New Orleans Joins Cities, States in Banning Hair Discrimination

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On December 17, 2020, the City of New Orleans joined a list of states and municipalities in outlawing discrimination on the basis of hairstyle, including **California, Washington, Colorado, Virginia, Maryland, New Jersey, New York, the City of Akron, Ohio and Broward County, Florida**.

The law passed by the New Orleans City Council was modeled after the CROWN ACT, a bill which was passed by the U.S. House of Representatives on September 21, 2020 that prohibits hair discrimination as a form of race or national origin discrimination. The CROWN ACT is an acronym that stands for "Creating a Respectful and Open World for Natural Hair." (The CROWN ACT is **not yet federal law** as it has not passed the Senate. However, the Act was sponsored by Representative Cedric Richmond, an incoming member of the Biden Administration, and it is plausible that the bill may receive renewed attention.)

It is not uncommon for workplaces to maintain dress and appearance guidelines, which dictate how employees may style their hair. Dress codes are used to communicate to employees what the organization considers appropriate work attire, and these policies allow employers to set expectations regarding the company's image. **Unlike clothing, which can be swapped out, hair is a living part of you, and it looks different from person to person.** For people of color, hairstyles like braids, locs, Afros, twists, Bantu knots, and cornrows are cultural norms. However, these hair styles are often antithetical to institutional grooming rules.

Under the New Orleans City Code, members of the New Orleans Human Rights Commission (which oversees discrimination complaints) can now investigate complaints of hair discrimination that occurs in the workplace, in public accommodations, in housing or commercial spaces. If the complaint is found to be valid, the offender may be required to pay a fine, make an offer of employment to, or in the case of public accommodations, admit the aggrieved person.

Hair discrimination is not a new phenomenon. While there is no specific language in Title VII of the Civil Rights Act of 1964 banning hair discrimination, the EEOC Compliance Manual states that "Title VII prohibits employment discrimination against a person because of cultural characteristics often linked to race or ethnicity, such as a person's name, cultural dress and grooming practices, or accent or manner of speech." The EEOC has used this guidance to pursue hair discrimination lawsuits in the past. But, the efforts have generally been unsuccessful.

For example, in *Equal Employment Opportunity Comm'n v. Catastrophe Mgmt. Sols.*, the U.S. Court of Appeals for the Eleventh Circuit held in 2016 that an employer's revocation of a job offer, under its race-neutral grooming policy, to a black applicant who refused to cut off her dreadlocks in order to secure a job, was not intentional discrimination under Title VII. The court explained that Title VII only prohibits adverse actions on the

basis of immutable characteristics of race, whereas black hairstyle is a mutable choice. For example, black hair texture is an immutable characteristic and discrimination on that basis is prohibited by Title VII, whereas a black hairstyle is a mutable choice and adverse action on that basis is not prohibited by Title VII. The new ordinance passed by **the New Orleans City Council makes no such distinction, and all forms of hair discrimination are now illegal.**

In the meantime, employers operating in any state or municipality that has banned hair discrimination should **revise their grooming policies** as soon as possible.

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*For more information on the CROWN Act, contact Camille Bryant or any member of McGlinchey's **Labor and Employment** team.*

Related people

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