

# NYC Commission on Human Rights

## Legal Enforcement Guidance on Race Discrimination on the Basis of Hair

February 2019

Anti-Black racism is an invidious and persistent form of discrimination across the nation and in New York City. Anti-Black racism can be explicit and implicit, individual and structural, and it can manifest through entrenched stereotypes and biases, conscious and unconscious. Anti-Black bias also includes discrimination based on characteristics and cultural practices associated with being Black, including prohibitions on natural hair or hairstyles most closely associated with Black people.<sup>1</sup> Bans or restrictions on natural hair or hairstyles associated with Black people are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional. Such policies exacerbate anti-Black bias in employment, at school, while playing sports, and in other areas of daily living.

The New York City Human Rights Law (“NYCHRL”) protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities.<sup>2</sup> For Black people, this includes the right to maintain natural hair,<sup>3</sup> treated or untreated hairstyles<sup>4</sup> such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed<sup>5</sup> state.<sup>6</sup>

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<sup>1</sup> The phrase “Black people” includes those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry.

<sup>2</sup> Hair-based discrimination implicates many areas of the NYCHRL, including prohibitions against race, religion, disability, age, or gender based discrimination. This legal enforcement guidance seeks to highlight the protections available under the NYCHRL for people who maintain particular hairstyles as part of a racial or ethnic identity, or as part of a cultural practice, regardless of the mutable nature of such characteristics. Covered entities with policies prohibiting hairstyles associated with a particular racial, ethnic, or cultural group would, with very few exceptions, run afoul of the NYCHRL’s protections against race and related forms of discrimination. While this legal enforcement guidance focuses on Black communities, these protections broadly extend to other impacted groups including but not limited to those who identify as Latin-x/a/o, Indo-Caribbean, or Native American, and also face barriers in maintaining “natural hair” or specific cultural hairstyles.

<sup>3</sup> “Natural hair” is generally understood as the natural texture and/or length of hair; it is defined as hair that is untreated by chemicals or heat and can be styled with or without extensions. The term “natural hair,” which has specific and significant cultural meaning within Black communities, is used throughout this guidance in reference to hair textures most commonly associated with Black people. However, the legal protections available under the NYCHRL extend beyond natural hair, including treated hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs.

<sup>4</sup> Hairstyles most commonly associated with Black people include hairstyles that involve some form of heat or chemical treatment or none at all (*i.e.*, “natural hair”).

<sup>5</sup> For communities that have a religious or cultural connection with uncut hair, including Native Americans, Sikhs, Muslims, Jews, Nazirites, or Rastafarians, some of whom may also identify as Black, natural hair may include maintaining hair in an uncut or untrimmed state.

<sup>6</sup> This is not an exhaustive list of hairstyles most closely associated with Black people. For more background, see Section II of this legal enforcement guidance.

While grooming and appearance policies adversely impact many communities, this legal enforcement guidance focuses on policies addressing natural hair or hairstyles most commonly associated with Black people, who are frequent targets of race discrimination based on hair. Accordingly, the New York City Commission on Human Rights (the “Commission”) affirms that grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people<sup>7</sup> generally violate the NYCHRL’s anti-discrimination provisions.

## I. The New York City Human Rights Law

The NYCHRL prohibits discrimination by most employers,<sup>8</sup> housing providers,<sup>9</sup> and providers of public accommodations.<sup>10</sup> The NYCHRL also prohibits discriminatory

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<sup>7</sup> Grooming or appearance policies that generally target communities of color, religious minorities, or other communities protected under the NYCHRL are also unlawful. Examples 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 Black 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 female servers.

<sup>8</sup> The NYCHRL prohibits unlawful discriminatory practices in employment and covers entities including employers, labor organizations, employment agencies, joint labor-management committee controlling apprentice training programs, or any employee or agent thereof. N.Y.C. Admin. Code § 8-107(1). Under the NYCHRL:

“The term ‘employer’ does not include any employer with fewer than four persons in his or her employ ... [N]atural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.”

N.Y.C. Admin. Code § 8-102.

“The term ‘employment agency’ includes any person undertaking to procure employees or opportunities to work.” *Id.*

“The term ‘labor organization’ includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.” *Id.*

<sup>9</sup> The NYCHRL prohibits unlawful discriminatory practices in housing, and covers entities including the “owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof.” N.Y.C. Admin. Code § 8-107(5). Covered entities also include real estate brokers, real estate salespersons, or employees or agents thereof. *Id.* The NYCHRL defines the term “housing accommodation” to include “any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. Except as otherwise specifically provided, such term shall include a publicly-assisted housing accommodation.” N.Y.C. Admin. Code § 8-102. However, the NYCHRL exempts from coverage: “the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner [or] members of the owner’s family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or (2) to the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the

harassment<sup>11</sup> and bias-based profiling by law enforcement.<sup>12</sup> Pursuant to Local Law No. 85 (2005) (“Local Civil Rights Restoration Act of 2005”), the NYCHRL must be construed “independently from similar or identical provisions of New York State or federal statutes,” such that “similarly worded provisions of federal and state civil rights laws [are] a floor below which the City’s Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.”<sup>13</sup> In addition, exemptions to the NYCHRL must be construed “narrowly in order to maximize deterrence of discriminatory conduct.”<sup>14</sup>

The Commission is the City agency charged with enforcing the NYCHRL. Individuals interested in vindicating their rights under the NYCHRL can choose to file a complaint with the Commission’s Law Enforcement Bureau within one (1) year of the discriminatory act and within (3) years for claims of gender-based harassment, or file a complaint in court within three (3) years of the discriminatory act.

## **II. Background on Natural Hair Textures and Hairstyles Associated with Black People**

While a range of hair textures are common among people of African descent, natural hair texture that is tightly-coiled or tightly-curved as well as hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, and Afros are those most closely associated with Black people.<sup>15</sup> The decision to wear one’s hair in a particular style is highly personal, and reasons behind that decision may differ for each individual. Some wearers may embrace a certain hairstyle as a “protective style,” intended to maintain

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owner or members of the owner’s family reside in such housing accommodation.” N.Y.C. Admin. Code § 8-107(5)(4).

<sup>10</sup> The NYCHRL prohibits unlawful discriminatory practices in public accommodations, and covers entities including any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation. N.Y.C. Admin. Code § 8-107(4). The NYCHRL defines the term “place or provider of public accommodation” to include: “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. Such term shall not include any club which proves that it is in its nature distinctly private . . . [or] a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law [which] shall be deemed to be in its nature distinctly private.” N.Y.C. Admin. Code § 8-102.

<sup>11</sup> N.Y.C. Admin. Code §§ 8-602 – 604.

<sup>12</sup> N.Y.C. Admin. Code § 14-151.

<sup>13</sup> Local Law No. 85 § 1 (2005); see N.Y.C. Admin. Code § 8-130(a) (“The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.”).

<sup>14</sup> Local Law No. 35 (2016); N.Y.C. Admin. Code § 8-130(b).

<sup>15</sup> See D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 999-1000 (2017).

hair health; as part of a cultural identity associated with being Black; and/or for a myriad of other personal, financial, medical, religious, or spiritual reasons.<sup>16</sup>

Hair may naturally form into locs, known as freeform locs, which are grown without manipulation.<sup>17</sup> Hair may also be manipulated into locs, known as “cultivated locs,” a cultural hairstyle predominantly worn by people of African descent.<sup>18</sup> Whether hair naturally forms or is manipulated into locs, this and other protective or cultural hairstyles often have great personal significance for the wearer. Black hair may also be styled into cornrows – hair that is rolled or closely braided to the scalp – or in twists, Afros, and other formations, with or without chemical or heat treatment.<sup>19</sup> Hair may also be worn in a manner that showcases its natural texture with little additional styling. In addition, protective styles may include braids, locs or extensions of various types that are integrated into an individual’s hair (e.g. box braids or weaves), wigs, or covering one’s hair with a headscarf or wrap.<sup>20</sup>

There is a widespread and fundamentally racist belief that Black hairstyles are not suited for formal settings, and may be unhygienic, messy, disruptive, or unkempt.<sup>21</sup> Indeed, white slave traders initially described African hair and locs as “dreadful,” which led to the commonly-used term “dreadlocks.”<sup>22</sup> Black children and adults, from schools to places of employment, have routinely been targeted by discriminatory hair policies.<sup>23</sup>

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<sup>16</sup> Locs may also be worn by some Black people for religious purposes, such as Rastafarians. See generally Brief for NAACP Legal Defense and Educational Fund, Inc. *et al.*, as Amici Curiae Supporting Appellants, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482 (11th Cir. Dec. 28, 2016), [https://www.naacpldf.org/files/about-us/EEOC\\_v\\_CMS\\_Final.pdf](https://www.naacpldf.org/files/about-us/EEOC_v_CMS_Final.pdf).

<sup>17</sup> Petition for Writ of Certiorari, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482, at 5-6 (Apr. 4, 2018), <https://www.naacpldf.org/files/about-us/CMS%20-%20Cert%20Petition%20FINAL.PDF>.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See generally, Greene, *supra* note 15 at 1000-01; see also Perrie Samotin, *A Banana Republic Employee Says She Was Told Her Box Braids Looked Too “Urban”*, *Glamour* (Oct. 7, 2017), <https://www.glamour.com/story/banana-republic-employee-destiny-tompkins-says-she-was-told-box-braids-looked-too-urban>.

<sup>21</sup> Petition for Writ of Certiorari, *supra* note 17, at \*6-7; see also NAACP Legal Defense and Educational Fund, Inc. & American Civil Liberties Union, *Letter to Florida Department of Education*, ACLU (Nov. 29, 2018), <https://www.aclu.org/legal-document/florida-department-education-complaint-charge-race-discrimination>.

<sup>22</sup> Because of this history, the Commission is utilizing the term “locs” in this guidance but recognizes that some members of Black communities, including Rastafarians, may still use the term “dreadlocks” or “dreads.” The term “locks” is an alternative term. See Shauntae Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 INT’L J. MEDIA & CULTURAL POL. 295, 965 n.3 (2005).

<sup>23</sup> For examples in employment, see, e.g., Complaint, *Tompkins v. The Gap, Inc.*, No. 17 Civ. 09759 (S.D.N.Y. 2017) (Black employee claimed that her white manager had refused to assign her shifts because of her hairstyle and allegedly told her that her box braids were too “unkempt,” “urban,” and not “Banana Republic appropriate.”); *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482, 2016 WL 7210059 (11th Cir. 2016) (holding that employer did not engage in race discrimination under Title VII when it refused to hire a Black customer service representative who styled her hair into locks, a violation of the company’s grooming policy.); *Pitts v. Wild Adventures*, No. 7:06-CV-HL, 2008 WL 1899306 (M.D. Ga. Apr. 25, 2008) (Black employee terminated for styling her hair into twists; employer not liable for race

For example, in 2014, the U.S. Department of Defense, the nation's largest employer, enacted a general ban on Black hairstyles, including Afros, twists, cornrows, and braids, which was later reversed after Black service members expressed wide outrage.<sup>24</sup> In 2017, the Army lifted its ban on female soldiers wearing locs, citing feasibility for Black soldiers, and noting that “[f]emales have been asking for a while, especially females of African-American descent, to be able to wear dreadlocks and locks because it’s easier to maintain that hairstyle.”<sup>25</sup> The Army also removed the terms “matted and unkempt” from its description of Black hairstyles in its appearance regulations.<sup>26</sup> These changes reflect a shift in American society in re-evaluating the basis for longstanding appearance norms, in light of their discriminatory nature, and the harm and burden placed on Black people who maintain prohibited hairstyles.

Race discrimination based on hair and hairstyles most closely associated with Black people has caused significant physical and psychological harm to those who wish to maintain natural hair or specific hairstyles but are forced to choose between their livelihood or education and their cultural identity and/or hair health.<sup>27</sup> Due to repeat manipulation or chemically-based styling (*i.e.*, using straighteners or relaxing hair from its natural state), Black hair may become vulnerable to breakage and loss, and the development of conditions such as trichorrhexis nodosa and traction alopecia.<sup>28</sup> Trichorrhexis nodosa is a medical issue where thickened or weakened points of hair break off easily.<sup>29</sup> Traction alopecia is defined as gradual hair loss, occurring from applying tension to hair.<sup>30</sup> In some cases, altering hair from its natural form by way of

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discrimination under Title VII even though its grooming policy only prohibited Afrocentric hairstyles); For examples in schools, *see, e.g.*, Michael Gold & Jeffrey Mays, *Civil Rights Investigation Opened After Black Wrestler Had to Cut His Dreadlocks*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/nyregion/andrew-johnson-wrestler-dreadlocks.html>; Mandy Velez, ‘Discriminatory’: ACLU, NAACP Go After Florida School That Banned Child for Dreadlocks, *The Daily Beast* (Nov. 29, 2018), <https://www.thedailybeast.com/aclu-naACP-take-on-florida-schools-discriminatory-hair-policy-after-boy-banned-for-having-locs>; Amira Rasool, *A Black Student’s Elementary School Reportedly Sent Her Home for Wearing Box Braids*, *Allure* (Aug. 22, 2018), <https://www.allure.com/story/black-student-sent-home-for-box-braids>; Kaitlin McCulley, *Waller high school [Black] student suspended for having long hair [and locs]*, *ABC* (Mar. 28, 2017), <https://abc13.com/education/waller-hs-student-suspended-for-haircut-/1823098/>.

<sup>24</sup> Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, *TIME* (Aug. 13, 2014), <http://time.com/3107647/military-black-hairstyles/>.

<sup>25</sup> See Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Servicewomen Rejoice*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicewomen.html>; Other military branches, including the Air Force and the Navy, have also lifted bans on locs for service members.

<sup>26</sup> See *id.*

<sup>27</sup> See generally Dr. Gillian Scott-Ward, *Moving Past Racist Grooming Standards Terrorizing our Children*, *Medium* (Jan. 10, 2018), <https://medium.com/@gillianscottward/moving-past-racist-grooming-standards-terrorizing-our-children-40df73b9ecb3>.

<sup>28</sup> See Venessa Simpson, *What’s Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW L. REV. 265, 289 (2017) (citing Ana Maria Pinheiro, *Acquired Trichorrhexis Nodosa in a Girl: The Use of Trichoscopy for Diagnosis*, 4 (1) J. DERMATOLOGY & CLINICAL RESEARCH, 1064, 65 (2016)).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

repeat manipulation or chemically-based styling may also expose individuals to risk of severe skin and scalp damage.<sup>31</sup> Medical harm may also extend beyond the skin or scalp; for instance, a 2012 study published in the American Journal of Epidemiology linked the use of hair relaxers to an increase in uterine fibroids, which disproportionately impact Black women.<sup>32</sup>

Black people with tightly-coiled or tightly-curved hair textures face significant socio-economic pressure to straighten or relax their hair to conform to white and European standards of beauty, which can cause emotional distress, including dignitary and stigmatic harms.<sup>33</sup> Because of these expectations, in addition to the physical harms noted above, Black people are more likely than white people to spend more time on their hair, spend more money on professional styling appointments and products, and experience anxiety related to hair.<sup>34</sup> These experiences highlight the unique and heavy burden and personal investment involved in decision-making around hair for Black communities, and the consequences of being compelled to style one's hair according to white and European beauty standards or be stigmatized for wearing one's hair in a natural style.

### III. Employment

The NYCHRL prohibits discrimination in employment, which in most circumstances covers employers with four (4) or more employees.<sup>35</sup> Disparate treatment occurs when a covered entity treats an individual less favorably than others because of a protected characteristic.<sup>36</sup> Treating an individual less well than others because of their actual or perceived race violates the NYCHRL. To establish disparate treatment under the NYCHRL, an individual must show they were treated less well or subjected to an adverse action, motivated, at least in part, by their membership in a protected class.<sup>37</sup> An individual may demonstrate this through direct evidence of discrimination or indirect evidence that gives rise to an inference of discrimination.

Black hairstyles are protected racial characteristics under the NYCHRL because they are an inherent part of Black identity. There is a strong, commonly-known racial association between Black people and hair styled into twists, braids, cornrows, Afros,

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<sup>31</sup> Taylor Mioko Dewberry, *Title VII and African American Hair: A Clash of Cultures*, 54 WASH. U. J.L. & POL'Y 329, 351 (2017).

<sup>32</sup> See Lauren Wise, *Hair Relaxer Use and Risk of Uterine Leiomyomata in African-American Women*, AMER. JOURNAL OF EPIDEMIOLOGY, Vol. 175, Issue 5, 432–440 (2012), available at <https://doi.org/10.1093/aje/kwr351>.

<sup>33</sup> Greene, *supra* note 15 at 1013.

<sup>34</sup> See *id.*

<sup>35</sup> N.Y.C. Admin. Code § 8-102.

<sup>36</sup> *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 39 (1st Dep't 2009).

<sup>37</sup> *Id.*

Bantu knots, fades, and/or locs,<sup>38</sup> and employers are assumed to know of this association.

Covered employers that enact grooming or appearance policies that ban or require the alteration of natural hair or hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs may face liability under the NYCHRL because these policies subject Black employees to disparate treatment. Covered employers are engaging in unlawful race discrimination when they target natural hair or hairstyles associated with Black people, and/or harass Black employees based on their hair.<sup>39</sup>

By way of example, while an employer can impose requirements around maintaining a work appropriate appearance, they cannot enforce such policies in a discriminatory manner and/or target specific hair textures or hairstyles. Therefore, a grooming policy to maintain a “neat and orderly” appearance that prohibits locs or cornrows is discriminatory against Black people because it presumes that these hairstyles, which are commonly associated with Black people, are inherently messy or disorderly. This type of policy is also rooted in racially discriminatory stereotypes about Black people, and racial stereotyping is unlawful discrimination under the NYCHRL.<sup>40</sup>

Consequentially, employers may not enact discriminatory policies that force Black employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations. The existence of such policies constitutes direct evidence of disparate treatment based on race and/or other relevant protected classes under the NYCHRL. Notably, employers that enact these types of grooming or appearance policies do not typically target hair characteristics associated with individuals with white, European ancestry.

Examples of violations of 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).<sup>41</sup>

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<sup>38</sup> This is not an exhaustive list of hairstyles most commonly associated with Black people. See *supra* pg. 3.

<sup>39</sup> See *Williams*, 872 N.Y.S.2d at 39.

<sup>40</sup> See, e.g., *Jenkins v. Blue Cross Mut. Hosp. Ins.*, 538 F.2d 164 (7th Cir. 1976) (en banc) (holding that a Black employee had sufficiently charged race discrimination under Title VII after she was denied a promotion for wearing an Afro; the employer was engaging in racially discriminatory stereotyping that Black hair was inappropriate when it told her that she could “never represent them” because of her Afro.).

<sup>41</sup> This is not an exhaustive list of violations and they are not limited to employment. Such policies are also prohibited when enacted by housing providers and places of public accommodation. Additionally, related violations that implicate religious groups, and other protected classes include: a grooming policy prohibiting employees from maintaining uncut hair or wearing untrimmed beards, which may impact Rastafarians, Native Americans, Sikhs, Muslims, Jews, and other religious or cultural minorities; or a

- A grooming policy banning hair that extends a certain number of inches from the scalp, thereby limiting Afros.

Discrimination can also come in the form of facially neutral grooming policies related to characteristics that may not necessarily be associated with a protected class but that are discriminatorily applied. For instance, an employer violates the NYCHRL when it enforces a grooming policy banning the use of color/dye, extensions, and/or patterned or shaved hairstyles against Black employees only.<sup>42</sup>

The NYCHRL also prohibits covered employees from harassing, imposing unfair conditions, or otherwise discriminating against employees based on aspects of their appearance associated with their race. Examples of discrimination include:

- Forcing Black people to obtain supervisory approval prior to changing hairstyles, but not imposing the same requirement on other people.<sup>43</sup>
- Requiring only Black employees to alter or cut their hair or risk losing their jobs.
- Telling a Black employee with locs that they cannot be in a customer-facing role unless they change their hairstyle.
- Refusing to hire a Black applicant with cornrows because her hairstyle does not fit the “image” the employer is trying to project for sales representatives.
- Mandating that Black employees hide their hair or hairstyle with a hat or visor.<sup>44</sup>

Finally, employers may not ban, limit, or otherwise restrict natural hair or hairstyles associated with Black communities to promote a certain corporate image, because of customer preference, or under the guise of speculative health or safety concerns. An employee’s hair texture or hairstyle generally has no bearing on their ability to perform the essential functions of a job.

Where 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 on employees’ hairstyles. There exist a number of options that may address such concerns related to hair, including the use of hair ties, hair nets, head coverings, as well as alternative safety equipment that can accommodate various hair textures and hairstyles. Alternative options may not be offered or imposed to address concerns unrelated to actual and legitimate health or safety concerns.

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grooming policy requiring male employees to cut their hair, but allowing female employees to maintain long hair.

<sup>42</sup> See generally *Santee v. Windsor Court Hotel Ltd. P’ship*, No. Civ. A. 99-3891, 2000 WL 1610775, at \*3-4 (E.D. La. Oct. 26, 2000) (Black woman with dyed blonde hair denied employment at a hotel because her hair violated the hotel’s grooming policy banning “extreme” hairstyles).

<sup>43</sup> *Hollins v. Atl. Co.*, 188 F.3d 652 (6th Cir. 1999).

<sup>44</sup> See, e.g., *Eatman v. UPS*, 194 F. Supp. 2d 256, 259, 262 (S.D.N.Y. 2002) (UPS’s policy required Black male drivers to wear hats to cover “dreadlocks,” “braids,” “corn rolls,” a “do rag,” and a “ponytail”). Such a policy would violate the NYCHRL.

#### IV. Public Accommodations

The NYCHRL prohibits discrimination in places of public accommodation, defined as “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available.”<sup>45</sup> This guidance focuses on schools because reports of racially discriminatory policies on grooming and appearance have proliferated in educational settings.<sup>46</sup>

The NYCHRL prohibits discrimination in most public, private, and charter schools.<sup>47</sup> The United States Supreme Court has established that students in public schools do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>48</sup> Schools may not infringe on students’ free expression rights “unless school authorities have reason to believe that such expression will ‘substantially interfere with the work of the school or impinge upon the rights of other students.’”<sup>49</sup>

Schools may not, intentionally or unintentionally, target students of a particular protected category, including in after school activities or programs. Because natural hair and locs, cornrows, twists, braids, Bantu knots, fades, and Afros are a form of hair maintenance and cultural identity and expression most closely associated with Black people, no school covered under the NYCHRL may prohibit such styles in New York City.<sup>50</sup> No sound pedagogical rationale justifies this disparate treatment of Black students, nor would students’ free expression to wear their hair in natural, protective, or other styles commonly associated with Black people ever “interfere with the work of the school or impinge upon the rights of other students.”<sup>51</sup>

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<sup>45</sup> N.Y.C. Admin. Code § 8-107(4).

<sup>46</sup> Michael Gold and Jeffrey Mays, *Civil Rights Investigation Opened After Black Wrestler Had to Cut His Dreadlocks*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/nyregion/andrew-johnson-wrestler-dreadlocks.html>; see also NAACP Legal Defense and Educational Fund, Inc. & American Civil Liberties Union, *Letter to Florida Department of Education*, ACLU (Nov. 29, 2018), at 6, n.22 (collecting cases), <https://www.aclu.org/legal-document/florida-department-education-complaint-charge-race-discrimination>.

<sup>47</sup> N.Y.C. Admin. Code § 8-107(4). Certain religious schools may be exempt from coverage under the NYCHRL. See N.Y.C. Admin. Code § 8-107(2).

<sup>48</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>49</sup> *Id.* at 509 (citing *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

<sup>50</sup> Similarly, banning characteristics associated with other cultures, including Native Americans, may violate the NYCHRL. Native Americans, who maintain long hair, wear braids, or wear other hairstyles for cultural reasons have also routinely faced discriminatory hair policies and practices in educational settings. See, e.g., Cat Schuknecht, *School District Apologizes for Teacher Who Allegedly Cut Native American Child’s Hair*, NPR (Dec. 6, 2018), [https://www.npr.org/2018/12/06/673837893/school-district-apologizes-for-teacher-who-allegedly-cut-native-american-childs-\(last-visited-Jan.-29,-2019\)](https://www.npr.org/2018/12/06/673837893/school-district-apologizes-for-teacher-who-allegedly-cut-native-american-childs-(last-visited-Jan.-29,-2019)); Zac Whitney, *Dress Code Collides With Culture as Native American Student With Mohawk Sent to Principal’s Office*, FOX (Sept. 17, 2015), <https://fox13now.com/2015/09/17/dress-code-collides-with-culture-as-native-american-student-with-mohawk-sent-to-principals-office/>.

<sup>51</sup> *Tinker*, 393 U.S. at 506.

Similarly, it is unlawful under the NYCHRL to harass, subject to adverse treatment, or otherwise discipline any student because they choose to wear their hair in a style commonly associated with Black people. Further, it is no justification to prohibit natural hair or hairstyles because they are perceived to be a distraction or because of speculative health or safety concerns. These protections extend to all users of public accommodations, including businesses such as restaurants, fitness clubs, stores, and nightclubs, and other public spaces, like parks, libraries, healthcare providers, and cultural institutions.<sup>52</sup>

Examples of discrimination include:

- 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.
- A charter school informs a Black student that she must change her Afro because it is a “distraction” in the classroom.
- A children’s dance company requires girls to remove their braids, alter their Afro, and only wear a “smooth bun” to participate in classes.
- A nightclub tells a patron she is not welcome because her natural hairstyle does not meet their dress code.

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As a best practice, the Commission encourages employers and other covered entities to evaluate any existing grooming or appearance policies, standards, or norms relating to professionalism to ensure they are inclusive of the racial, ethnic, and cultural identities and practices associated with Black and historically marginalized communities. The Commission further recommends that public and private schools assess any workplace preparation programs geared toward helping students find employment to ensure that they do not intentionally or inadvertently send the message that natural hair or hairstyles associated with Black communities are “unprofessional,” “messy,” or “unkempt.”

The Commission is committed to eradicating anti-Black and other forms of discrimination in New York City. If you believe you have been subjected to unlawful discrimination on the basis of your race or membership in another protected class, please contact the Commission at 311 or at 718-722-3131 to file a complaint of discrimination with our Law Enforcement Bureau.

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<sup>52</sup> See, e.g., *Comm’n on Human Rights ex rel. Spencer v. Kings Plaza Unisex Palace of Hair Design, Inc.*, Complaint No. FH82030990DN-PA, Dec. & Order, 1991 WL 790573 (Nov. 8, 1991).