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NYC Commission on Human Rights Declares a Ban on 'Hair' Discrimination

On February 18, the New York City Commission on Human Rights (NYCCHR) issued new guidance stating that company policies that ban, alter or otherwise restrict hairstyles may constitute racial discrimination in violation of the NYC Human Rights Law (NYCHRL). The NYCHRL prohibits discrimination based on certain personal characteristics, including race, color, creed, age, national origin, alienage or citizenship status, gender (including gender identity), sexual orientation, disability, and marital or partnership status. The focus of this new guidance is to protect against "Anti-Black racism," which includes "... prohibitions on natural hair or hairstyles most closely associated with Black people" Specifically, policies that affect an employee's ability to wear their hair in a natural state, or that ban twists, braids, cornrows, afros, bantu knots, fades or other hairstyles, may be unlawful.

This new guidance gives the following examples of what the NYCCHR will consider unlawful practices by an employer relating to hair:

- adopting a policy requiring a change in natural hairstyle (such policies can be used as direct evidence of discrimination);
- harassing an employee because of his or her hairstyle;
- refusing to hire an employee or limiting job opportunities or customer interface due to hairstyle;
- forcing an employee to hide his or her hairstyle under a hat or other hair covering; and
- enforcing any neutral policy in a way that has a disparate, discriminatory impact on Black employees (e.g., requiring a "neat and/or orderly appearance" in order to ban traditionally black hairstyles).

Finally, while the guidance permits employers to enforce appearance policies for health or safety concerns, those concerns must be legitimate—not speculative—and companies must also consider alternatives that limit the restrictions on employee hairstyles.

In light of this new guidance, NYC employers should review their current policies and practices regarding hair and any other grooming, appearance or image guidelines. According to the press release, the NYCCHR is currently investigating at least seven cases of hair discrimination—so don't let your company be the next one.

Authors



Daniel L. Schwartz

Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin

Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Rachel A. Gonzalez

Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly

Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com