

# Employee grooming policies: Review yours with a fine-tooth comb

Grooming policies have long been a flashpoint for employers and employees. Employers prefer that employees sport professional hairstyles. Employees want to express their personalities. When a professional hair grooming rule is interpreted to ban ethnic hairstyles, the end result may be hair discrimination. Hair discrimination usually occurs when specifically ethnic hairstyles like braids, cornrows, afros and other non-Eurocentric styles are deemed unprofessional.

Until recently, such discrimination wasn't necessarily illegal. Title VII doesn't specifically ban hair discrimination. But when combined with other protected rights like religion or disability, some employees could sue for discrimination. More recently, states and cities have stepped in and passed hair discrimination laws based on model legislation called the CROWN Act. California and New York have taken the lead, but at least five other states are also considering legislation.

## Title VII and hair

The Civil Rights Act 1964's Title VII prohibits discrimination based on race, religion, national origin and sex. The Americans with Disabilities Act bars disability discrimination in the workplace. All these protected characteristics have been applied to grooming codes. For example, grooming rules that prohibit men from wearing beards or other styles of facial hair may violate an employee's right to express his religion.

Other grooming policies that require workers to leave their hair uncovered as part of a dress code may also violate the right to adhere to religious beliefs. Requiring males to be clean-shaven may discriminate against persons with disabilities involving skin. Pseudofolliculitis barbae affects between 45 and 85 percent of black males, for example, and makes shaving very painful and disfiguring.

The U.S. Supreme Court has frequently ruled in favor of employees or others who claim grooming policies are a form of religious discrimination. Two fairly recent decisions deal with hair – its style or its covering. In [Holt v. Hobbs](#), the Court unanimously upheld the right of a Muslim prisoner to wear a beard in accordance with his religion over safety fears. In [EEOC v. Abercrombie & Fitch](#), a Muslim woman appeared at an interview covering her hair with a hijab. The Supreme Court ruled that the employer's desire for a "collegiate" look was not justification for rejecting her. Both decisions came in 2015.

The Equal Employment Opportunity Commission (EEOC) takes the position that Title VII forbids discrimination based on wearing so-called ethnic hairstyles. These include styles like Afros, cornrows or dreadlocks. When it has sued on behalf of employees challenging grooming policies, it has won some and lost some cases. It has won cases where dreadlocks were not allowed but worn for religious reasons. It has lost cases when dreadlocks were worn for other or no reason.

In [EEOC v. Catastrophe Management Solutions](#), Chastity Jones appeared for an interview wearing a business suit and pumps. She wore her hair in short, natural dreadlocks. She was offered a job as a customer service representative at a call center. But the HR manager pulled her aside and explained the grooming policy. Ms.

Jones was told to cut her hair because the grooming policy required professional hair. Dreadlocks, the HR manager said, tend to become “messy.” Ms. Jones declined to cut her hair and the company declined to hire her.

The EEOC sued on Ms. Jones’ behalf and lost at the 11th [Circuit Court of Appeals](#). She had argued that grooming policies banning styles popular with black wearers are suspect. Banning ethnic styles as inherently messy or unprofessional is based on stereotypical thinking about race, she claimed. The judge concluded that dreadlocks are not an immutable feature of race such as skin color. Since she could cut her ethnic hairstyle and get the job, it was not race discrimination. The Supreme Court declined to review the case in 2018.

## **CROWN Act**

Some states and cities have passed new laws that prohibit discrimination in the workplace based on hairstyles. These expand protection to all individuals choosing to wear their hair in styles outside what some employers may consider “professional.” Black hair worn in its natural state sometimes runs afoul of grooming policies that call for neat, professional styles.

These legislative fixes were spurred by a model hair discrimination law known as the CROWN Act. CROWN stands for Creating a Respectful and Open World for Natural Hair. Dove, the maker of beauty products, the Urban League and others partnered to draft the legislation. It has prompted California and New York state to pass into law CROWN Act legislation. Several cities have also done so.

- **California:** The first state to pass a version of the CROWN Act was California, on July 3, 2019. It adds “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles” to the definition of race. The legislation states that hair remains a proxy for race, and that discrimination targeting hairstyles is racial discrimination. It bars grooming policies that claim to be race-neutral but disproportionately impact people of color. The law goes into effect on January 1, 2020.
- **New York City:** The first city to outlaw hair discrimination was New York City. state in February 2019. The New York City Commission on Human Rights (Commission) says “employers may not ban, limit, or otherwise restrict natural hair or hairstyles associated with Black communities to promote a certain corporate image, because of customer preference, or under the guise of speculative health or safety concerns.” The ordinance lists examples of prohibited discrimination, including:
  - Forcing black employees to get supervisory approval prior to changing their hairstyles;
  - Threatening to fire black employees who refuse to adhere to the grooming code;
  - Refusing to let black employees with certain hairstyles work in customer-facing roles;
  - Refusing to hire a black applicant with cornrows or other black styles because the style does not fit the image the employer is trying to project; and
  - Mandating that black employees cover their hair or hairstyle with a hat or other covering except for legitimate health and safety reasons, universally enforced.

The penalty is considerable. Any applicant or worker who has experienced discrimination, punishment or harassment due to their chosen hairstyle or texture can complain. The Commission will investigate. Employers found violating the law can face a penalty of up to \$250,000, with no cap on damages. The Commission can order company policy changes as well as order an applicant rejected because of hairstyle hired.

- **New York State:** In July 2019, Governor Cuomo signed the CROWN Act, which made changes to the New York Human Rights Law (NYHRL). It adds “traits historically associated with race, including but not limited to hair texture and protective hairstyles” to the law’s definition of race discrimination. It defines protective styles to include braids, locks and twists. This hair discrimination is treated as race discrimination under NYHRL.
- **Cincinnati:** On October 9, 2019, Cincinnati became the second city to ban hair discrimination. Discriminate against natural hair and natural hairstyles associated with race is now illegal. Employers that

discriminate face a \$100 per day fine up to \$1,000.

## **What should employers do?**

Employers should review their current grooming policies. If that policy requires “professional” hairstyles, revise it to define professional to allow natural hairstyles, including dreadlocks, braids and Afros. Alternatively, state that the company will always accommodate religious or cultural beliefs and practices. For example:

“All employees must dress for their position and must be clean, neat in appearance and free of any distractions that may impair health or safety in the workplace. Natural hairstyles are allowed. Employees with questions about what is acceptable may contact the HR office for guidance. Our company remains committed to supporting our employees’ religious and cultural beliefs and practices and will modify the dress code accordingly.”