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Hair Bias Bans Mean Employer Grooming Rules Need Review, Law360, ft. Keith Gutstein

Keith Gutstein, Esq., co-managing partner of the Long Island office of Kaufman Dolowich & Voluck, LLP and co-chair of the KD Labor & Employment Law practice group, was quoted in a *Law360 article by Vin Gurrieri on August 12, 2019.*

California and New York recently became the first two states to connect the dots between racial discrimination and rules that discourage or prohibit certain hairstyles, which experts say should motivate employers to revisit their appearance policies even if they don't ban any specific looks.

The Golden State got the ball rolling on July 3 when Gov. Gavin Newsom signed into law the CROWN Act, an acronym for "create a respectful and open workplace for natural hair." New York Gov. Andrew Cuomo signed a similar law a few weeks later, and a bill modeled on California's statute is pending before lawmakers in New Jersey.

Even though claims of discrimination based on a person's hair, be it in employment or in the public accommodation context, don't arise often, management-side attorneys told Law360 the trend of new statewide mandates puts the onus on employers in California, New York and other states that may enact similar laws to take a fresh look at their policies.

While outright racial discrimination has long been outlawed under both state and federal law, the bills in California and New York make it clear that the definition of race in existing anti-discrimination statutes includes bias against natural hair or hairstyles.

The CROWN Act in particular states that hair "remains a proxy for race," and makes clear that racial discrimination includes bias that is based on "traits historically associated with race" like "hair texture and protective hairstyles." The statute specifically cites braids, locks and twists as being among the specific hairstyles that are protected.

"Invariably, when it comes to these new protected classes or the broadening of existing protected classes, I don't think employers pay as much attention to it until they start seeing either their business or other businesses that they know hit with claims," said Keith Gutstein, co-managing partner of Kaufman Dolowich Voluck LLP's Long Island office and co-leader of the firm's employment practice. "That's when the alarm bells ring."

Workplace grooming policies can take many forms, with some employers having hyper-specific policies that regulate workers' appearance, while others opt for less stringent regulation or no regulation at all on what workers wear or how they keep themselves up.

But with natural hair discrimination laws now in place in California and New York, employers there and in states that enact similar laws should quickly remove any prohibitions keeping workers from, for example, wearing an afro or dreadlocks, attorneys say.

Gutstein, for one, also pointed out that training will be a key component for employers to make sure they remain in compliance with the new expanded mandates, particularly for lower-level managers, who often engage in conduct that can get an employer in trouble because they may not be as aware of current laws.

"It's not just a matter of fixing your policy, but also of letting all your managers know that this is something that they cannot make wrong decisions on," Gutstein said.

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