

The CROWN Act: Protecting Natural Hairstyles *A Root to End Overview for Employers on Hair Discrimination Laws*

By Cymoril M. White, FordHarrison LLP

Executive Summary:

Many have said that the workplace tends to be society's battlefield—where culture wars play out and emerging trends go up against long-established ones. This notion holds true with the controversial issue of hair in the workplace that has been brought to the forefront of this battle in the past year and a half via the CROWN Act. The CROWN Act (which stands for Creating a Respectful and Open World for Natural Hair), prohibits discrimination based on natural hair style and texture. Variations of this bill have been introduced in 29 states and even at the federal level. Now more than ever, employers must look at several federal, state, and local laws—which are constantly changing to keep up with societal views—to ensure their employee handbooks and appearance policies are non-discriminatory and overall legal. Therefore, while employers have traditionally created “professional” appearance standards to include the banning of certain hairstyles (such as cornrows, braids, twists, dreadlocks,¹ etc.), employers could now be facing potential litigation for those same policies.

The Legal Root of the Issue:

One of the first cases concerning discrimination against natural hair in the workplace was in Indiana in 1976 in the case of *Jenkins v. Blue Cross Mutual Hospital Insurance, Inc.*² The Seventh Circuit Court of Appeals allowed a race discrimination lawsuit proceed against the employer for bias against afros. The employer denied the African American employee a promotion for wearing an afro to work. The Seventh Circuit agreed that workers were entitled to wear their natural afros in the workplace and would be protected under Title VII. However, in New York 1981, an African American woman challenged American Airlines' grooming policy that banned employees from wearing braided hairstyles.³ The employee sought to wear her hair in cornrows: rows of braids laced closely along the scalp. The employee argued that American Airlines discriminated against her because of her race and gender by forbidding wearing her hair in cornrows. But, the court ruled against her using the immutability doctrine; stating that because the employee had the ability to choose whether or not to braid her hair into cornrows, they were not a protected component of her race. The right for African American employees to wear their hair in afros might be covered under the civil rights laws, but the court suggested that “an all-braided hairstyle is a different matter. It is not the product of natural hair growth but that of artifice. An all-braided hairstyle is an easily changed characteristic

¹ The social and cultural history of dreadlocks is a long one, and the terminology referring to this hairstyle is no different. Some of the terms include: dreads and locks or locs. In America, the term “dreads” or “dreadlocks” began to have a negative connotation as society used the terms to refer to seeing the hairstyle as “dreadful,” unkempt, or unclean. Therefore, those who wanted to embrace their hairstyle and the culture it stems from, began referring to dreadlocks as simply “locs” or “locks.” For the sake of this article, the terms will be used synonymously as some legislation may vary in the terms used.

² *Jenkins v. Blue Cross Mut. Hosp. Ins., Inc.*, 538 F.2d 164 (7th Cir. 1976)

³ *Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981)

and, even if socioculturally associated with a particular race or nationality, it is not an impermissible basis for distinctions in the application of employment practices by an employer.”⁴

More recently, in Alabama in 2011, a woman who had applied for a customer service position had her job offer rescinded because she refused to cut her dreadlocks.⁵ The woman sued, claiming race discrimination, but in 2016, the 11th Circuit upheld the lower court’s decision in favor of the employer, finding that “Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices.” The court considered hairstyle a matter of individual expression rather than a biological imperative. Despite pleas from special interest groups, the U.S. Supreme Court refused to review the case without giving any explanation as to why. However, other states began to view these hair discrimination cases as validly falling within the framework of a disparate impact claim.

The Social Split Ends:

In light of the varying responses from the courts and widespread public discontent with the outcome of hair discrimination cases, California was the first state to act in settling the matter. On July 3, 2019, California sought to outlaw racial discrimination based on hairstyles with SB 188 a/k/a the CROWN Act. In short, the bill stated that “workplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these polices are more likely to deter Black applicants and burden or punish Black employees than any other group.”⁶ The bill applied to public schools and public and private employers, and is now California law which prohibits discrimination based on hair style and hair texture by extending protection for both categories under the California Fair Employment and Housing Act (FEHA) and the California Education Code. Therefore, the bill provided that the definition of race for these purposes also include “traits historically associated with race, including but not limited to, hair texture and protective hairstyles ... [which] includes, but is not limited to, such hairstyles as braids, locks, and twists.”⁷

Not far behind, New York soon joined California in summer 2019 by adopting the CROWN Act’s sentiments and language into their own law through Assembly Bill 07797. Since then, New Jersey, Washington, Colorado, Maryland, and Virginia have passed a version of the CROWN Act, and many other state legislatures have acknowledged the public’s interest in hair equality with over half of the states filing or pre-filing a version of the bill as well. Additionally, the CROWN Act has joined the ranks of viral social justice movements like #BlackLivesMatter. As evidence of its reach, the 2020 Academy Awards saw the movie *Hair Love*, an animated short film about natural black hair, win an Oscar for Best Animated Short Film, and the director praised the CROWN Act during his

⁴ *Id.* at 232.

⁵ *EEOC v. Catastrophe Mgmt. Sols.*, 876 F.3d 1273 (11th Cir. 2017)

⁶ Under the FEHA, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination based on protected characteristics, including race, sex, and religion, unless based on a bona fide occupational qualification or applicable security regulation.

⁷ See SB 188 § 212.1(c)

acceptance speech. However, there are still many states, particularly in the south, that did not pass the proposed CROWN Act legislation—Florida among them.

Twists at the Federal Level:

Although approximately 17 states have voted the CROWN Act down, there has been forward movement on the federal level. On December 5, 2019, Senator Cory Booker (D-NJ) and Congressman Cedric Richmond (D-LA) introduced the Act on a national level in both chambers of Congress. According to H.R. 5309, the CROWN Act would specifically prohibit discrimination based on hairstyle or texture, “if that hair texture or that hairstyle is commonly associated with a particular race or natural origin.” Like other adopted versions of the CROWN Act, the bill specifically recognizes tightly coiled or tightly curled hair, locs, twists, braids, Bantu knots, and Afros as hairstyles predominately worn by black individuals. Proponents of the CROWN Act believe the law will help avoid facially neutral policies that disproportionately affect African Americans, unconscious bias, and overt racial discrimination. Opponents argue that protecting hairstyles amounts to protecting self-expression and dilutes the importance of Title VII. Yet, on September 21, 2020, the Act passed in the House and on September 22, it was received in the Senate and has since been read twice and referred to the Committee on the Judiciary.

Following the historic 2020 election, which unveiled Joe Biden and Kamala Harris as the next President and Vice President of the United States, the CROWN Act movement will undoubtedly gain momentum at the state and local levels again. However, although the presidential race was a close one, the current race for control of the Senate is even closer with both Republicans and Democrats holding 48 seats. This post-election cliff-hanger will probably not be decided until January 2021 as the two seats in Georgia are set for a runoff on January 5, 2021 and one seat in both North Carolina and Alaska still haven’t been called—but both are likely to go to the Republicans. Therefore, the likelihood of adopting the CROWN Act at the federal level looks promising, but is still very uncertain.

Conclusion:

With this new wave of CROWN Act legislation, employers should be wary of requirements in their grooming guidelines when it comes to hairstyles, as their state or city laws could be changing in 2020 if they haven’t already. Appearance and hair policies should be tailored to align with the business’ professional dress and hair codes of cleanliness and less aligned with banning particular hairstyles. The hair movement had begun and will only grow stronger through its connections to the media and legislatures alike. Employers should be proactive and review their long-standing appearance policies to ensure they are updated to avoid opening the door to disparate impact claims under Title VII and the CROWN Act.

¹ If you have any questions regarding this article please feel free to contact the author, [Cymoril White](mailto:Cymoril.White), (813) 261-7821 [or cwhite@fordharrison.com](mailto:cwhite@fordharrison.com), or the FordHarrison attorney with whom you usually work.