

What is the CROWN Act, what do I need to know about it, and how should employers prepare for it?

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On March 18, 2022, the U.S. House of Representatives passed the Creating a Respectful and Open World for Natural Hair (CROWN) Act by way of a party line vote of 235-189. In general, the federal CROWN Act and similar state acts explicitly prohibit discrimination on the basis of a person's natural hair. More specifically, the proposed federal legislation prohibits "discrimination based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin" and seeks to ban race-based hair discrimination in the workplace, federal programs, and public accommodations. The U.S. Senate has not yet voted on the Act. If enacted into law, the federal law would be treated as incorporated into Title VII of the Civil Rights Act of 1964 which, among other things, already bans discrimination on the basis of race and national origin. While the fate of the bill at the Senate is unknown, several states have already passed similar CROWN Acts and several others have introduced CROWN Acts in the hopes of making it law. **Given the national attention the CROWN Act has received, employers are smart to ask which states already have these laws in effect and what they need to know about these laws so they can prepare.**

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Do any states have their own CROWN Acts?

Yes. California was the first state to pass a CROWN Act in 2019 and, as of the date of this post, 16 states have passed similar legislation. To date, the following states have passed similar state or territory-level hair discrimination laws: California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Tennessee, Virginia, Washington, and the U.S. Virgin Islands. Localities in various states including Arizona, Colorado, Florida, Georgia, Kentucky, Louisiana, Maryland, Michigan, Missouri, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Texas, Washington, West Virginia, and Wisconsin have also instituted ordinances or other directives prohibiting hairstyle and texture-based discrimination.

State hair discrimination laws are similar to the federal law, but consulting an

experienced labor and employment attorney as to your state's CROWN Act is recommended.

Why are CROWN Acts passed?

Proponents of these laws view the legislation as way to address systemic racism and to prohibit the removal from—or denial of—employment due to an individual's natural hairstyle. For a long time, courts declined to recognize that discrimination on the basis of someone's appearance could be discrimination on the basis of that person's race or national origin. Advocates of CROWN Acts say this historical lack of protection from hair discrimination is largely due to a lack of understanding about how a person's hair choices are connected to their race or national origin. The hair discrimination laws being introduced and passed are an attempt to address this issue.

What do courts have to say about the issue?

This issue played out between disagreeing appellate judges in *EEOC v. Catastrophe Mgmt. Sols.*, 876 F.3d 1273, 1274 (11th Cir. 2017). In that case, an employer refused to hire any applicant who had an "excessive hairstyle" and ultimately relied upon that policy in declining to hire a Black woman who wore her hair in dreadlocks. The Eleventh Circuit held that "dreadlocks are not, according to the EEOC's proposed amended complaint, an immutable characteristic of black individuals." The majority's rationale was that a person does not have to wear their hair in dreadlocks, therefore dreadlocks are not immutable and not protected under Title VII. The EEOC argued that "dreadlocks are protected under Title VII because they are culturally and physiologically associated with individuals of African descent," the exact sentiment underlying CROWN Acts.

One judge wrote a scathing dissent, stating:

The discriminatory animus that motivates an employer to ban dreadlocks offends the antidiscrimination principle embodied in Title VII just as much as the discriminatory animus motivating a ban on Afros. Both are distinctly African-American racial traits.

...

In other words, when an aspect of a person's appearance marks her as a member of a protected class and her employer then cites that racial marker as the reason for taking action against her, the employee's race probably had something to do with it. Whether that racialized aspect of her appearance is 'immutable' such as skin color or 'mutable' such as hair is beside the point. Either way, the employer's action based on a racial identifier is an action based on the employee's race.

Legal disputes asserting claims of hair-based discrimination continue to be filed, including a lawsuit filed by a Black man who applied for re-employment following furlough. The plaintiff's lawsuit asserts that he was told by the hiring manager that he

would have to conform his appearance to company policy, which meant that he would need to cut his locs. See *Thornton v. Encore Group USA LLC*, No. 37-2021-00049996 (Cal. Super. Nov. 29, 2021) This and other disputes centering around alleged hairstyle or texture discrimination appear to be here to stay, particularly with the increasing number of state laws providing an avenue for workers to seek redress.

What does the CROWN Act momentum mean for employers?

Hair discrimination laws seek to expand the scope of characteristics that may give rise to actionable claims of discrimination, including in the workplace. Given the current momentum behind this movement and legislative trends, employers operating in states or localities with hair discrimination laws should be mindful of these new protections for workers. Employers should also consider revisiting dress and/or grooming policies to ensure that they do not prohibit employees from wearing particular hairstyles commonly connected to racial, ethnic, and religious identity. Additional training for management personnel and those with interviewing or hiring responsibilities—including implicit bias training—may also be beneficial to ensure that hiring decisions are based upon proper grounds, and do not implicate potential hair-based discrimination.

If you are an employer in one of these states seeking guidance on your state's new CROWN Act, or if you are an employer seeking guidance on how you can guard against hair discrimination in the workplace regardless of your state's laws, you should contact an experienced labor and employment attorney.