

An Increasingly Hairy Situation: Discriminatory Employment Decisions Based on Hairstyles

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Hairstyles are gaining more attention in the labor and employment context. Earlier this year, Austria's Supreme Court allowed a former employee to reopen his discrimination claim upon discovering evidence that the employer may be engaging in discriminatory conduct by imposing hairstyle-related requirements on employees. In 9 ObA 4/19g, a staffing agency's employee was denied a position on account of his long hair, and sued the staffing agency for sex discrimination under the Equal Treatment Act, which prohibits differing treatment on the basis of sex without an objective justification. The employee lost the initial suit but successfully revived the claim upon discovering that the staffing agency's handbook prescribed the manner in which both males and females were to wear their hair, including requiring that males keep their hair short. The Supreme Court confirmed the lower courts' rulings to reopen the case, finding that the handbook could shed "new light" on the initial legal assessment. The employer will likely have to change its policy in order to avoid further claims in the future.

In the United States, New York and California are leading the fight against discriminatory decisions based on hairstyle. As we previously [reported](#), the New York City Commission on Human Rights ("NYCCHR") recently issued enforcement [guidance](#) on race discrimination on the basis of hair with regard to employer policies that restrict or ban certain hairstyles commonly associated with "communities of color, religious minorities, and other communities," and stating that the City's Human Rights Law "protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic or cultural identities." We also recently [reported](#) that proposed legislation in California seeks to amend the State's education and government laws to define "race or ethnicity" to include certain hairstyles and hair texture. The preamble to the [proposed legislation](#) notes that "hair today remains a proxy for race."

We suspect that an increasing number of jurisdictions, both in the United States and abroad, will turn their attention to protecting individuals against discriminatory action on the basis of their hairstyle. Employers should note these early developments and carefully evaluate their appearance and/or grooming policies, and decisions based on those policies. We will continue to monitor this trend.

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