

Alert | Labor & Employment



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NYC Commission on Human Rights Issues Guidance on Race Discrimination on the Basis of Hair

Setting new precedent on Feb. 18, 2019, the New York City Commission on Human Rights (NYCCHR) issued **new guidance** prohibiting race discrimination on the basis of hair. The new guidance provides legal recourse under the New York City Human Rights Law (NYCHRL) to individuals who are discriminated against, harassed, punished, not hired, or fired based upon the style and length of their hair. The guidance extends to work, school, housing, or public spaces, and generally includes all employers with four or more employees.

The NYCHRL protects individuals working and living in New York City. The new guidance allows New Yorkers to maintain “natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities,” regardless of the mutable nature of such characteristics. Natural hair is broadly defined to include natural texture and/or length and includes hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs.

Private entities with policies that prohibit hairstyles associated with a particular racial, ethnic, or cultural group likely run afoul of the NYCHRL’s protections. The guidance expressly states that policies rooted in the belief that certain hairstyles are “unhygienic, messy, disruptive or unkept” are “fundamentally racist” (citing grooming policies that require maintenance of a “neat and orderly” appearance that prohibits locs or cornrows). The guidance also makes clear that even a “facially neutral grooming policy related to

characteristics that may not necessarily be associated with a protected class” will be deemed a violation of the NYCHRL if discriminatorily applied to enforce a grooming policy banning hairstyles closely associated with a racial, ethnic, or cultural identity.

While the guidance focuses predominantly on race, it is broadly extended to other impacted groups including Latin, Indo-Caribbean, or Native American individuals. Also footnoted in the guidance is reference to communities that have a religious connection with uncut hair, including Native Americans, Sikhs, Muslims, Jews, Nazirites, or Rastafarians.

The NYCCHR’s new guidance extends to grooming or appearance policies prohibiting employees from maintaining or wearing untrimmed beards, regardless of health and safety concerns or customer preference. If an employer does have a legitimate health or safety concern, it must consider alternative ways to meet that concern prior to imposing a ban or restriction.

Examples of violations include but are not limited to:

- A grooming policy prohibiting twists, locs, braids, cornrows, Afros, Bantu knots, or fades;
- A grooming policy requiring employees to alter the state of their hair to conform to the company’s appearance standards, including having to straighten or relax hair;
- A grooming policy banning hair that extends a certain number of inches from the scalp.

The NYCHRL also prohibits covered employers from harassing, imposing unfair conditions, or otherwise discriminating against employees based on appearance associated with their race, including:

- Forcing employees to obtain supervisory approval prior to changing hairstyles;
- Requiring only employees of a certain race to alter or cut their hair or risk losing their jobs;
- Telling employees with cornrows that they cannot be in a customer-facing role unless they change their hair style;
- Refusing to hire applicants with cornrows or other hairstyles because it does not fit with the “image” of the employer;
- Mandating that employees hide their hair or hairstyle.

Any employers with employees based in or out of New York City that have existing grooming or appearance policies or standards should reevaluate such policies or standards based on the new guidance, which is effective immediately.

The statute of limitations for filing a complaint with the Commission’s Law Enforcement Bureau is one (1) year from the discriminatory act and within three (3) years for claims of harassment. The statute of limitations for filing a complaint in court is three (3) years from the discriminatory act.

Authors

This GT Alert was prepared by **Wendy Johnson Lario**, **Courtney Lario Caine**, and **Danielle E. Gonnella**‡. Questions about this information can be directed to:

- **Wendy Johnson Lario** | +1 973.443.3274 | lariow@gtlaw.com
- **Courtney Lario Caine** | +1 973.443.3267 | cainec@gtlaw.com
- **Danielle E. Gonnella**‡ | +1 973.443.3295 | gonnellad@gtlaw.com
- **Jerrold F. Goldberg** | +1 212.801.9209 | goldbergj@gtlaw.com
- **Eric B. Sigda** | +1 212.801.9386 | sigdae@gtlaw.com
- **Jonathan L. Sulds** | +1 212.801.6882 | suldsj@gtlaw.com
- Any other member of **Greenberg Traurig's Labor & Employment Group**.

‡Admitted in New Jersey. Not admitted in New York.

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