Workplace Discrimination and Eurocentric Beauty Standards

By Kim Carter

Do not remove the kinks from your hair—remove them from your brain.

—Marcus Garvey

Marcus Garvey was a political activist, publisher, and journalist whose life's work included sparking a Pan-African and Rastafarian movement in America as he sought to enrich the lives of oppressed Blacks. Garvey's ideology—however radical for the 1920s—far predates the U.S. Civil Rights movement of the 1960s and the enactment of the Civil Rights Act of 1964. Yet, the quote above speaks to the heart of an ongoing social construct of injustice around Black identity and inferior biases toward African features, which resulted in Blacks conforming to European beauty standards by straitening—or removing the kink from—Black hair. Today, these biases remain relevant in American society and our legal system, nearly 100 years later.

Now, in the midst of a renewed wave of social outcries to right historical injustices against Black people across the nation, California has passed SB-188, known as the "CROWN Act" (which stands for Creating a Respectful and Open Workplace for Natural Hair; kpcne.ws/33FsKEu), making California the first state to ban employment discrimination against employees who choose to wear natural hairstyles.

Besides skin tone, hair texture is historically a physical trait and ethnic indicator of African descent. However, in the United States, Black hair textures and natural styles carry negative connotations of being "unprofessional," "unkept," and "messy" (for more, see "The 'Good Hair' Study: Explicit and Implicit Attitudes Toward Black Women's Hair," the Perception Institute, February 2017, kpcne.ws/2OXrkBC). Thus, African, Pan-African, and Black people are pressured to conform to unrealistic European standards of beauty in their pursuit of employment or education.

The bias concerning Black hair has created a cultural phenomenon where Black people—attempting to avail themselves of their constitutional right to "life, liberty, and the pursuit of happiness" by participating in employment and education practices—are often subjected to grooming policies that are rooted in Eurocentric standards. These standards require Blacks to shun their natural tresses and take extreme—and at times

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harmful—measures to change their hair textures or remove their hair all together, to conform to social norms.

In the alternative, Blacks who don their natural hair texture and wear natural hairstyles—and thereby essentially refuse to conform to employers' subjective grooming standards—have endured explicit and implicit discrimination, including, but not limited to, being demoted, passed over for employment or promotion opportunities, or terminated.

This article will examine the legal and social landscape surrounding Black hair bias and discuss: why legislation is necessary to overcome a judicial precedent that denies Black people protection from employment discrimination against their natural hair textures and styles; the socioeconomic harms and harmful health conditions that Black people incur as a result of hair discrimination; and the trend of employment laws that are seeking to rectify the disparate impact hair discrimination has had on Blacks to ultimately protect individuals' civil rights.

BLACK HAIRSTYLES AND TITLE VII

To understand why legislation is necessary to protect Black people from subjective and unfair discrimination based on their natural hair texture and hairstyles, one must examine the courts' findings and reasoning in hair discrimination cases.

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. The courts have interpreted race as an immutable characteristic.

In the case *EEOC v. Catastrophe Management Solutions,* an "immutable characteristic" was defined as one that is beyond a person's power to alter (*EEOC v. Catastrophe Mgmt. Sols.* (2017) 876 F.3d 1273, 1276). The court held, "banning dreadlocks in the workplace under a race-neutral grooming policy—without more—does not constitute intentional race-based discrimination." The court has considered evidence in other cases of a person's natural hair to be the state the hair reverts to without any manipulation; for some Black people, that natural hair state may be an afro (*Id.* at 1274).

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The court in *Catastrophe Management Solutions* held the Equal Employment Opportunity Commission (EEOC) failed to plead disparate treatment in failing to assert dreadlocks are an immutable characteristic of black individuals. Indeed, the court reasoned that natural hair *styles* such as locks, twists, and braids are mutable characteristics that may be associated with the race, but are not—in and of themselves—protected under Title VII. As a result, employers are legally permitted to enforce grooming policies—even if the practice unfairly applies European beauty standards to Black people—absent any other evidence of race discrimination. The EEOC did not allege disparate impact. Courts will likely find that Title VII has not been violated if the grooming policy appears to be neutral on its face (*Id.*).

The 11th Circuit's decision in *Catastrophe Management Solutions* underscores this rationale further by acknowledging that neither it, nor any other court, can broaden the definition of race under Title VII as the EEOC sought, "to include anything purportedly associated with the culture of a protected group" (*Id.* at 1278). The court further notes that if mutable characteristics should be considered in Title VII analysis, it was up to Congress to revise the Act to include mutable characteristics in race discrimination analyses (*Id.* at 1277).

Indeed, the judiciary's analysis of how Title VII applies in race discrimination cases exposes the statute's limitations and demonstrates how, over the years, Title VII has failed to protect Black people from disparate treatment when wearing natural hair or natural hairstyles in workplaces.

CORRECTIVE ACTION AT THE STATE AND MUNICIPAL LEVELS

As discussed above, the courts have concluded that Black people donning their natural hairstyles are not afforded federal protection under Title VII. In response,

states and municipalities are now stepping up to address the issue.

On the state level, the California legislature passed the CROWN Act, which Governor Gavin Newsome signed into law on July 3, 2019. The Act officially goes into effect January 1, 2020.

California State Senator Holly J. Mitchell introduced the CROWN Act because it acknowledges that our nation's history is "riddled with laws and societal norms that equated 'blackness,' and . . . physical traits," such as "dark skin, kinky and curly hair to a badge of inferiority, sometimes subject to separate and unequal treatment" (The CROWN Act, Preamble). As such, the Act expands the definition of race, as identified in the California Fair Employment and Housing Act and state laws governing persons in public schools, to "include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles" (The CROWN Act, Section 2(b)). According to the text of the Act, "'Protective hairstyles' includes, but is not limited to, such hairstyles as braids, locks, and twists" (The CROWN Act, Section 2(c)).

The Act further seeks to explain and address a fallacy applied by the federal courts in hair discrimination cases: "Federal courts accept that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, and therefore protects against discrimination against afros. However, the courts do not understand that afros are not the only natural presentation of Black hair. Black hair can also be naturally presented in braids, twists, and locks" (The CROWN Act, Section 1(e)).

On the municipal level, in February 2019 New York City's Commission on Human Rights (NYCCHR) released new guidelines to protect "New Yorker's rights to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities. For Black people, this includes the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state" (NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair; kpcne.ws/2OYjgko). Similar to the CROWN Act, these regulations were promulgated to address the disparate impact Black people have endured by seemingly race-neutral grooming policies that nonetheless have historically applied unrealistic European beauty standards to Blacks.

While NYCCHR addresses the disparate impact of Black hair discrimination in employment, the agency only has jurisdiction within New York City. On July 12, 2019, New York state lawmakers expanded the New York Human Rights and Dignity for All Students Act to include protections for Black students who choose to wear their natural hair, making New York the second state to codify protections for Blacks similar to California's CROWN Act—which expands the definition of race and cinches the gap exposed by the federal courts' interpretation of mutable versus immutable race characteristics in Title VII cases (kpcne.ws/2TzGGuV; kpcne.ws/2HaLjGL). Similar legislation has also been introduced by state lawmakers in New Jersey.

The CROWN Act's definition of race includes "hair texture and protective hairstyles."

DISPARATE IMPACT

While the EEOC promulgated regulations that allow employers the freedom to enforce neutral grooming policies, the definition of "neutral" is not clear (EEOC Compliance Manual, 915.003, Section VII; kpcne.ws/2Mk5Mx0), and the practice of enforcement has left Black people exposed to adverse employment actions for wearing their natural hair—whether the ramifications are intended or not.

Numerous media reports are replete with examples of individuals having been denied employment, terminated from employment, or subjected to other adverse actions because of their hairstyles, due to employers' or schools' "neutral" grooming policies.

For example, in July 2019 Kerion Washington, a 17-year-old Black male, claims he was denied employment at Six Flags Over Texas after he refused to cut off his locks as a condition of employment. The management purportedly made light of

the request, stating, "it's just hair and it would grow back" (Sarah Sarder, "Teen Whose Hair Cost Him Job at Six Flags Over Texas Turns Heads at Modeling Agency," *Dallas Morning News,* July 6, 2019; kpcne.ws/2TxMc0Y).

Similarly, in May 2018 Brittany Noble's employment as a news anchor was terminated after she allegedly endured a series of race-related incidents, including criticisms for wearing her natural hair, in natural Black hairstyles, while on the air. Noble claims to have filed a discrimination complaint with her former employer in 2017, after being told by her manager that "natural hair was unprofessional, the equivalent to him throwing on a baseball cap to go to the grocery store. . . ." (Christina Santi, "Black News Anchor Fired After Wearing 'Unprofessional' Natural Hair," *Ebony,* January 16, 2019; kpcne.ws/31F9Vzd).

Hair discrimination is not solely relegated to employment spheres—Black students also experience discrimination and are denied access to education and participation in athletic programs because of their natural hairstyles.

For instance, in December 2018 Andrew Johnson, a high school student, endured great embarrassment and public humiliation when a referee forced him to cut off his locks or forfeit a high-stakes wrestling match. Johnson was denied a less extreme alternative—to wrestle with a cap over his hair. Media reports claim that the referee in question had a history of engaging in racist conduct toward other Black students, prior to this incident (kpcne.ws/2ZbGTWw).

Also in 2018, a 14-year-old Black student was suspended from middle school in Fresno, California, because of his "distracting" haircut—which included lines on the side of his head. After his mother wrote an open letter to the school and took to social media, calling for a discussion on diversity and inclusion regarding the middle school's grooming policy, the American Civil Liberties Union of Northern California took notice and surmised that the school's conduct invaded the student's right to "expressive conduct" that reflects his culture (Avery Matera, "A Black Student Was Suspended Because of Shaved Head," *Teen Vogue,* March 21, 2018; kpcne.ws/306Af4P).

These accounts demonstrate how hair discrimination affects Black citizens' everyday access to employment and education, solely on subjective grounds, without any other legitimate purpose.

IMPLICATIONS FOR BLACK WOMEN'S HEALTH

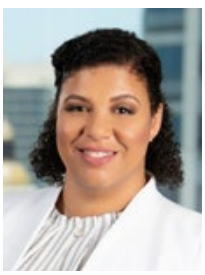
Moreover, the effects of these "neutral" grooming policies have been disastrous for Black women's health. In recent years, science has confirmed that Black women who have resorted to chemical treatments to assimilate to European beauty standards often do so at great risk to their health.

A study conducted from 1997 to 2009 surveying more than 23,000 women concluded that Black women developed uterine leiomyomata tumors (also known as uterine fibroids) two to three times more frequently than White women (Lauren A. Wise et al., "Hair Relaxer Use and Risk of Uterine Leiomyomata in African-American Women," *American Journal of Epidemiology,* March 2012 (175:5) at 432–440; kpcne.ws/2OXZW6z). Scientists ruled out inherent risk factors as the reason for this disparity. Instead, the study determined that the use of hair relaxers or chemical hair straighteners actually increased Black women's exposure to harmful tumor-causing hormones. While uterine fibroids are benign, they can result in gynecologic morbidity and are the leading indication for hysterectomy in the United States.

Historically requiring Black people to conform to Eurocentric standards of beauty has resulted in many people undergoing harmful chemical treatments to alter the texture of their hair. It is estimated that nearly 80 percent of Black women exposed to these chemicals will develop uterine fibroids over the course of their life.

CONCLUSION

It has been nearly 100 years since Marcus Garvey called out the assimilation tactics rooted in hair straightening; now is the time to "remove the kink" from America's social fabric and liberate Black people with the freedom to express their uniqueness without fear of reprisal, or being stripped of their livelihoods and education. ■



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