

## LAW &amp; POLICY GROUP

**GRIST**

## US: CALIFORNIA EMPLOYERS CAN'T DISCRIMINATE BASED ON HAIR

*By Mercer's Stephanie Rosseau and Fiona Webster  
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California is the first US state to ban employers from discriminating against employees or applicants because of their hair texture and "protective" hairstyles like braids, locks, twists, cornrows and Afros. [Senate Bill 188](#) (Ch. 58), [signed](#) into law July 3, protects "the right of Black Californians to choose to wear their hair in its natural form, without pressure to conform to Eurocentric norms," according to the bill's author, state Sen. Holly Mitchell, D-Los Angeles.

### CALIFORNIA LAW

Effective Jan. 1, 2020, the new law amends existing anti-bias provisions of the Fair Employment and Housing Act and the Education Code to prohibit employers and schools from:

- Enforcing purportedly "race neutral" grooming policies that disproportionately impact persons of color
- Discriminating against individuals based on traits associated with race, including hair texture or hairstyle

Employers can still make and enforce neutral and nondiscriminatory policies — such as a policy requiring employees to secure their hair for safety or hygienic reasons — that do not have a disparate impact on employees of a particular race.

### HAIRSTYLE PROTECTIONS ELSEWHERE IN US

New York City recently [banned](#) discrimination based on hair, while [Washington, DC](#), and other cities prohibit discrimination based on personal or physical appearance, including hairstyles and beards. New Jersey and New York are considering similar legislation.

At least one appeals court has rejected the Equal Employment Opportunity Commission (EEOC)'s stance that a workplace policy banning dreadlocks is racial discrimination barred by Title VII of the Civil Rights Act of 1964 ([EEOC v. Catastrophe Mgt. Solutions](#), No. 14-13482 (11th Cir. Sept. 15, 2016)). However, some courts have agreed with EEOC's [position](#) that some workplace grooming policies can have a racially

disparate impact prohibited by Title VII. Workplace policies restricting hairstyles or beards may also run afoul of Title VII's [ban on religious discrimination](#).

## RELATED RESOURCES

- [2019 Chapter 58 \(SB 188\)](#) (CA Legislature, July 4, 2019)
- [Press Release](#) (CA Governor, July 3, 2019)
- [Legal Enforcement Guidance on Race Discrimination on the Basis of Hair](#) (New York City Human Rights Commission, Feb. 26, 2019)
- [Enforcement Guidance 17-03: Unlawful Treatment Based on Personal Appearance, Political Affiliation and Matriculation](#) (Washington, DC, Office of Human Rights, Sept. 18, 2017)
- [EEOC v. Catastrophe Mgt. Solutions](#), No. 14-13482 (11th Cir. Sept. 15, 2016)
- [Religious Garb and Grooming in the Workplace: Rights and Responsibilities](#) (EEOC, March 6, 2014)
- [Section 15. Race and Color Discrimination](#) (EEOC Compliance Manual, April 19, 2006)

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