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New Massachusetts Law Creates Expanded Definition of Racial Discrimination in Employment and Other Areas to Encompass "Natural or Protective Hairstyles"

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On July 26, 2022, Massachusetts Governor Charlie Baker signed the Creating a Respectful and Open World for Natural Hair Act ("CROWN Act") into law, making Massachusetts the 18th state to enact legislation aimed at protecting against discrimination on the basis of hairstyles that are historically associated with race. The CROWN Act will go into effect October 24, 2022, 90 days after Governor Baker signed the bill.

The Massachusetts law amends the definition of "race" across several Massachusetts statutes, including but not limited to the public accommodations law (M.G.L. c. 272), and the Massachusetts Fair Employment Practices Act (M.G.L. c. 151B), to provide that protections against discrimination include "traits historically associated with race, including but not limited to, hair texture, hair type, hair length, and protective hairstyles." See H.B. 4554. These amendments expose Massachusetts employers to potential discrimination claims brought by employees alleging employment discrimination on the basis of their hairstyle. Employers who are found to be in violation of the CROWN Act will be liable for compensatory damages, including for instance lost pay, as well as possible punitive damages and attorneys' fees. The law further defines "protective hairstyles" to include "braids, locks, twists, Bantu knots, hair coverings and other formations." In addition, the law expressly prohibits schools and related organizations from implementing or creating policies or codes relating to student participation in sports or athletic events "that impairs or prohibits a hairstyle that is historically associated with race."

The law also tasks the Massachusetts Commission Against Discrimination ("MCAD") with adopting and promulgating rules, regulations, policies, and recommendations to enforce the law.

The CROWN ACT was inspired by a case involving two teenage girls. In 2017, a Boston suburb charter school disciplined two teenage twin sisters for alleged violation of the school hair and make-up policy, which among things, prohibited extensions. The sisters, Deanna and Mya Cook, joined Governor Baker at the bill's signing.

Conclusions and Recommendations

In light of the law's impact on Massachusetts statutes and discrimination laws, Massachusetts employers should carefully review their employee handbooks, policies, and training materials to ensure they are not violation of the CROWN Act, and promptly remove or amend any problematic policies on the books. Additionally, employers may want to consider using this opportunity to provide managers and supervisory personnel with updated discrimination training highlighting the effect of the new law.

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Related Professionals

- **Mark W. Batten**
  Partner
- **Alexandra (Lexie) Rueckle Reynolds**
  Associate