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NEW YORK CITY BANS DISCRIMINATION BASED ON HAIR

The New York City Commission on Human Rights (the “Commission”) recently has issued new guidelines (the “Guidance”)(available [here](#)) that interpret New York City’s racial discrimination laws to encompass discrimination based upon hair.

The New York City Human Rights Law (the “NYCHRL”) prohibits discrimination by, among others, employers of four or more persons, housing providers and providers of public accommodations.¹ The Guidance specifically discusses how discrimination based on one’s particular hairstyle violates the NYCHRL.

The purpose of the Guidance is set forth, as follows:

Hair-based discrimination implicates many areas of the NYCHRL, including prohibitions against race, religion, disability, age, or gender-based discrimination. This legal enforcement guidance seeks to highlight the protections available under the NYCHRL for people who maintain particular hairstyles as part of a racial or ethnic identity, or as part of a cultural practice, regardless of the mutable nature of such characteristics. Covered entities with policies prohibiting hairstyles associated with a particular racial, ethnic, or cultural group would, with very few exceptions, run afoul of the NYCHRL’s protections against race and related forms of discrimination. While this legal enforcement guidance focuses on Black communities, these protections broadly extend to other impacted groups including but not limited to those who identify as Latin-x/a/o, Indo-Caribbean, or Native American, and also face barriers in maintaining “natural hair” or specific cultural hairstyles.²

The Guidance also notes that while it “focuses on Black communities, these protections broadly extend to other impacted groups,”³ it also protects the rights of New Yorkers to maintain

¹ See N.Y.C. Admin. Code § 8-102 and 8-107.

² See Guidance, n.2, at <https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>.

³ *Id.*

natural hair and to keep hair in an uncut or untrimmed state. The Guidance specifies that “[f]or communities that have a religious or cultural connection with uncut hair, including Native Americans, Sikhs, Muslims, Jews, Nazirites, or Rastafarians, some of whom may also identify as Black, natural hair may include maintaining hair in an uncut or untrimmed state.”⁴

The Guidance states that “grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people generally violate the NYCHRL’s anti-discrimination provisions” and that “[g]rooming or appearance policies that generally target communities of color, religious minorities, or other communities protected under the NYCHRL are also unlawful.”⁵ The Guidance provides specific examples of actions by employers (and others) that would constitute discrimination under the NYCHRL, including a Sikh applicant denied employment because of his religiously-maintained uncut hair and turban; an Orthodox Jewish employee ordered to shave his beard and cut his payot (sidelocks or sideburns) to keep his job; a Black salesperson forced to shave his beard despite a medical condition that makes it painful to shave; a 60 year-old employee with gray hair told to color their hair or lose their job; or a male server ordered to cut his ponytail while similar grooming policies are not imposed on female servers.

Notably, the Guidance emphasizes that employers may not ban or restrict natural hair or hairstyles associated with Black communities to promote a certain corporate image, and that an employee’s hair texture or hairstyle generally has no bearing on his or her ability to perform the essential functions of a job.⁶

Specifically, the Guidance states as follows:

Consequentially, employers may not enact discriminatory policies that force Black employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations. The existence of such policies constitutes direct evidence of disparate treatment based on race and/or relevant protected classes under the NYCHRL. Notably, employers that enact these types of grooming or appearance policies do not typically target hair characteristics associated with individuals with white, European ancestry.⁷

In light of the Guidance, it would be prudent for New York City employers to review their human resources policies and employee manuals to evaluate any existing grooming or appearance policies, standards, or norms relating to professionalism to ensure compliance with the recent interpretation of the NYCHRL provided by the Guidance.

⁴ *Id.* at n.5.

⁵ *Id.* at p.2 and n.7.

⁶ *Id.* at p.8.

⁷ *Id.* at p.7.

Please contact Avi Lew, the undersigned or your regular Warsaw Burstein attorney if you need assistance reviewing your human resources policies, updating your training manuals, or for any questions you may have about employment law issues.

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