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New Laws Reflect Rising Tide of Anti-Discriminatory Policy

By Hayes Edwards

SUMMARY: Laws passed over the summer in New York and California prohibit employers from enforcing dress codes that restrict traditional African-American hairstyles, and New York has expanded the scope of potential discrimination claims by lowering the standard for severity of mistreatment and eliminating important defenses for employers.

New York and California have recently passed legislation that prohibits new types of discrimination and lowers the bar for proving harassment against an employer. Both of these developments suggest that employers nationwide should tighten up their practices and handbooks to stay ahead of the curve.

Over the summer, legislation passed in California (known as the CROWN Act) will make it illegal for employers to prohibit hairstyles that are associated with African American traditions, including “protective hairstyles” including “braids, locks, and twists.” New York followed suit with a similar law, and New Jersey is presently considering a third bill with the same effect. The California bill declares that “hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals,” and asserts that workplace dress code and grooming policies must be addressed as a potential means of perpetuating those inequalities.

More recently, New York passed a law that eliminates the requirement for employees to prove that the sexual harassment or other workplace discrimination they suffered was “severe and pervasive,” which was traditionally the standard and still is in most states. Whereas employers could previously assert a defense that the conduct alleged was not “severe and pervasive,” even if it did occur, that defense is now only available where the conduct amounted to “petty slights or trivial inconveniences.” Equally as impactful is the law’s elimination of the defense, previously available to employers, that the employee failed to comply with internal reporting requirements before bringing their claim. Employees are also no longer required to demonstrate that one of their peers (who was outside of their protected category) was receiving more favorable treatment. Finally, the law prohibits nondisclosure terms in settlement agreements arising from discrimination claims, unless the employee prefers nondisclosure.

Commenters are noting the likely major impact of these changes and urging employers to take heed. Many business have noted that they could become liable for conduct that they never knew about, despite taking proper steps to prevent it.

While Maryland, D.C., and Virginia have yet to pass similar laws, the legislative success of these initiatives is a clear indicator that anti-discrimination policies are being expanded and strengthened. Before an employer finds itself on the wrong side of such a law, it would be wise to ensure that proper standards and reporting structures are in place. If you have a question regarding your employment policies, employee handbook, or any issues related to discrimination or harassment, please contact the employment attorneys at Paley Rothman.

