Labor and Employment Alert: California and New York Ban Hairstyle Discrimination

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Michael C. Griffaton

Mark A. Knueve

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California and New York already prohibit discrimination on the basis of numerous protected characteristics, including disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion and sexual orientation. The California Fair Employment and Housing Act (FEHA) and the New York Human Rights Law (NYHRL) make it unlawful to discriminate against a job applicant or employee with respect to the terms and conditions of employment based on a protected characteristic. Both states recently enacted the CROWN Act (Creating a Respectful and Open Workplace) to further prohibit discrimination on the basis of natural hairstyle.

The CROWN Act redefines "race" under the FEHA and NYHRL to expressly include "traits historically associated with race" including "hair texture and protective hairstyles." A "protective hairstyle" includes such hairstyles as braids, locks, and twists. Now, it will be an unlawful discriminatory act or practice to refuse to hire an applicant with a protective hairstyle.

New York City has also weighed in on natural hairstyles. In February 2019, the New York City Commission on Human Rights issued an enforcement guidance stating that the New York City Human Rights Law protects an individual's right to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities. "For Black people, this includes the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

Employers in California and New York should review their policies and procedures to ensure they comply with these laws. Contact your Vorys lawyer if you have questions about equal employment opportunity laws.