

LABOR AND EMPLOYMENT

ALERT

OCTOBER
2020

Hairstyle Discrimination Banned in Pittsburgh and Allegheny County

By Karen Baillie

The City of Pittsburgh's recently adopted "Creating a Respectful and Open World for Natural Hair (CROWN) Act" took effect October 23, 2020. The ordinance prohibits discrimination in employment, housing, and public accommodations based on "hairstyle and protective and cultural hair textures and hairstyles." The new law amends the Pittsburgh City Code to include hairstyle as an additional protected category, in addition to race, color, religion, ancestry, national origin, place of birth, pregnancy, childbirth, or related medical conditions and events, sex, sexual orientation, gender identity, gender expression, age, and nonjob-related handicap or disability.

Allegheny County, surrounding the City of Pittsburgh, likewise amended the county code of ordinances to include "hairstyle" as a separate protected category. "Hairstyle" is defined in the county ordinance as "any characteristic, texture, form, or manner of wearing an individual's hair if such characteristic, texture, form or manner is commonly associated with a particular race, national origin, gender, gender identity or expression, sexual orientation, or religion." The County prohibits hairstyle discrimination in employment, housing, real estate transactions, public accommodations, medical care, and public education.

The CROWN Act was modeled on similar legislation enacted in California, Colorado, Maryland, New York, New Jersey, Virginia, and Washington. The Act gets its name from the Dove CROWN research study, conducted in 2019, which surveyed 2,000 women throughout the United States to assess how societal norms and corporate grooming policies impact Black women in the workplace. Similar legislation passed the U.S. House of Representatives and has been

introduced in the Pennsylvania General Assembly and the Philadelphia City Council.

The Pittsburgh City Commission on Human Relations (CHR) published guidance on its website to assist employers, landlords and business owners in understanding the new law. See the October 21 Announcement on "CROWN Act Guidance and Handouts" at <https://pittsburghpa.gov/inc/announcement.html?ta=chr>.

According to the CHR guidance, employers "may not enforce grooming or appearance policies that ban, limit, or restrict hairstyles. Examples include banning hair styled into twists, braids, cornrows, Afros, locs, Bantu knots, fades, or other hairstyles closely associated with racial, cultural, and ethnic identity." The CHR advises that the "underlying concept is that hair or how one's hair is styled or groomed is not indicative of one's job abilities or performance." Seemingly neutral policies that require hair to be "kempt" or "neat" or "tidy" will also violate the new law if the policies are selectively enforced only against Black employees.

The CHR guidance provides an example of discriminatory selective enforcement. It explains that discrimination may occur when an employer tells Black employees who wear shoulder-length locs or braids that they cannot maintain their hairstyle at work because it is not tidy or kempt, but does not give these instructions to employees with fine or straight shoulder-length hair.

The CHR guidance further advises that employers should not rely on a "neat and tidy appearance" requirement to assign employees with locs or Afros to the stockroom rather than the sales floor, and cannot

justify such policies “based on a desire to project a certain corporate image, because of concerns about customer preference, customer complaints, or because of speculative health or safety concerns.” The guidance does suggest that there may be legitimate health and safety concerns, such as those “rooted in objective, factual evidence – not generalized assumptions or stereotypes – that the hairstyle in question would actually present a materially enhanced risk of harm to the wearer or to others.” This suggests that employers who wish to enforce health- or safety-driven neat and tidy hair requirements should have “objective, factual evidence” documented to support such requirements.

Employers should also stand ready to respond to requests for reasonable accommodation for workers whose hairstyles may be connected to religious beliefs or practices. The CHR suggests that employers follow an interactive accommodations process and document the process. When a legitimate concern is raised, employers should consider whether the concern can be addressed without “banning or restricting a hairstyle.” For example, the employer might suggest less restrictive alternatives such as hair ties, hair nets, and head coverings that must be universally required of all employees. The key is to enforce such rules universally whenever possible as well as to engage in the interactive process to document exceptions.

The CHR has issued a “CROWN Act Dos and Don'ts” poster for employers. The “Do” list includes:

- **Do** eliminate restrictions on hairstyles for employees and applicants wherever possible.
- **Do**, if it is absolutely necessary to have hairstyle policies, develop written policies and distribute those policies to all employees.
- **Do** inform employees of their right to request reasonable accommodations for hairstyles of religious significance.
- **Do** engage in the interactive process for individuals who request reasonable accommodations related to hairstyle.

- **Do** train managers and human relations personnel on anti-discrimination laws and company policies regarding hairstyle.
- **Do** recognize that hair texture or hairstyle, including use of extensions, hair ornaments or headwraps, is not indicative of job performance.
- **Do** apply policies equally to all employees and applicants.

The CHR's “Don't” list includes:

- **Don't** refuse to hire any person because of hairstyle or protective and cultural textures and hairstyles.
- **Don't** discriminate against any person with respect to hiring, tenure, compensation, promotions, discharge or any other terms, conditions or privileges directly or indirectly because of hairstyles and cultural hair textures and hairstyles.
- **Don't** substantially confine or limit recruitment or hiring of employees with intent to circumvent the spirit or purpose of the CROWN Act.
- **Don't** discriminate against any person in any way that would deprive or limit their employment opportunities because of hairstyles and cultural hair textures and hairstyles.

To ensure compliance with the new laws, employers should review employee handbooks and orientation materials, update their non-discrimination policies, train managers, and be alert for new legislation and guidance that may be forthcoming. ◆

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