

Does Your Employee Handbook Need a Makeover?

The Washington State Legislature has passed an amendment to the Washington Law Against Discrimination (WLAD) to prohibit discrimination based on hair textures and hairstyles historically linked to race. Washington's House Bill (HB) 2602 is similar to the Creating a Respectful and Open Workplace for Natural Hair (C.R.O.W.N.) Act enacted in California in July 2019, as well as laws subsequently enacted in New York, New Jersey, Virginia, and Colorado. On March 19, Governor Jay Inslee signed the bill with an effective date of June 11, 2020. Washington employers may need to review their discrimination and harassment prevention programs as well as workplace dress code and grooming policies to ensure compliance.

The Natural Hair Movement

California's C.R.O.W.N Act, and the general push for similar legislation across the country, is an outgrowth of the natural hair movement, a social justice movement that has recently penetrated the public consciousness. The movement's significant cultural impact was demonstrated recently at the Academy Awards, where Matthew A. Cherry won an Oscar for his animated short film, "Hair Love," a story about a black father trying to do his daughter's hair. The current movement traces back to the early 2000s (with roots in the Civil Rights Era), as a campaign to encourage black men and women to wear their hair in its natural curly state, or in traditional hairstyles intended to protect or enhance their hair's natural features.

The movement has also worked to highlight the ways in which black people—especially black women—have historically been discouraged from donning natural or traditional hairstyles. Illustrating the movement's connection with the current wave of anti-discrimination legislation, the California legislature acknowledged the disparate impact Eurocentric workplace dress codes and grooming policies have had on black employees. In stating the purpose of the C.R.O.W.N. Act, the legislature expressed the act's intent was to enforce the "values of fairness, equity, and opportunity for all."

As of this writing, besides California, four other states, New York, New Jersey, Virginia, and Colorado, as well as multiple cities and counties have already enacted nearly identical laws. Similar amendments are currently working their way through the legislatures of over 20 other states. A C.R.O.W.N. Act bill was also introduced in both houses of Congress in December 2019.

Washington's Amendment

The WLAD already prohibits discrimination based on race, but it does not explicitly define "race" in the statute. Short of providing a comprehensive definition of race, HB 2602 amends the WLAD to include hair textures and certain hairstyles that have historically or traditionally been associated with a specific race within the characteristics protected by the WLAD's prohibition against race discrimination. The amendment also provides specific examples. The full text of the amendment, as passed, will add the following language to the WLAD's operative definitions section:

"Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists.

Employers' Policies

Now may be a good time for Washington employers to consider reviewing their policies and practices that may be affected by this change in the law. Specifically, employers should assess their discrimination and harassment prevention programs, as well as workplace dress code and grooming policies, to ensure compliance.

Anti-Discrimination and Harassment Programs. When addressing race discrimination in their training materials and programs, employers will want to cover this new legislation, including the specific hairstyles at issue. It is important for employers to remember, though, that the amendment is broader than the specific examples of hairstyles provided. In this instance, the important factor to remember is that hair texture and traditional hairstyles may be considered a proxy for race, just as the color of a person's skin would be, if used as the basis for an adverse employment decision.

Dress Codes and Grooming Standards. One of the main thrusts of the natural hair movement is that certain hairstyles, traditionally worn by people of African descent, such as afros, locks, and twists, have typically been perceived as "messy," "unprofessional," or "political." Whatever its source, this perception has led to measurable negative impacts for black people in the workplace. What this means for employers, in practice, is that it will be important to ensure that such perceptions are addressed and, to the extent possible, eliminated.

A first step for many organizations may be a candid assessment of whether a detailed dress code or grooming policy is even necessary for the business. For some organizations, general statements of employee expectations in line with business goals and organizational values applicable to all employees may provide enough flexibility to address any potential concerns. Most importantly, though, when addressing issues involving an employee's appearance, employers should ensure that such issues are confronted on objectively race-neutral grounds, and not on potentially racialized misperceptions (i.e., that certain hairstyles are inherently unprofessional).

Some organizations have compelling reasons to adopt comprehensive dress codes or grooming policies. For example, certain attire may pose safety concerns in some manufacturing or construction settings. Food service employers may need to have stated hygiene policies for health and safety reasons. And some organizations, with customer-facing employees may wish to implement policies to ensure some level of standardization of their customers' experience.

In these instances, employers should review their policies to ensure compliance with this new legislation. Additionally, where policy language may be open to subjective interpretation, it will be important for employers to communicate to employees responsible for implementing its policies the potential liability that negative perceptions about certain hairstyles or hair types could pose for the organization.

Takeaways

Employers should review their current policies and training programs to ensure compliance with this new legislation. Washington employers may want to consult experienced legal counsel for assistance.

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