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Workplace Policies Prohibiting Natural Hairstyles Under Fire in Recent Legislation

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By **Jeffrey Campolongo and Miranda Curtis** | July 18, 2019

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By now, many folks are familiar with the wrestling referee out of Buena, New Jersey, who, in December 2019, forced a 16-year-old biracial wrestler to cut his dreadlocks or forfeit the match. Alan Maloney, a white referee, refused to allow the student, Andrew Johnson, to wrestle in the same head cover he had used in prior matches because his hair "wasn't in its natural state."

In a separate incident involving the same rogue referee, Maloney allegedly told another biracial wrestler, this time a 6-year-old with dreadlocks, that he could not compete because his "hair doesn't naturally look like that." Despite a history of alleged racist incidents, Maloney only recently came under investigation after a video of the incident in Buena leaked. The video shows a white trainer cutting the

16-year-old Johnson's hair at Maloney's direction. The video quickly went viral, sparking outrage and instigating a national debate on "race-neutral" grooming policies that disproportionately impact people of color.

Incidents like this illustrate a long-standing gap in anti-discrimination laws. In the employment law context, anti-discrimination laws have been held to not protect employees from being fired or disciplined in the workplace because they wear braids, twists, dreadlocks or other natural hair styles.

Take, for example, Kerion Washington, a black teenager who was denied a job at Six Flags Over Texas in spring 2019 because of his "extreme" dreadlocks that reached down to his shoulders. Washington was told that he could cut his hair and come back, since hair is "just hair and …would grow back." Washington declined to cut his dreadlocks and instead sought another job. When his mother's post about the incident went viral on Facebook, Washington was contacted by a scout from well-known modeling agency, IMG Worldwide, and is now reportedly pursuing a modeling career.

Six Flags has a history of race-based hair discrimination dating back to at least 2006, when the ACLU investigated complaints by several black employees at Six Flags in Maryland who were told that their hairstyles were inappropriate. In 2010, a group called Friends for Hair Freedom started a petition to boycott the park after two women claimed they were denied employment at the same Maryland location because of their hair. In 2012, MarKeese Warner was denied a food service summer job with Six Flags in Maryland because of her hair. And just earlier this year, 16-year-old Kobe Pierce was also denied a job at Six Flags Over Texas because he refused to cut his long braid. Since Washington's story went viral, Six Flags has changed its policy and now allows male team members to wear dreadlocks as long as they are "well-groomed and do not extend past the bottom of the collar."

Another victim of the gap in employment anti-discrimination laws is Chastity Jones, whose job offer in a customer service call center at Catastrophe Management Solutions (CMS) was rescinded because she declined to cut off her dreadlocks. The employer's allegedly race-neutral grooming policy required that "hairstyles reflect a business/professional image" and prohibited "excessive hairstyles." Jones, who is black, was told by CMS' human resources manager that the company could not hire her with the dreadlocks because "they tend to get messy."

The Equal Employment Opportunity Commission (EEOC) filed a claim on Jones' behalf, alleging that she was discriminated against in violation of Title VII of the Civil Rights Act. Jones lost her discrimination suit in the Southern District of Alabama against CMS for failure to state a claim because "Title VII does not protect against discrimination based on traits," such as hair styles, according to the opinion, see *Equal Employment Opportunity Commission v. Catastrophe Management Solutions*, 11 F. Supp. 3d 1139 (S.D. Ala. 2014). The district judge reasoned that dreadlocks are a mutable trait and are not a protected immutable characteristic, even if they are a reasonable result of black hair texture. The U.S. Court of Appeals for the Eleventh Circuit affirmed, reasoning that the EEOC's proposed amended complaint did not allege that dreadlocks are an immutable characteristic of black individuals, see *Equal Employment Opportunity Commission v. Catastrophe Management Solutions,* 876 F.3d 1273 (11th Cir. 2017).

States are now taking the lead in responding to growing demands for legal protections against race-based hair discrimination. To combat this previously unaddressed gap, the CROWN Coalition sponsored bills this year in California, New York and New Jersey to amend existing anti-discrimination laws to include

discrimination based on hair. CROWN is a national alliance comprised of the National Urban League, the Western Center on Law & Poverty, Color of Change. and Dove, the personal care brand owned by Unilever.

The bills appear to be a direct response to race-based hair discrimination in the workplace. A recent study by personal care brand Dove revealed that black women are 50% more likely to be sent home from the workplace because of their hair, which is 3.4 times more likely to be perceived as unprofessional. Black women are 80% more likely to change their hair to meet social norms or expectations at work. The study found that black women are more policed in the workplace and fear scrutiny and discrimination for wearing natural hairstyles at work.

On July 3, California became the first state to prohibit race-based hair discrimination when Gov. Gavin Newsom signed SB 188, the Create a Respectful and Open Workplace for Natural Hair (CROWN) Act, into law. The law amends the definition of race in the Fair Employment and Housing Act to include protective hairstyles such as braids, locks and twists.The CROWN Act goes into effect Jan. 1, 2020.

The California legislature, in passing the CROWN Act, recognized that professionalism is closely linked to European features and mannerisms, forcing people of color that do not naturally fall into Eurocentric norms to alter their appearances in order to be deemed professional. The legislative findings for the act make mention of the fact that, historically, our laws and societal norms have equated “blackness” and linked physical traits, including hair, to a badge of inferiority. Hair remains a proxy for race and a rampant source of racial discrimination with serious economic and health consequences for people of color, per the findings. The California legislature concluded that “hair discrimination targeting hairstyles associated with race is racial discrimination.”

New York Gov. Andrew Cuomo signed a similar CROWN Act, S.6209A/A.7797A, into law on July 12. The act is modeled after California SB 188 and amends the New York Human Rights Law and the Dignity for All Students Act to expand the definition of race to include hair texture and protective hairstyles historically associated with race. The act is effective immediately and expands some of the protections extended in New York City in February 2019 by the New York City Commission on Human Rights (NYCCHR).

In guidelines to the New York City Human Rights Law, the NYCCHR expanded anti-discrimination protections to natural hair that is untreated by chemicals or heat, uncut or untrimmed hair, and treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades and afros. Race-based hair discrimination pressures employees to treat hair with heat or chemicals, causing hair to become vulnerable to breakage and loss, the development of conditions such as trichorrhexis nodosa and traction alopecia, severe skin and scalp damage, and even an increase in uterine fibroids linked to the use of hair relaxers.

In New Jersey, state legislators have introduced a version of the CROWN Act, also modeled after the California law. The act, S3945/A5564, is pending vote in the New Jersey House and Senate and would amend the New Jersey Law Against Discrimination so that the definition of race includes “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles” such as braids, locks and twists. The bill appears to be a direct response to the Buena dreadlocks incident.

These laws are an important step toward combating discrimination based on hair as a racial proxy. The laws extend existing civil rights, providing legal protections for employees and students against an all-too-common type of discrimination. In

instances of explicit racism targeting natural hair, such as that experienced by Chastity Jones or Kerion Washington, the laws also provide recourse against discriminatory employers.

Though the laws cannot immediately eradicate implicit bias, they work to normalize hairstyles that have been targeted historically for not complying with Eurocentric ideas of professionalism. The laws expand the definition of racism, working toward a more inclusive workplace and world.

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