NYC Employers Should Review Policies Targeting Hairstyles

By Avi Lew

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Last month, the New York City Commission on Human Rights issued new guidelines[1] that interpret New York City's racial discrimination laws to encompass discrimination based upon hair.

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The New York City Human Rights Law is a civil rights law that is embodied in Title 8 of the Administrative Code of the City of New York that prohibits discrimination based on race, color, creed, age, national origin, alienage or citizenship status, gender (including gender identity and sexual harassment), sexual orientation, disability, marital status, and partnership status, by, among others, employers of four or more persons, housing providers and providers of public accommodations.[2]

Previously, someone asserting a discrimination claim based on hair would have to fit his or her claim under the rubric of the preexisting language of the NYCHRL, which did not specifically identify hair discrimination as a form of racial discrimination. However, the new guidance — which is believed to be the first of its kind in the country — will simplify bringing a claim for hair discrimination under the NYCHRL and likely will serve to greatly increase the number of such claims.

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.[3]

The guidance also notes that while it focuses on black communities, these protections broadly extend to other impacted groups, and that it also protects the rights of New Yorkers to maintain natural hair and to keep hair in an uncut or untrimmed state. The guidance specifies that for 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.

The guidance explains that: "Bans or restrictions on natural hair or hairstyles associated with Black people are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional. Such policies exacerbate anti-Black bias in employment, at school, while playing sports, and in other areas of daily living." [4]

The guidance makes clear 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 communities of color 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.

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.[6]

The commission cites specific examples of violations (and states that it is not an exhaustive list of violations and they are not limited to employment) including grooming policies that:

- Prohibit twists, locs, braids, cornrows, Afros, Bantu knots, or fades, which are commonly associated with black people;

- Require employees to alter the state of their hair to conform to the company's appearance standards, including having to straighten or relax hair (i.e., use chemicals or heat); and

- Ban hair that extends a certain number of inches from the scalp, thereby limiting Afros.

Under the NYCHRL, if the New York City Commission on Human Rights finds that a violation of the guidelines has occurred, it can levy civil penalties of up to $125,000, and in situations involving willful or malicious conduct, it can levy civil penalties of up to $250,000. Significantly, there is no cap on individual damages.

In light of the guidance, and the significant penalties for violations of the guidance, it would be prudent for New York City employers to review their human resource 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.

Employers should be aware that hair grooming policies could violate the NYCHRL if employers enforce such policies in what could be interpreted under the guidance to be a discriminatory manner. To the extent that a firm has a provision in its employee manual or elsewhere that sets forth restrictions as to grooming hair, including restrictions as to length or style or volume, it should consider removing such provision, or, at a minimum, revising it, to ensure that it is not applied in a discriminatory manner.

In view of the significant amount of attention received by the media concerning the guidance, attention should be paid to rules and ordinances of other states and cities to see if they will follow New York City's lead and adopt a broader interpretation of racial discrimination laws that will explicitly cover discrimination based on hairstyle.

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[1] The Guidance is available at https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf.

[2] See N.Y.C. Admin. Code § 8-102 and 8-107.

[3] See Guidance, n.2,

[4] Id. at p.1.

[5] Id. at p.2 and n.7.

[6] Id. at p.7.