

PUBLICATION

The CROWN: Anti-Hairstyle Discrimination Legislation Protecting Natural Hairstyles in the Workplace

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In a developing state and local employment law trend, wearing one's natural hair in the workplace has become a right in certain jurisdictions. People of color are most likely to experience discrimination in the workplace based on the style and texture of their natural hair.

The Creating a Respectful and Open World for Natural Hair (CROWN) Coalition conducted a 2019 study surveying 2,000 working women aged 25 – 64, who are employed in an office setting, or had been employed in a corporate office within the last six months.¹ The findings of this study revealed that African-American women are 80 percent more likely to change their natural hair to conform to social norms or expectations at work, and that African-American women's hair is approximately three times more likely to be perceived as unprofessional in the workplace.² Discrimination based on the appearance of an individual's natural hair affects both women and men of color. To illustrate, in 2018, New Jersey high school wrestler Andrew Johnson was given 90 seconds to make the determination of whether to have his dreadlocks cut off or forfeit a wrestling match.³

Natural Hairstyle Discrimination Claims Pre-CROWN

In 2013, the Equal Employment Opportunity Commission (EEOC) sued an employer on behalf of an African-American female applicant whose job offer was rescinded after she refused to cut off her dreadlocks at the employer's request.⁴ The employer asserted that the applicant's dreadlocks ran afoul of their personal grooming policy, which required hairstyles to "reflect a business professional image" and prohibited "excessive hairstyles."⁵ The U.S. District Court for the Southern District of Alabama dismissed the EEOC's complaint, holding that a hairstyle constitutes a "mutable characteristic" which is not afforded Title VII protection.⁶ On appeal, the Eleventh Circuit affirmed the District Court's decision, noting that although dreadlocks are a natural outgrowth of the texture of black hair, that does not make them an immutable characteristic of race.⁷

States and Localities that Have Enacted or Introduced the CROWN Act

The *Catastrophe Management* decision was one of the many cases that inspired California Senator Holly Mitchell to seek reform. On July 3, 2019, California Governor Gavin Newsom signed SB 188 into law, which made California the first state to enact the Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act.⁸ California's CROWN Act went into effect January 1, 2020.⁹ Senator Mitchell, who introduced the CROWN Act in the California legislature, testified before the state assembly that "It's 2019, and from my perspective, any law that sanctions a job description that immediately excludes me from a position, not because of my capabilities or experience, but because of how I choose to wear my hair is long overdue for reform."¹⁰

California's CROWN Act expands the definition of "race" under the California Fair Employment and Housing Act (FEHA) to include traits historically associated with race, such as hair texture, and natural or protective hair styles such as braids, dreadlocks, and twists.¹¹ After January 1, 2020, employees who allege discrimination based on the appearance of their natural hair are permitted to seek remedies under California's FEHA which include back pay, front pay, reinstatement, out of pocket expenses, attorney's fees, and punitive damages.¹² California's CROWN Act applies to employers who employ five or more persons throughout the state.¹³

Similar legislation has also been enacted at the local government level. On November 5, 2019, the Montgomery County Council unanimously voted to enact the CROWN Act.¹⁴ Under the Montgomery County CROWN Act, "race" includes traits historically associated with race, including hair texture and protective hairstyles, and "protective hairstyles" includes hairstyles such as "braids, locks, afros, curls, and twists." The Montgomery County CROWN Act is distinct, in that the law establishes its own remedy, permitting individuals who are discriminated against because of the appearance of their natural hair to seek up to a \$5,000 penalty through the Montgomery County Office of Human Rights.¹⁵ Montgomery County's CROWN Act is not limited to the employment context and applies to other places of public accommodation such as taxi services, and group homes.¹⁶ Montgomery County's CROWN Act went into effect February 6, 2020, and applies to all employers in Montgomery County with one or more employees.¹⁷

Other states and local jurisdictions have followed California's lead in enacting similar anti-hairstyle discrimination legislation including New York and New Jersey.¹⁸ According to the CROWN Coalition, approximately 20 states have introduced, or formally declared their intent to introduce, their own anti-hairstyle discrimination legislation such as Colorado, Delaware, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Nebraska, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.¹⁹ Cincinnati, Ohio's law took effect on January 1, 2020, and applies to any individual who employs ten or more persons within the City of Cincinnati.²⁰

Anti-hairstyle discrimination reform has also been introduced at the federal level. On December 5, 2019, Cory Booker, a U.S. Senator from New Jersey, introduced a federal CROWN Act bill in the United States Senate, and companion legislation was also introduced in the House of Representatives.²¹

One of the most recently introduced state anti-hairstyle discrimination bills is Maryland's Senate Bill 0531, which was introduced on January 30, 2020.²² This bill proposes to expand the term "race" to include "protective hairstyles," which is defined in the bill as a hairstyle designed to protect the ends of the hair by decreasing tangling, shedding, and breakage including braids, twists, and locks.²³ Employees alleging discrimination based upon the appearance of their natural hair would be permitted to file an employment discrimination claim, with the Maryland Commission on Civil Rights as they would for Sex, Age, or National Origin Discrimination claims. If enacted, Maryland's state CROWN law would take effect October 1, 2020.²⁴

Best Practices for Employers in States that Have Enacted the CROWN Act

The CROWN Act movement quickly evolved into a nationwide trend, and we anticipate that most states will eventually enact some form of this legislation in the foreseeable future. Accordingly, employers in the jurisdictions in which CROWN Acts have been enacted should review their policies to ensure compliance with the CROWN laws. Below are a few best practices for employers to implement to ensure that your personal grooming policy is CROWN Act compliant:

1. Avoid utilizing subjective and vague terminology in personal grooming policies such as "excessive hairstyles," as was in the policy challenged in the *Catastrophe Management* decision, or policies requiring for an employee's hair to be "smooth," "contained" or "pulled back," unless the employer has a legitimate health or safety justification, and consistently enforces the provision without regard to race or ethnicity.
2. Add clarifying language to your existing personal grooming policy. If your employee handbook currently has a policy in place that requires for an employee to physically present in a manner that is "professional" or to reflect a "corporate or business image," add clarifying language in the policy that states that the term "professional" is defined to include natural hairstyles such as braids, dreadlocks, and twists.

3. Avoid outright prohibitions on specific hairstyles historically associated with race, such as dreadlocks, twists, afros, or braids. As the proponents of the CROWN laws suggest, these prohibitions historically have caused a disparate impact on minorities.
4. Ensure that management and Human Resources professionals in your organization are adequately informed about natural hairstyle discrimination by conducting a training session or providing information to management and staff about the requirements of the CROWN laws. Awareness alone can serve as an effective tool to combat implicit bias.

¹ CROWN COALITION, *The Crown Research Study*, <https://www.thecrownact.com/research> (last visited Feb. 13, 2020).

² *Id.*

³ Laurel Wamsley, *Adults Come Under Scrutiny After HS Wrestler Told To Cut His Dreadlocks Or Forfeit*, NAT'L PUB. RADIO (Dec. 27, 2018, 1:43 PM), <https://www.npr.org/2018/12/27/680470933/after-h-s-wrestler-told-to-cut-his-dreadlocks-or-forfeit-adults-come-under-scrut>.

⁴ *E.E.O.C. v. Catastrophe Mgmt. Sols.*, 11 F. Supp. 3d 1139, 1140 (S.D. Ala. 2014).

⁵ *Id.*

⁶ *Id.* at 1143.

⁷ *Equal Employment Opportunity Comm'n v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1030 (11th Cir. 2016).

⁸ See CAL. GOV'T CODE § 12926(w).

⁹ *Id.*

¹⁰ Ray Sotero, *Senate votes to end hair discrimination in the workplace and schools*, CA. SENATE, <https://sd30.senate.ca.gov/news/press-releases/2019-04-22-april-22-2019-video-senate-votes-end-hair-discrimination-workplace> (last visited Feb. 13, 2020).

¹¹ CAL. GOV'T CODE § 12926(x).

¹² See *id.*

¹³ *Id.*

¹⁴ MONTGOMERY, MD. CODE §27-6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ New York's anti-hairstyle discrimination law went into effect July 12, 2019 and covers employers with four or more employees. N.Y. EXEC. L. § 292.38. New Jersey's anti-hairstyle discrimination law went into effect on December 19, 2019 and the statute does not include an employee threshold. N.J. STAT. ANN. § 10:5-5.

¹⁹ The CROWN Coalition is an organization founded by the National Urban League, Color of Change, Western Center on Law & Poverty that sponsors anti-hairstyle discrimination bills nationwide. CROWN COALITION, <https://www.thecrownact.com/> (last visited Feb. 13, 2020).

²⁰ CINCINNATI, OHIO, CODE §914-1-T1.

²¹ S. 3167, 116th Cong. (2020).

²² S.B. 531, Gen. Assemb., Reg. Sess. (Md. 2020).

²³ *Id.*

²⁴ *Id.*