

Lawyer Insights

Hairstyle Discrimination: A Wave of New Laws

By Amber M. Rogers, J. Drei Munar and Katherine Sandberg
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Hairstyle discrimination is a trending topic in the news as a flurry of states recently passed legislation that extends protected status to employees' hairstyles.

This legislation is intended to address dress and grooming policies that have prevented African American employees and students from wearing natural hairstyles such as afros, dreadlocks (also called dreads, locks, or locs), twists, cornrows, or braids. In banning natural hairstyles, these policies take the stance that certain hair textures and hairstyles are “unprofessional” or against corporate and school “image.” At their core, they assume discriminatory definitions based on a white Eurocentric standard of appearance.

Most of the media attention has focused on cases in which school officials told African American students that their natural hairstyles violated school dress codes. For example, DeAndre Arnold, a senior at a public high school in Mont Belvieu, Texas, was suspended for his dreadlocks. The school gave Arnold an ultimatum: Cut the dreadlocks, or be prohibited from walking at graduation. The school's policy drew national attention, and Arnold was invited to attend the 2020 Oscars with his family. At the ceremony, director Matthew A. Cherry won for best animated short film for *Hair Love*, which tells the story of an African American father trying to do his young daughter's natural hair for the first time. During his speech, Cherry advocated the passage of the CROWN (Create a Respectful and Open Workplace for Natural Hair) Act, a law first passed in California on July 3, 2019¹ that prohibits discrimination by schools and employers based on traits, such as hairstyle, that are commonly associated with race.

At the same time, a movement for natural hair is growing. This movement is made up of participants, usually African American, who wish to forego chemicals, heat damage, time, and expensive upkeep for styles that aim to smooth or straighten hair. The natural hair movement has gained traction through YouTube and social media outlets, where users can document and share their stories of reclaiming their natural hair via tutorials and posts.

Yet a recent study sponsored in part by Dove² revealed that an African American woman's hair is 3.4 times as likely to be perceived as “unprofessional” in comparison to Caucasian women, and African American women were 50 percent more likely than white women to be sent home from their workplaces because of their hair.

Current Case Law

The case law on whether protections against race discrimination extend to a person's hairstyle is sparse, but it generally concludes that anti-discrimination protections do not extend to hairstyle on its own.

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The most notable case was brought in 2013 by the Equal Employment Opportunity Commission (EEOC) on behalf of Chastity Jones against Catastrophe Management Systems (CMS). The EEOC alleged that CMS discriminated against Jones when it rescinded her job offer because she refused to cut her dreadlocks. The company's hairstyle policy stated that a "hairstyle should reflect a business/professional image" and "no excessive hairstyles or unusual colors are permitted." The EEOC argued that dreadlocks are a "racial characteristic, just as skin color is a racial characteristic."

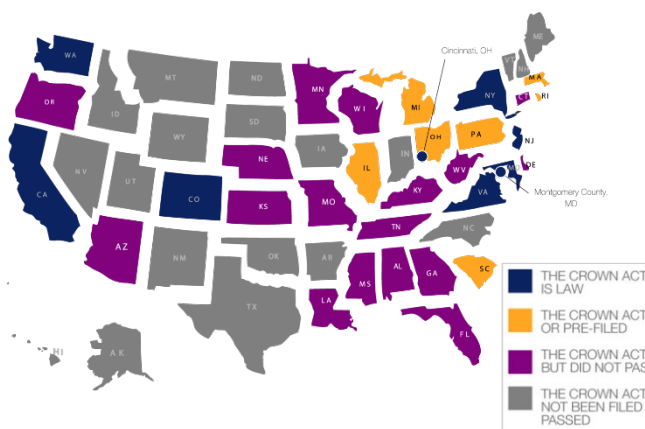
The district court judge dismissed the lawsuit, and the EEOC appealed to the Eleventh Circuit. A unanimous panel upheld the lower court's ruling, stating that the EEOC "did not state a plausible claim that CMS intentionally discriminated against Jones because of her race."³

The EEOC requested a rehearing en banc, which was denied. A majority of judges in active service in the Eleventh Circuit sided with the three-judge panel, and stated: "Under our precedent, banning dreadlocks in the workplace under a race-neutral grooming policy—without more—does not constitute intentional race-based discrimination." The EEOC elected not to appeal to the U.S. Supreme Court.

In 2018, the NAACP Legal Defense and Education Fund, Inc. filed a motion to intervene to allow Jones to bring the appeal, but that motion was denied.⁴ Similar decisions in various district courts considering dress code policies similar to the one at issue in Jones' case have likewise found in favor of the employer.

In a possible shift of how courts will begin to evaluate this issue, on August 17, 2020, the U.S. District Court for the Southern District of Texas granted a request made by the NAACP Legal Defense and Educational Fund, Inc. to enjoin enforcement of a high school's alleged discriminatory dress and grooming policy.⁵ Before the court's ruling, the high school intended to confine a student to indefinite in-school suspension and exclude him from school activities until he cut his dreadlocks.

State Laws and Municipal Ordinances



In California, the CROWN Act took effect on January 1, 2020. That law extends the definition of race in the Fair Employment and Housing Act (FEHA) and the Education Code to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles," which include "braids, locks, and twists."⁶

Following that lead, several states have also recently passed legislation prohibiting discrimination based on a person's hairstyle.

On July 12, 2019, New York signed CROWN Act legislation amending the state's Human Rights Law and Dignity for All Students Act.⁷

The law went into effect immediately and established that discrimination based on race includes discrimination based on traits historically associated with race, such as hair texture and protective hairstyles.

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In New Jersey, CROWN Act legislation amending the New Jersey Law Against Discrimination was signed into law on December 19, 2019 and went into effect immediately.⁸ The law prohibits race discrimination based on hair texture, hair type, or protective hairstyles that shield natural hair from the elements—usually by sealing it in a twist, braid, or a tuck.

Virginia was the fourth state, and the first Southern state, to ban hairstyle discrimination. Its bill amends Virginia's Human Rights Act to extend the definitions of "because of race" or "on the basis of race" to include traits that are historically associated with race, such as a hair texture, type, or style. The law was passed on March 4, 2020, and took effect on July 1, 2020.⁹

On March 6, 2020, Colorado also enacted CROWN Act legislation. The law specifies that the state's anti-discrimination laws will cover discrimination based on hair texture, hair type, or protective hairstyle—including "braids, locs, twists, tight coils or curls, cornrows, Bantu knots, Afros, and headwraps." The law became effective on August 5, 2020.¹⁰

On March 19, 2020, Washington passed CROWN Act legislation, expanding race discrimination to include hairstyle discrimination based on hair texture or protective hairstyles, including afros, braids, locks, and twists. The law became effective on June 11, 2020.¹¹

Maryland's CROWN Act was originally enacted on May 8, 2020, and went into effect on October 1, 2020.¹² The law defines race, for the purposes of certain laws prohibiting discrimination, to include certain traits associated with race, including hair texture, afro hairstyles, and protective hairstyles.

At the local level, several cities and municipalities have also recently passed laws to prohibit hairstyle discrimination—including Albuquerque, New Mexico; Cincinnati and Toledo, Ohio; Kansas City, Missouri; New Orleans, Louisiana; New York City, New York; Suffolk County, New York; and Montgomery County, Maryland.

Pending State Legislation

CROWN Act legislation has been introduced in 23 states including Alabama, Arizona, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, West Virginia, and Wisconsin. While 17 of these states have introduced CROWN Act legislation, the bills failed to move through the legislature before the end of the legislative session and have not passed.

Members of the Texas Legislative Black Caucus have also announced that they will be drafting a bill for the 2021 legislative session in response to DeAndre Arnold's story. On August 11, 2020, Nebraska passed CROWN Act legislation, but Governor Pete Ricketts vetoed the bill.

Federal Legislation

On December 5, 2019, U.S. Senator Cory Booker introduced a CROWN Act bill that would prohibit discrimination based on hair textures and styles, classifying it as race or national origin discrimination. The Senate bill, co-sponsored by U.S. Senator Sherrod Brown, is backed by multiple civil rights groups, including Color of Change, National Urban League, and the Western Center on Law & Poverty. Beauty brand Dove is also a supporter.

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In the House of Representatives, U.S. Representative Cedric Richmond introduced companion legislation. On September 21, 2020, the House of Representatives passed CROWN Act legislation prohibiting discrimination based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin. Specifically, the bill prohibits this type of discrimination against those participating in federally assisted programs, housing programs, public accommodations, and employment. No action has been taken yet on the Senate bill previously introduced by Senator Booker, but the House's CROWN Act goes to the Senate next for consideration.

Takeaways for Investigators

There are several issues to consider when conducting an investigation of a hairstyle discrimination claim.

It is likely a company's grooming and appearance policy will play a central role in a hairstyle discrimination case. As with all investigations of discrimination and harassment, the focus should be on the action, not the intent. In other words, if a manager banned a natural hairstyle based on what he or she believed to be a neutral application of company policy, that action may still violate the law.

Where the applicable policy does not prohibit hairstyles historically associated with their racial, ethnic, or cultural identities, the investigation should encompass whether the prohibition on a certain hairstyle was applied in a neutral and consistent manner, unrelated to an employee's race. Note that customer or client preference does not excuse discrimination based on hairstyle, and likely would not be a "neutral" reason for enforcing a discriminatory policy.

When employees allege discrimination based on hairstyle, it is prudent to ask open-ended questions in the course of the investigation to determine whether they may have experienced other incidents of discrimination based on race or religion, beyond the allegations related to hairstyle.

Given the widespread trend of states enacting CROWN Act legislation, practitioners should carefully monitor the laws in the jurisdictions where they practice and where their clients are located. If the federal legislation passes, and if it conflicts with a state law or local ordinance, the controlling law will be the one that affords the most protection to the employee.

Notes

1. The CROWN Act, S.B. 188, amended Cal. Educ. Code § 212.1 and Cal. Gov. Code § 12926.
2. Dove 2019 CROWN Research Study.
3. *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1035 (11th Cir. 2016).
4. *EEOC v. Jones*, #17M109 (May 14, 2018).
5. *Arnold v. Barbers Hill Indep. Sch. Dist.*, No. 4:20-CV-1802, 2020 WL 4805038, at *14 (S.D. Tex. Aug. 17, 2020).
6. S. B. No. 188 (Cal. 2019), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB188.
7. S.B. No. S6209A (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s6209>.
8. S.B. No. 3945 (N.J. 2019), <https://legiscan.com/NJ/text/S3945/2018>.
9. S.B. No. 50 (VA 2019), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB50>.
10. S.B. No. HB20-1048 (CO 2020), https://leg.colorado.gov/sites/default/files/2020a_1048_signed.pdf.
11. H.B. No. 2602 (WA 2020), <http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/2602.PL.pdf?q=20201022132525>.
12. S.B. No. 531 (MD 2020), <https://legiscan.com/MD/text/SB531/2020>.

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