California Bill Would Prohibit Employment Race Discrimination Based on Hairstyles

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A measure currently pending in the California Legislature, and garnering wide bipartisan support, would provide that prohibited employment discrimination based on race under the Fair Employment and Housing Act (FEHA) also includes discrimination based upon hair texture and hairstyles. If enacted into law, this bill will require California employers to re-evaluate workplace grooming standards applicable to their work sites in order to ensure compliance with the law.

The legislation, Senate Bill 188 by Senator Holly Mitchell (D-Los Angeles) specifically amends the definition of "race" under FEHA to include "traits historically associated with race, such as hair texture and protective hairstyles," including "braids, locks, and twists." The legislation was recently amended to address similar discrimination in the public school education context.

According to the author and supporters of the proposal, the legislation is necessary because societal stereotypes that define European features as the norm for "professionalism" disproportionately impact persons of color, especially African-Americans.

This is an issue that has garnered national attention of late. In February, the New York City Human Rights Commission issued new guidance that stated "grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people generally violate [the City's] anti-discrimination provisions."

Federal courts have also evaluated these issues under federal employment discrimination law. For example, in 2016, the 11th Circuit Court of Appeals ruled on a case involving an individual who was denied employment based on having her hair done in "locks." *EEOC v. Catastrophe Mgmt. Sols.* (11th Cir. 2016). In that case, the court held that "discrimination on the basis of black hair texture (an immutable characteristic) is prohibited by Title VII [federal discrimination law], while adverse action on the basis of black hairstyle (a mutable choice) is not."

While these cases are not binding legal precedent on employers in California (and a court with jurisdiction over the state could interpret federal law differently), critics of those court decisions have argued that SB 188 is necessary to ensure that California's employment discrimination laws provide protections to employees with such hair texture and hairstyles.

The legislative process is still in its early stages, so SB 188 could be amended significantly before it reaches Governor Newsom's desk. Nevertheless, California employers are likely curious as to the potential impact such a proposal might have on their policies and procedures should it be enacted into law. Again, while the bill may be further amended, a recent legislative committee analysis of the measure stated:

"This does not at all mean that, if SB 188 were enacted, employers would lose the ability to make and enforce grooming policies. So long as those rules are imposed for valid, non-discriminatory reasons, have no disparate impact, and are uniformly applied, such rules are legal now and would remain so under this bill…What *would* change under SB 188 is that an employer could not have an explicit policy against wearing [locks], twists, braids, or other protective hairstyles."

California employers should monitor SB 188 closely, and consult with legal counsel if the bill becomes law to ensure that any workplace grooming or appearance standards comply with any new requirements or prohibitions.

As noted above, SB 188 has received significant bipartisan support, and recently passed the State Senate by a 37-0 vote. While Governor Newsom has not yet taken a position on the bill, it seems likely that the measure will be enacted into law.

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