

New Jersey Issues New Guidance on Hair Discrimination Following Dreadlock-Cutting Incident at a New Jersey High School

The New Jersey Division on Civil Rights Joins New York in Issuing Guidance on Race Discrimination Based on Hairstyle

September 25, 2019

On September 18, 2019, New Jersey Attorney General Gurbir S. Grewal and the Division on Civil Rights (“DCR”) [announced](#) that Buena Regional High School referee, Alan Maloney, will be suspended for the next two wrestling seasons following an investigation into a [nationally reported incident](#) in which Mr. Maloney forced a black wrestler to either have his dreadlocks cut or forfeit a match. The Buena Regional High School wrestling incident sparked a flurry of new guidance and legislation across the nation, including [guidance issued by the New York City Commission on Human Rights](#) and pending legislation in [California](#) and [New Jersey](#). The New Jersey bills were introduced in the Assembly and Senate on June 13, 2019 and are still awaiting a committee hearing.

On the same day Mr. Maloney’s suspension was announced, the DCR issued [new enforcement guidance](#) to clarify and explain how it applies the New Jersey Law Against Discrimination (“LAD”) to discrimination based on hairstyles. The Guidance makes clear that the LAD’s prohibition on race discrimination “encompasses discrimination that is ostensibly based on hairstyles that are inextricably intertwined with or closely associated with race.”

Similar to the guidance in New York, employers, housing providers, schools, and other places of public accommodation in New Jersey are prohibited from enforcing grooming policies “that ban, limit, or restrict hairstyles closely associated with Black people, including, but not limited to, twists, braids, cornrows, Afros, locs, Bantu knots, and fades.” In no uncertain terms, the Guidance warns that “[a]ny policy specifically singling out such a hairstyle will generally constitute direct evidence of disparate treatment under the LAD and unlawful discrimination on the basis of race.” Although the Guidance places a particular focus on Black hair, the LAD’s prohibition on hair discrimination extends to other protected groups.

In addition, even “facially neutral” hair-related policies that require a “professional” or “tidy” appearance may violate the LAD if they are discriminatorily applied or selectively enforced. Although restrictions on hairstyles may be imposed for legitimate health or safety concerns, there must be “objective, factual evidence . . . that the hairstyle in question would actually present a materially enhanced risk of harm to the wearer or to others.” Notwithstanding this narrow exception, the DCR has determined that “there would generally be no health and safety concerns that would justify a policy that exclusively banned, limited, or restricted natural hair or hairstyles associated with Black people.”

The Guidance includes several examples that may be violations of the LAD:

- A school administrator selectively applying a facially neutral hair-length policy only to Black students or only to students with braids, while not applying the policy to white students with long hair.

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An employer denying a promotion or bonus to, failing to address harassment or a hostile work environment against, imposing unfair work conditions on, or otherwise adversely disadvantaging an employee for wearing locs.

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A dance school requiring a child to change or cut her Afro in order to attend class because it is a “distraction” to other students.

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A restaurant or bar refusing entry to a patron with braids because it does not conform to the establishment’s dress code.

The fast-paced developments in the area of discrimination based on hair or hairstyle mean that employers must ensure that their grooming and appearance policies are compliant with the DCR’s new guidance and pending legislation and that managerial staff are informed as to potential liability based on hair or hairstyle discrimination.

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If you have any questions concerning the DCR’s Guidance, New Jersey’s proposed legislation, or any other federal or state employment laws, please feel free to contact [Jennine DiSomma](#) or [Vincent C. Cirilli](#) of Saiber LLC’s Employment and Labor Law practice.