

Client Alert **Employment & Labor**

Hair Today, Gone Tomorrow: New Jersey Proposes Legislation Proscribing Hairstyle Discrimination Similar to Current New York and California Laws

New Jersey is poised to become the third state to prohibit enforcement of grooming policies that disproportionately affect people of color. In line with a growing national trend, members of the New Jersey State Assembly and Senate have introduced a bill ([NJ A-5564](#)/[NJ S-3945](#)) that seeks to amend the state's Law Against Discrimination ("LAD") by broadening the definition of "race" to outlaw discrimination on the basis of an individual's hairstyle in the workplace, housing, and schools. New Jersey Governor Phil Murphy is expected to sign the proposed legislation into law once it passes given his recent express disapproval of policies and practices prohibiting certain Black hairstyles worn by student athletes.

New Jersey's bill is modeled after a new [California law](#), which was enacted this summer and goes into effect January 1, 2020. The California law, the first of its kind in the nation, essentially acknowledges that hairstyles are often a function of race and culture and that Black hairstyles, in particular, have historically been subject to hyper-scrutiny insofar as workplace and school-based policies have been developed, with particular attention to proscriptions going to the Black aesthetic. Declaring that "hair today remains a proxy for race," the California law specifically provides that "[w]orkplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group."

Like California's law, New Jersey's bill would apply to public and private employers, as well as public schools, but it would exclude religious associations and nonprofit organizations.

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The New Jersey bill would expand the LAD's protections to include "traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles." The term "protective hairstyles" includes styles historically associated with race, such as "braids, locks, and twists."

New York State recently passed similar legislation that prohibits discrimination based on hairstyle. The New York law, which went into effect immediately on July 3, 2019, operates essentially the same way as the California law and New Jersey bill are meant to, informed by concerns that company policies use hairstyle proscriptions as a pretext for other forms of unlawful discrimination. The New York State law followed [guidance](#) issued by New York City's Commission on Human Rights in February 2019 regarding the prohibition of hair-based discrimination that acts to push back on "white standards of appearance" that "perpetuate racist stereotypes that Black hairstyles are unprofessional." The guidelines reference specifically the right of people in New York City to maintain their "natural hair, treated or untreated hairstyles, such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed fashion," making policies that ban, limit or restrict those hairstyles violations of the New York City Human Rights law.

Akin to both California and New York's laws, New Jersey's proposed law would prohibit employers from imposing policies that require employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations. These laws, however, appear to contemplate that the health and safety needs of a business can provide the basis for an exception to the law. For example, New York City's Commission on Human Rights' Guidance contemplates businesses imposing a ban or restriction where there is "a legitimate health or safety concern"; however, the Guidance provides that where such legitimate concerns arise, the business "must consider alternative ways to meet that concern prior to imposing a ban or restriction on employees' hairstyles." To the point, New York City's Guidance further states, "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." New York's law also cautions that any use of "alternative options" must be "related to actual and legitimate health or safety concerns." New Jersey's Division on Civil Rights issued its own [guidance](#) document in September 2019, which interprets the LAD prohibition of race discrimination as ostensibly encompassing discrimination based on hairstyles that are "inextricably intertwined with or closely associated with race."

Behind the momentum to enact the proposed New Jersey legislation is the story of an African American high school wrestler who was forced to cut his hair or forfeit a match in December 2018. A viral Internet video of the incident displays the young New Jersey grappler weeping in humiliation as he is having his locks cut off in front of a

sizable crowd of spectators. The incident sparked outrage in the wrestler's community, across the state, and around the country. Governor Murphy, and native New Jerseyan and Olympic wrestler Jordan Burroughs, also condemned the incident, contributing to a national conversation on the racial implications of hair in work and places of public accommodation. The Governor, in a social media post he issued on December 22, 2018, stated that he was "deeply disturbed" that the wrestler "was forced to choose between keeping his dreadlocks and competing in a wrestling tournament. No student should have to needlessly choose between his or her identity & playing sports."

Several states and localities have proposed similar hairstyle discrimination laws, including Michigan, Wisconsin, Illinois, and Kentucky, as well as Cincinnati, Ohio, and Montgomery County, Maryland. Given the growing trend, it is likely other states and local jurisdictions will propose similar restrictions.

Employers should recognize that the New Jersey bill and laws in other states do not entirely prohibit grooming policies addressing hairstyles in the workplace. However, policies in states banning hairstyle discrimination must not target hairstyles traditionally associated with persons of a particular race or culture.

In anticipation of the passage of New Jersey's proposed anti-hair discrimination law, all New Jersey employers should begin to review their grooming policies to determine whether they discourage natural hairstyles. Employers should also review their handbooks generally regarding requirements for employee appearance or aesthetics to determine whether they implicate any other proxies to race. To the extent New York employers have not yet updated their policies based on the recent enactment of that state's hairstyle discrimination law, they should do so.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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