The Roots Of The CROWN Act: What Employers Need To Know About Hairstyle Discrimination Laws

Insights
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Curly, straight, natural, relaxed, braids, dreads, Afro, or weave. Hair in the workplace is a controversial issue that has been flooding the media in the past year. In response, state and federal legislators have constructed the model CROWN Act (an acronym for Creating a Respectful and Open World for Natural Hair), which prohibits discrimination based on natural hair style and texture.

Employers routinely try to control the professional appearance of their employees. Consider your employment handbooks, which likely include a personal appearance policy advising employees to dress professionally, practice good hygiene, and perhaps hide offensive tattoos. Though litigants have attempted to discredit the policies and bring claims based on appearance discrimination, these lawsuits rarely succeed. So, why would hair be different?

Legal Roots
Studies have shown that appearance is linked to success, so no wonder employers want to regulate the appearance of their workers. One's looks can affect perceived traits such as intelligence, motivation, and overall capability.

Appearance, however, is not a protected characteristic. Title VII of the 1964 Civil Rights Act only prohibits employment discrimination on the bases of race, color, religion, national origin, and sex. Other federal laws also create protected classes based on age, disability, pregnancy, familial status, veteran status, and genetic information. Characteristics such as height, eye color, blood type, and weight, however, are not protected in most situations. Federal law only cares about a person's immutable – or unchangeable – characteristics.

Some local legislatures, on the other hand, have addressed appearance discrimination. Washington D.C., for example, banned personal appearance discrimination based on bodily condition, beards, hair style, personal grooming, and dress. Michigan is an outlier state that has specifically banned employment discrimination on the bases of height or weight. But, until recently, Michigan's law did not protect someone's hair. At-will employees could be fired for showing up to work with bedhead or for having shaggy hair they refused to cut. With CROWN Act legislation pending in many states and in Congress, you should think twice before admonishing any employee for their choice of hairstyle.

Origins Stem From Alabama Case

Proponents of the CROWN Act argue that natural hair discrimination is not appearance bias but rather a conduit for racial discrimination. The Act sprung up partially as a result of a 2013 Alabama case where the Equal Employment Opportunity Commission filed a racial discrimination lawsuit on behalf of an African American job applicant who was offered a job as a customer service representative but informed that her dreadlocks violated the company's grooming policy. When she refused to cut and restyle her hair, the company rescinded its offer of employment.

The Southern District of Alabama dismissed the claim, stating that hairstyle is not an immutable characteristic protected by Title VII because it can be changed. In upholding the opinion, the 11th Circuit Court of Appeals in 2016 stated that "Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices." The court considered hairstyle a matter of individual expression rather than a biological imperative. Despite pleas from special interest groups, the Supreme Court refused to review the case.

Other courts have also refused to expand protection to an individual's hairstyle. The U.S. District Court for the Southern District of New York dismissed a case against an airline where a black employee was fired for refusing to take out his cornrows. The court noted, however, that hair texture was different than style. If the company had banned natural Afros rather than corn rows, it may have violated Title VII because hair texture constitutes an immutable characteristic.

Social Roots

The CROWN Act has joined the ranks of viral social movements along with #MeToo and #BlackLivesMatter. As evidence of its reach, the 2020 Academy Awards saw the movie *Hair Love*, an animated short film about natural, black hair, win an Oscar for Best Animated Short Film. The director lauded the CROWN Act during his acceptance speech.

Many state legislatures have acknowledged the public's interest in hair equality by introducing a version of the CROWN Act in their states. California was the first state to adopt the law, with Governor Newsom signing the bill on July 3, 2019. New York and New Jersey quickly followed suit. Over half of the states have filed or pre-filed the bill as well.

On December 5, 2019, Senator Cory Booker (D-NJ) and Congressman Cedric Richmond (D-LA) introduced the Act on a national level in both chambers of Congress. According to H.R. 5309, the CROWN Act would specifically prohibit discrimination based on hairstyle or texture, "if that hair texture or that hairstyle is commonly associated with a particular race or natural origin."

The bill specifically recognizes Afros, Bantu knots, braids, cornrows, dreadlocks, and twists as hairstyles predominately worn by black individuals. Proponents of the CROWN Act believe the law will help avoid facially neutral policies that disproportionately affect African Americans, unconscious bias, and overt racial discrimination. Opponents argue that protecting hairstyles amounts to protecting self-expression and dilutes the importance of Title VII.

Twists Employers Should Consider

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Employers should pay close attention to their state legislatures as many begin to introduce the CROWN Act. With hair discrimination abuzz in the media, you can take the following steps to avoid potential litigation:

- Review the wording of your employee appearance policies and remove references to specifically prohibited hairstyles;
- Apply policies equally to all employees regardless of race;
- Educate employees on all policies, including the appearance policy;
- Train managers on any changes in policies and on how to handle appearance policy infractions with sensitivity;
- Train any individuals responsible for hiring not to comment on an applicant's appearance and on appropriate interview questions and comments;
- Consider instituting unconscious bias training; and
- Consider instituting escalating punishments for appearance policy infractions.

Most importantly, appearance policies should be tailored to align with professional dress codes and employee cleanliness. Otherwise, you could face disparate impact claims, which challenge policies that while neutral on their face — because they apply to everyone — have a disproportionate impact on a group that Title VII protects. Consider a policy that bans dreadlocks. It could apply to all employees – black, white, male, female – but, more likely than not, it would disproportionately affect African-Americans.

The hair revolution has begun, and it will continue to sweep through the media and legislatures alike. Do not let your company become another unfortunate headline. And, if you need to work out the contours of your appearance policies or train your employees on the nuances of the CROWN Act, consult your employment attorneys.

Contact the author for more information.

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