

California Bill Would Expand Definition of Race to Include Hairstyle

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California [Senate Bill \(SB\) 188](#) seeks to provide a broader definition of “race” in California’s anti-discrimination law. The bill defines “race” as “inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.” The bill is expected to become law, and employers may want to plan accordingly.

The Equal Employment Opportunity Commission (EEOC) has long held that the meaning of “race” is not limited to skin color. Color discrimination is itself a protected category, which can be defined as discrimination based on pigmentation, complexion, or skin shade or tone. “Race” has a broader meaning and can include physical characteristics associated with race (such as a person’s hair, facial features, and height and weight), as well as cultural characteristics related to race (including a person’s name, cultural dress and grooming practices, or accent or manner of speech).

Recently, the New York City Commission on Human Rights [released new guidance](#) regarding the application of the New York City Human Rights Law to situations involving characteristics and cultural practices closely associated with race. The commission focused in particular on discrimination against hair texture and hairstyles associated with being Black because of the frequency of such discrimination. The commission explained that “[r]ace discrimination based on hair and hairstyles most closely associated with Black people has caused significant physical and psychological harm to those who wish to maintain natural hair or specific hairstyles but are forced to choose between their livelihood or education and their cultural identity and/or hair health.” California’s SB 188 further reflects this development in civil rights law.

SB 188 makes a series of findings and declarations, including that discrimination against “‘blackness,’ and the associated physical traits” is pervasive in society and has “permeated societal understanding of professionalism.” The bill states that this “Eurocentric image of professionalism . . . disparately impact[s] Black individuals.” Accordingly, the bill expressly includes protections of traits historically associated with race, including protective hairstyles such as braids, locks, and twists.

Key Takeaways for Employers

California employers are likely to see this new standard become law, so they may want to consider taking steps to ensure that their discrimination and harassment prevention programs, as well as their

grooming policies, comply with this new standard. For example, companies could train management that the following policies and practices would likely violate the standards set forth in SB 188:

- Having a grooming policy that prohibits twists, locks, braids, cornrows, Afros, Bantu knots, or fades—all of which are commonly associated with Black people
- Having a grooming policy that requires employees to alter the state of their hair to conform to the company's appearance standards, including a policy that requires employees to straighten or relax hair (which involves the use of chemicals or heat)
- Having a grooming policy that bans hair that extends a certain number of inches from the scalp, thereby limiting Afros
- Having a grooming policy that requires "professional hair" or "clean and tidy hair" but is applied to mean that employees cannot wear Afros, locks, twists, or braids
- Forcing Black people to obtain management approval prior to changing hairstyles but not imposing the same requirement on other people
- Requiring only Black employees to alter or cut their hair or risk losing their jobs
- Telling Black employees with locks that they cannot be in a customer facing role unless they change their hairstyle
- Refusing to hire a Black applicant with cornrows because his or her hairstyle does not fit the image the company is trying to project to customers
- Mandating that Black employees hide their hair or hairstyle with a hat or visor

Instead, employers may want to consider adopting the following policies and practices:

- Adopting a grooming policy based on rules that are valid, nondiscriminatory, have no disparate impact, and are uniformly applied
 - For example, the policy may include a race-neutral rule requiring employees to keep their hair neat and clean.
 - Similarly, a company could adopt a rule requiring all employees to secure their hair for bona fide safety or hygienic reasons.
- Revising discrimination and harassment prevention policies to broadly define race to include physical and cultural characteristics associated with race
- Supplementing harassment prevention training programs with hypotheticals that further illustrate the broad meaning of race-based harassment and discrimination
 - These examples may include, as the EEOC has explained, unfair height and weight standards that have an adverse impact on Asian Americans and hairstyling rules that have an adverse impact on Black women.

- Emphasizing that a respectful workplace does not condone teasing or joking about traits that have historically been associated with one's race or ethnic identity in harassment prevention trainings

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