Governor Newsom Signs Law Prohibiting Employment Race Discrimination Based on Hairstyles

Insights
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Governor Newsom recently signed legislation to provide that prohibited employment discrimination based on race under the Fair Employment and Housing Act (FEHA) also includes discrimination based on hair texture and protective hair styles. This new law goes into effect on January 1, 2020. California employers will need to review workplace grooming standards 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 amended during the process to address similar discrimination in the public school education context.

According to the author and supporters of the proposal, the legislation was 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 stating "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 dreadlocks. *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 this and other similar 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 argued that SB 188 was necessary to ensure that California's employment discrimination laws provide protections to employees with such hair texture and hairstyles.

As the bill made its way through the legislative process, a 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."

Next Steps for California Employers

Prior to January 1, 2020, you should consult with legal counsel to ensure that any workplace grooming or appearance standards comply with the new prohibitions. Any grooming policy that explicitly prohibits twists, locks, braids, cornrows, natural hair or similar styles are likely to run afoul of the new law. You should instead make sure that any grooming standards are neutral, nondiscriminatory, applied evenly in a uniform manner, and do not result in a disparate impact. You should also consider training managers, supervisors, and employees involved in the hiring process regarding the prohibitions of the new law.

For more information about this new law, please contact your Fisher Phillips attorney or one of the attorneys in any of our California offices:

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This article provides an overview of a specific state law change. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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