

New York's Continued Commitment to Eradicating Discrimination and Inequality in the Workplace

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New York City and New York State government officials and administrative agencies have been extremely busy during the first quarter of 2019 with various anti-discrimination and equality initiatives.

- As described below, the New York City Commission on Human Rights (“NYCCHR” or the “Commission”) launched a Gender-Based Harassment Unit (“Harassment Unit”) in January 2019.
- In February 2019, the Commission released legal enforcement guidance (“Guidance”) addressing race discrimination on the basis of hair and hairstyles in an ongoing effort to combat anti-Black racism in New York City.
- On March 15, 2019, the Commission launched a “While Black” campaign to target anti-Black racism in New York City by addressing some common forms of discrimination that Black people face while doing everyday activities. This campaign also serves to educate entities on their responsibilities under the law.
- Governor Cuomo released a comprehensive Women’s Salary Negotiation Guide (“Guide”) on April 2, 2019 and again called for the passage of a salary history ban to close the gender wage gap in New York State in honor of Equal Pay Day. The Governor proclaimed that New York State “will never stop fighting until we reach full gender equality and economic justice for all.”

These initiatives—all of which were launched during the first four months of 2019—showcase why New York has long been a leader in enacting some of the most robust human rights laws in the country.

New York City’s Gender-Based Harassment Unit

In an ongoing effort to combat gender-based harassment in the workplace, NYC Mayor Bill de Blasio announced the launch of the Harassment Unit on January 29, 2019. The Harassment Unit is tasked with escalating high priority cases more quickly and thoroughly in an effort to reduce instances of retaliation and better identify widespread harassment within entities.

Along with the launch of the Harassment Unit, the Commission announced that it plans to issue additional legal enforcement guidance concerning gender identity definitions and discrimination on the basis of gender expression. This guidance will include updated terms such as “transgender” and “intersex.” Though this guidance has not yet been published, if it is similar to the Guidance published in February, it will be substantive and will clarify certain rights already protected under the law.

Discrimination Based on Hair and Hairstyle is Illegal Under Existing NYC Law

The Guidance published by the NYCCHR in February 2019 is the second guidance¹ it has published in the last two months and there is no indication that the Commission has any intention of slowing down its commitment to eradicating discrimination in New York City.

¹ On February 15, 2019, the NYCCHR issued legal enforcement guidance concerning discrimination on the basis of gender identity and gender expression.

While the Guidance focuses on hair and hairstyles associated with “Black people,”² it makes clear that the New York City Human Rights Law (“NYCHRL”) protects the rights of New Yorkers to maintain “natural hair or hairstyles that are closely associated with their natural hair, treated or untreated hairstyles such as locs, cornrows, twists, Bantu knots, braids, Afros, and/or the right to keep hair in an uncut or untrimmed state.” Further, the Guidance advises that the NYCCHR considers “protective headwear,” such as wigs, headscarves and wraps, protected under the law.

The Guidance explains that “Black hairstyles are protected racial characteristics under the NYCHRL because they are an inherent part of Black identity.” For this reason, the Guidance states that covered employers³ who target natural hair or hairstyles associated with Black people, or who target Black people based on their hair, are engaging in unlawful race discrimination prohibited by the NYCHRL. As such, the NYCCHR expressly affirmed in the Guidance that “grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people [or other communities protected under the NYCHRL] generally violate the NYCHRL’s anti-discrimination provisions.”

Five Considerations Covered Employers Should Keep in Mind:

- First, the Guidance not only applies to policies, bans and restrictions concerning Black hairstyles, but it also applies to all such policies, bans or restrictions prohibiting hairstyles associated with a particular racial, ethnic or cultural group. Specifically, the Guidance states that any such policies, with few exceptions, would run afoul of the NYCHRL.
- Second, covered employers with grooming or appearance policies that ban or require alteration of hair, hairstyles or headwear should review such policies because such policies may subject employees to disparate treatment and thus trigger liability for the employer under the NYCHRL.
- Third, in reviewing their grooming or appearance policies, covered employers should keep in mind that while they may impose requirements to maintain a work appropriate appearance, they cannot enforce these policies in a discriminatory manner. For example, a grooming policy that requires maintaining a “neat and orderly” appearance which prohibits Afros or cornrows is discriminatory because it “presumes that these hairstyles, which are most commonly associated with Black people, are inherently messy or disorderly.”
- Fourth, facially neutral grooming or appearance policies may be unlawful if they are applied in a discriminatory manner.
- Fifth, a covered employer cannot ban, limit or otherwise restrict natural hair or hairstyles under the guise of customer preference or speculative health and safety concerns. That being said, where a covered employer has a legitimate health or safety concern, the Guidance requires the employer to consider alternative ways to meet such concern prior to imposing a ban or restriction on employees’ hair or hairstyles. However, alternative options may not be imposed to address concerns unrelated to actual and legitimate health or safety concerns.

New York State Publishes Salary Negotiation Guide

On Equal Pay Day (April 2, 2019), Governor Cuomo and the New York State Department of Labor (“NYSDOL”) released the Guide in an effort to help women ensure that they are fairly compensated. The Guide, which was developed based on recommendations from the State’s gender wage gap study, provides information concerning negotiation practices during interviews, timelines for considering an offer, and how and when to approach the topic of raises. The NYS simultaneously released an online training video covering the same information. The Guide and the training are two of many recent New York State initiatives aimed at gender equality and women’s rights in New York.

While only time will tell what legal developments will emerge in the coming months and years, Vedder Price’s labor and employment attorneys remain committed to keeping employers informed of any and all legal updates. If you have any questions regarding the topics discussed in this article, please contact **Blythe E. Lovinger** at +1 (212) 407 7770, **Haley P. Tynes** at +1 (212) 407 6997 or any other Vedder Price attorney with whom you have previously worked.

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² The Guidance defines “Black people” as “those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry.”

³ New York City employers with four or more employees are covered under the NYCHRL.