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CLIENT ALERT

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CALIFORNIA BECOMES THE FIRST STATE TO BAN EMPLOYMENT DISCRIMINATION BASED ON HAIRSTYLE

On July 3, 2019, California Governor Gavin Newsom signed SB 188 into law, creating what is known as the "CROWN Act," an acronym for the phrase "Creating a Respectful and Open Workplace for Natural Hair." The Crown Act makes explicit that employers are prohibited from discrimination based on hairstyle.

As stated in the preamble to the CROWN Act: "Despite the great strides American society and laws have made to reverse the racist history that Black traits are inferior, hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals." The preamble goes on to state that "the Legislature recognizes that continuing to enforce a Eurocentric image of professionalism through purportedly race-neutral grooming policies that disparately impact Black individuals and exclude them from some workplaces is in direct opposition to equity and opportunity for all."

Although there has been some attention by courts under existing race discrimination laws to hairstyle discrimination, rulings have been inconsistent and, where discrimination has been found, the preamble to the CROWN Act points out that it largely has been limited to circumstances involving "discrimination against afros." These holdings therefore do not recognize that there are other natural hairstyles that can cause discrimination based on race.

The CROWN Act therefore explicitly broadens the prohibition against hairstyle discrimination in employment. It accomplishes this goal by amending the definitional section of California's Fair Employment and Housing Act (Government Code Section 12926) to state that (i) "Race is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." (Section 12926(w)), and (ii) "'Protective hairstyles' includes, but is not limited to, such hairstyles as braids, lock, and twists." [Section 12926(x)]

The CROWN Act takes effect on January 1, 2020. California employers therefore should examine their dress codes and grooming policies, and amend these policies (as well as train those involved in employee hiring) to ensure compliance with these protections.



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