

Maryland Legislature Passes Hairstyle Discrimination, Facial Recognition in Hiring, Retaliation, and Equal Pay Laws

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COVID-19 has certainly not slowed down legislators in Annapolis. Far from sitting idle, the Maryland General Assembly recently passed a broad array of workplace legislation without the governor's signature. In addition to a significant expansion of [Maryland's Worker Adjustment and Retraining Notification \(WARN\) Act](#), three new employment laws are set to take effect on October 1, 2020.

Hairstyle Discrimination

Under [House Bill \(HB\) 1444/Senate Bill \(SB\) 531](#), Maryland employers are prohibited from discriminating against individuals based on "certain traits associated with race, including hair texture and certain hairstyles." The Maryland legislation follows similar antidiscrimination laws—commonly known as the "CROWN Act"—enacted in several other states, including [California](#), [New Jersey](#), New York, and [Washington](#). The legislation specifically includes protection for "braids, twists, and locks," as well as "hair texture, afro hairstyles, and protective hairstyles." Though the Senate version of the bill, SB531, attempted to place some carve-outs for employers to set standards in their workplace by requiring employees to "adhere to reasonable workplace appearance [and] grooming ... standards," that language was struck before final passage, and the stricter House version will therefore go into effect on October 1, 2020.

This law is of particular note to employers that have set grooming or personal appearance standards in their workplace. Employers may want to review their handbooks and relevant policies prior to the date of enactment to ensure they do not run afoul of this new law's protections.

Prohibition on Using Facial Recognition in the Hiring Process

A law prohibiting the use of facial recognition services ([HB1202](#)) is aimed at limiting the use of artificial intelligence during the hiring process. Some companies use facial recognition to analyze the language and tone of an applicant's voice, as well as their facial expressions during an interview. The program can be used to compare an applicant against other successful candidates seeking the same position, and is designed to speed up the hiring process.

Sensing a novel venue for workplace discrimination, the Maryland General Assembly enacted HB1202 to prohibit employers from using a facial recognition service to create facial templates of applicants during job interviews without their consent. For employers that already use, or may be planning to use, a facial recognition service during hiring, HB1202 requires that candidates sign a waiver prior to the start of the interview.

Anti-Retaliation in Equal Pay Claims

[HB14](#) expands Maryland's "equal pay for equal work" law to prohibit retaliation against an employee who inquires about his or her own (rather than a coworker's) wages. Specifically, the amended law states that employers may not:

- "prohibit an employee from inquiring about, discussing, or disclosing the wages" of other employees;
- "prohibit an employee from requesting that the employer provide a reason for why the employee's wages are a condition of employment";
- "require an employee to sign a waiver or any other document that purports to deny the employee the right to disclose or discuss the employee's wages"; or
- "take any adverse employment action against an employee for:
 - inquiring about the employee's wages or another employee's wages;
 - disclosing the employee's own wages;
 - discussing another employee's wages if those wages have been disclosed voluntarily;
 - asking the employer to provide a reason for the employee's wages; or
 - aiding or encouraging another employee's exercise of rights" under the law.

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