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Client Alert

New York City Commission on Human Rights Releases Guidance on Race Discrimination on the Basis of Hair

March 12, 2019 – Last month, the New York City Commission on Human Rights (NYCCHR) released legal guidance stating that policies which ban, limit or otherwise restrict natural hair or hairstyles associated with "Black people" are a form of racial discrimination banned by the New York City Human Rights Law (NYCHRL). The guidance defines "Black people" as those who identify as African, African American, AfroCaribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry. It explains that such hairstyles are "protected racial characteristics under the NYCHRL because they are an inherent part of Black identity" and that "[b]ans or restrictions on [them] . . . are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional." As such, the NYCHRL now explicitly "protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities."

The guidance provides that although employers may impose requirements surrounding the maintenance of a "work appropriate appearance," they are prohibited from enforcing such requirements in a discriminatory manner by targeting certain hair textures or hairstyles. Specifically, employers may not enact grooming or appearance 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); or
- Ban hair that extends a certain number of inches from the scalp, thereby limiting Afros.

In addition, certain grooming policies that appear racially neutral on their face may not be discriminatorily applied. For example, an employer may not enforce a grooming policy that bans the use of color or dye only against Black employees.

The NYCHRL further prohibits employers from harassing or otherwise discriminating against employees on the basis of their hairstyle. For example, employers may not:

- Require Black people to obtain supervisory approval prior to changing hairstyles, but not impose the same requirement on other people;
- Require only Black employees to alter or cut their hair or risk losing their jobs;

- Tell Black employees that they cannot be in a customer-facing role unless they change their hairstyle;
- Refuse to hire a Black applicant because his or her hairstyle does not fit the "image" the employer is trying to project; or
- Mandate that Black employees hide their hair or hairstyle with a hat or visor.

Employers are, of course, permitted to address legitimate health and safety concerns associated with hair, but they must consider non-discriminatory ways of doing so. The guidance suggests requiring the use of hair ties, hair nets, and head coverings, as well as alternative safety options to accommodate various hair textures and hairstyles. The guidance also specifies that nothing prohibits employees from covering their hair with a headscarf or wrap.

The NYCCHR guidance expands upon recent federal guidance released by the Equal Employment Opportunity Commission ("EEOC"), which lists "hair texture" as a protected physical characteristic. The EEOC guidance similarly explains that while "[e]mployers can impose neutral hairstyle rules," such rules may not be applied "more restrictively to hairstyles worn by African Americans." The federal guidance further states that employers can require employees to be clean-shaven. However, employers must make exceptions to such a policy for men with pseudofolliculitis barbae, an inflammatory skin condition that occurs primarily in Black men and that is caused by shaving, unless being clean-shaven is job-related and consistent with business necessity.

On a related note, employers are also obligated under federal law reasonably to accommodate certain grooming and dress practices that an employee undertakes for religious reasons. For example, employers may not prohibit employees from wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard) or from wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf or Hijab). If such practices do not pose an undue hardship—and the examples above would not—then the employer must grant the accommodation. There is no reason to believe that the New York State Division of Human Rights or the NYCCHR would not enforce similar standards if called upon to do so.

New York City employers, as well as those operating outside NYC limits, should review their grooming requirements or policies in light of this most recent guidance. If you require any additional information concerning appearance-based discrimination or need to have your current policies reviewed or updated, or if you have any other employment-related issue, please feel free to contact:

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