

**ALERTS**

# New York City Issues New Guidance on Racial Discrimination on the Basis of Hair

**March 20, 2019**

The New York City Commission on Human Rights (“NYCCHR”) issued guidance on Feb. 19, 2019 for employers and public accommodations, particularly schools, on the unlawfulness of restrictions on certain types of hair and hairstyles associated with protected classes, namely members of the Black community.[1] See the full guidance here. Hairstyle restrictions and bans may constitute racial discrimination, as well as discrimination on the basis of religion, disability, age or gender. In general, policies that prohibit or disfavor hairstyles associated with a particular racial, ethnic or cultural group violate the New York City Human Rights Law’s (“NYCHRL”) protections against race and related forms of discrimination.

According to the guidance, protected hairstyles include, but are not limited to, locs (also known as “dreads” or “dreadlocks”), natural hair (hair that is untreated by chemicals or heat), cornrows, twists, braids, Bantu knots, fades, Afros, extensions of various types that are integrated into an individual’s hair, covering hair or head, such as in a scarf or turban and/or the right to keep hair in an uncut or untrimmed state.[2] Accordingly, schools and employers may not ban or restrict hairstyles, such as those listed above, that are tied to a protected class.[3] Examples of violations of the NYCHRL, as set forth in the guidance, include:

- A grooming policy prohibiting twists, locs, braids, cornrows, Afros, Bantu knots or fades, which are commonly associated with Black people;

- 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 (i.e., use chemicals or heat);
- Refusing to hire a Black applicant with cornrows because their hairstyle does not fit the "image" the employer is trying to project for sales representatives; or
- Mandating that Black employees hide their hair or hairstyle with a hat or visor.

## Guidance for Employers

Hairstyles connected to a racial, religious, ethnic or cultural group are protected characteristics under the NYCHRL. Employers that enact grooming or appearance policies that restrict, ban or mandate the alteration of protected hairstyles engage in disparate treatment against affected employees, and therefore, such employers will have violated NYCHRL and may face liability as a result. Employers, while permitted to set requirements for their employees' work appearance, are further prohibited from installing facially neutral policies that are applied in a discriminatory fashion against members of a protected class or target specific hairstyles. Employers may not use an employee's or an applicant's protected hairstyle to deny employment, deny any privileges of employment, restrict the employee's responsibilities or terminate employment.

In limited circumstances where an employer has a legitimate health or safety concern related to the condition of an employee's hair, it must consider alternatives to accommodate the employee's hairstyle and resolve the concern. Alternative options may not be offered or imposed if no legitimate health or safety concern exists. Maintaining a particular corporate image or adherence to customer preferences are not valid reasons to impose alternative options on employees.

Examples from the NYCCHR of religious, disability, age or gender-based discrimination with respect to hair include:

- A Sikh applicant denied employment because of his religiously-maintained uncut hair and turban;

- An Orthodox Jewish employee ordered to shave his beard and cut his payot (sidelocks or sideburns) to keep his job;
- A salesperson forced to shave his beard despite a medical condition that makes it painful to shave;
- A 60-year-old employee with gray hair told to color their hair or lose their job; or
- A male server ordered to cut his ponytail while similar grooming policies are not imposed on a female server.

## Guidance for School Student Policies

Schools — private, public and charter — are subject to this guidance not only as employers, but also with regards to their student policies regarding dress or appearance. A school may not, intentionally or otherwise, restrict, ban, demand alteration, discipline, subject to adverse treatment or interfere with a student’s protected hairstyle, for any reason. This rule extends to all school-sponsored activities. It is no justification, according to the NYCCHR, to prohibit natural hair or hairstyles because they are perceived to be a distraction or because of speculative health or safety concerns.

The NYCCHR provided the following examples that would constitute discrimination on the basis of hair by a school:

- A private school has a policy prohibiting locs or braids;
- A public school athletic association prohibits a Black student athlete with locs from participating in an athletic competition because his hair is below his shoulders but allows white student-athletes with long hair to tie their hair up; or
- A charter school informs a Black student that she must change her Afro because it is a “distraction” in the classroom.

## Compliance

Schools should review their grooming and appearance policies, standards or norms, with regard to both employees and students, to ensure that they are compliant with the NYCHRL in light of this guidance. To the extent that an organization has a policy or expectations on hair or

hairstyles, those measures should be set forth in neutral terms, limiting bias as much as possible, and accommodate all protected hairstyles.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] The NYCCHR defined the phrase “Black people” to include “those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise hav[e] African or Black ancestry.” See New York City Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair (Feb. 19, 2019), available here.

[2] The guidance suggests that “uncut or untrimmed hair” is a protected hairstyle because such hair is connected to certain cultures and/or religions, such as Rastafarians, Sikhs, Jews and Native Americans.

[3] See N.Y.C. Admin Code § 8-107(1).

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