practices to ensure inclusivity and compliance with this new law.

For more information about SB 188 or about public agency dress code policies in general, whether directed at employees or students, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.

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