



Guidance on Race Discrimination Based on Hairstyle September 2019

This enforcement guidance clarifies and explains how the New Jersey Division on Civil Rights (DCR) applies the New Jersey Law Against Discrimination (LAD) to discrimination based on hairstyles,¹ with a particular focus on hairstyles closely associated with Black people.²

As we explain below, the LAD's prohibition on discrimination based on race encompasses discrimination that is ostensibly based on hairstyles that are inextricably intertwined with or closely associated with race. That means, for example, that the LAD generally prohibits employers, housing providers and places of public accommodation (including schools) in New Jersey from enforcing grooming or appearance policies that ban, limit, or restrict hairstyles closely associated with Black people, including, but not limited to, twists, braids, cornrows, Afros, locs, Bantu knots, and fades.³ A similar analysis applies to discrimination based on hairstyles that are inextricably intertwined with or closely associated with other protected characteristics, such as hairstyles associated with a particular religion.

Background on Anti-Black Racism and Discrimination Based on Hairstyles That Are Inextricably Intertwined with or Closely Associated with Being Black

Anti-Black racism, along with implicit and explicit bias against Black people, is an entrenched and pervasive problem both in New Jersey and across the country. In 2017 and 2018, respectively, 52 and 54 percent of reported bias incidents in New Jersey were motivated by the victim's race, ethnicity, or national origin. Of those, approximately 72 percent were anti-Black.⁴

¹ The purpose of this enforcement guidance is to clarify and explain DCR's understanding of existing legal requirements in order to facilitate compliance with the LAD. This guidance does not impose any new or additional requirements that are not included in the LAD, does not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the LAD.

² The phrase "Black people" is used here to include all people who identify as African, African-American, Afro-Caribbean, Afro-Latin-x/a/o, or otherwise have African or Black ancestry.

³ The New York City Commission on Human Rights (NYCCHR) set forth similar guidance interpreting the New York City Human Rights Law (NYCHRL) in February of this year. N.Y.C. Comm'n on Human Rights, Legal Enforcement Guidance on Race Discrimination on the Basis of Hair (Feb. 2019), *available at* <https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf> [hereinafter N.Y.C. Hair Guidance]. While DCR's guidance differs in certain respects, portions of the background section explaining the history of discrimination against Black people based on hair and many of the examples closely follow NYCCHR's analysis.

⁴ See Office of the Attorney General, New Jersey State Police, and New Jersey Division on Civil Rights, *Bias Incident Report 2017-2018* at 6-8 (2019), *available at* https://www.nj.gov/oag/newsreleases19/2017-2018_Bias-Incident_Report_080719a.pdf.

While anti-Black racism can take many forms, one form of persistent anti-Black racism is discrimination against Black people based on hairstyles that are inextricably intertwined or closely associated with being Black. Historically, that discrimination has been rooted in white, European standards of beauty, and the accompanying stereotypical view that traditionally Black hairstyles are “unprofessional” or “unkempt.”⁵

While Black people can have a wide range of hair textures, hair that naturally grows outward in thick, tight coils is most closely associated with being Black.⁶ Such hair texture naturally forms or can be formed into a variety of hairstyles, including, but not limited to, locs,⁷ cornrows, twists, braids, Afros, fades, and Bantu knots, all of which are closely associated with Black people.⁸

Discrimination based on hairstyles closely associated with Black people has been all too common in our history. Many employers, schools, and other places of public accommodation have allowed traditionally white or European hairstyles, while banning, restricting, or limiting hairstyles that are closely associated with Black people.⁹ Black people around the country have

⁵ See, e.g., First Am. Compl. ¶¶ 27, 30, *EEOC v. Catastrophe Mgmt. Solutions*, No. 1:13-cv-00476, ECF No. 21-1 (S.D. Ala. Apr. 17, 2014) [hereinafter *EEOC Compl.*]; Alexis M. Johnson, et al., *The “Good Hair” Study: Explicit And Implicit Attitudes Toward Black Women’s Hair* 6, 9-10, 12-14, Perception Institute (Feb. 2017), available at <https://perception.org/wp-content/uploads/2020/06/Good-Hair-Study-Appendix.pdf> (discussing implicit bias against natural Black hairstyles); N.Y.C. Hair Guidance, *supra* note 3, at 1, 4, 10.

⁶ See, e.g., Johnson, *supra* note 5, at 2 (“Tightly coiled hair texture is distinctly tied to blackness and has been a marker of black racial identity for centuries.”); Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 *Geo. L.J.* 1079, 1094 (2010) (“[T]he hair of black women is not naturally straight. It is tightly coiled into tiny curls.”); NAACP Legal Defense and Educational Fund, Inc. & American Civil Liberties Union, Letter to Florida Department of Education 5 (Nov. 29, 2018), available at <https://www.aclu.org/press-releases/aclu-aclu-florida-naacp-ldf-file-complaint-against-discriminatory-hair-policies> [hereinafter *NAACP-ACLU Compl.*].

⁷ This document uses the term “locs” rather than “dreadlocks” because the term “dreadlocks” comes from the word “dreadful,” which is how slave traders described the hair of African slaves, which had likely naturally formed into locs during the Middle Passage. See Shauntae Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 *Int’l J. Media & Cultural Pol.* 295, 296 n.3 (2005); *EEOC Compl.*, *supra* note 5, ¶ 20.

⁸ The natural texture of Black hair is often conducive to locs, “which can be formed with manipulation (cultivated locs) or without (freeform locs).” Petition for Writ of Certiorari, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482, at 5-6 (U.S. Apr. 4, 2018), available at <https://www.naacpldf.org/files/about-us/CMS%20-%20Cert%20Petition%20FINAL.PDF>; see *NAACP-ACLU Compl.*, *supra* note 6, at 5. For more on traditionally Black hairstyles, see N.Y.C. Hair Guidance, *supra* note 3, at 3-4; D. Wendy Greene, *A Multidimensional Analysis of What Not To Wear in the Workplace: Hijabs and Natural Hair*, 8 *F.I.U. L. Rev.* 333, 347, 349, 355-56, (2013); *EEOC Compl.*, *supra* note 5, ¶¶ 8, 19; see also Audrey Davis-Sivasothy, *The Science of Black Hair: A Comprehensive Guide to Textured Hair* 23, 144-52 (2011); Venessa Simpson, Note, *What’s Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 *Sw. L. Rev.* 265, 265-66 (2017).

⁹ N.Y.C. Hair Guidance, *supra* note 3, at 1, 4-6 & n.23; see D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 *U. Miami L. Rev.* 987, 991, 1005 (2017) [hereinafter *Greene, Splitting Hairs*]; D. Wendy Greene, *Black Women Can’t Have Blonde Hair ... in the Workplace*, 14 *J. Gender, Race & Justice*, 405, 421-28 (2011).

thus been subjected to dignitary, psychological, physiological, and financial harm because of discrimination based on their hair.¹⁰

For example, for years, the United States Army explicitly banned locs, referring to them as “matted” and “unkempt.”¹¹ In 2014, it added for female soldiers an “outright ban”¹² on twists, as well as more specific prohibitions on those “[b]raids or cornrows” that were considered to be “unkempt or matted.”¹³ Shortly after issuing the 2014 updates, the Army reversed some portions of the policy after complaints that it was “racially biased against black women who choose to wear their hair naturally curly rather than use heat or chemicals to straighten it.”¹⁴ And it was not until 2017 that the Army retracted its prohibition on female soldiers wearing locs altogether.¹⁵

In 2017, a Black woman who worked at Banana Republic reportedly was told by her store manager that her braids were inappropriate and “too ‘urban’ and ‘unkempt’ for [the store’s] image.”¹⁶

In 2018, a six-year-old child allegedly was forced to forgo a scholarship at a private school because the school would not permit him to wear locs. Locs were explicitly prohibited in the student handbook along with “Mohawks, designs, unnatural color, or unnatural designs.”¹⁷

Many policies that ban traditionally Black hairstyles while leaving traditionally white hairstyles untouched are rooted in the pervasive stereotype that Black hairstyles are somehow

¹⁰ Greene, *Splitting Hairs*, *supra* note 9, at 1011-13 13 (citing Onwuachi-Willig, *supra* note 6, at 1112-20); *see also* EEOC Compl., *supra* note 5, ¶ 27.

¹¹ Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia 3-4 (Feb. 3, 2005), *available at* <https://fas.org/irp/doddir/army/ar670-1.pdf>.

¹² NPR, *Army’s Updated Rules on Hair Styles Tangle with Race* (Apr. 21, 2014), <https://www.npr.org/2014/04/21/305477539/armys-new-rules-on-hair-styles-tangles-with-race>.

¹³ Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia 5-6 (Mar. 31, 2014), *available at* <https://www.army.mil/e2/c/downloads/337951.pdf>; Helen Cooper, *Army’s Ban on Some Popular Hairstyles Raises Ire of Black Female Soldiers*, N.Y. Times (Apr. 20, 2014), <https://www.nytimes.com/2014/04/21/us/politics/armys-ban-on-some-popular-hairstyles-raises-ire-of-black-female-soldiers.html>.

¹⁴ Andrew Tilghman, *Hagel Changes Hair Policy After Controversy*, Army Times (Aug. 12, 2014), <https://www.militarytimes.com/2014/08/12/hagel-changes-hair-policy-after-controversy/>.

¹⁵ Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Servicewomen Rejoice*, N.Y. Times (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicewomen.html>; *see* Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia (May 25, 2017), *available at* <https://history.army.mil/html/forestruc/docs/AR670-1.pdf>.

¹⁶ Perrie Samotin, *A Banana Republic Employee Says She Was Told Her Box Braids Looked Too ‘Urban’*, Glamour (Oct. 7, 2017), <https://www.glamour.com/story/banana-republic-employee-destiny-tompkins-says-she-was-told-box-braids-looked-too-urban>.

¹⁷ NAACP-ACLU Compl., *supra* note 6, at 1-4; Mandy Velez, *‘Discriminatory’: ACLU, NAACP Go After Florida School That Banned Child for Dreadlocks*, Daily Beast Nov. 30, 2018, <https://www.thedailybeast.com/aclu-naacp-take-on-florida-schools-discriminatory-hair-policy-after-boy-banned-for-having-locs>. For other similar incidents in schools, *see* NAACP-ACLU Compl., *supra* note 6, at 6 n.22 (collecting and describing list of incidents).

“unprofessional” or “unkempt.”¹⁸ And attempting to conform to racial stereotypes about what constitutes “professional” or “neat” hair can be expensive, time-consuming, dangerous, and psychologically harmful to Black people.¹⁹ Indeed, certain hair products and professional treatments that are intended to help Black people “conform” to these stereotypes can be damaging to the hair and scalp and can be acutely painful.²⁰

In recent years, federal, state, and local government entities have increasingly recognized that policies that discriminate against traditionally Black hairstyles, including, but not limited to, locs, cornrows, twists, braids, Afros, fades, and Bantu knots, qualify as discrimination on the basis of race.

The Equal Employment Opportunity Commission (EEOC) recognized as much nearly fifty years ago. Indeed, “one of the earliest formal Commission decisions”—from 1971—“concluded that race discrimination encompassed an employer’s prohibition of Afro hairstyles.”²¹ In that 1971 decision, the EEOC explained that “the wearing of an Afro-American hair style by a Negro has been so appropriated as a cultural symbol by members of the Negro race as to make its suppression either an automatic badge of racial prejudice or a necessary abridgement of first amendment rights.”²² The EEOC reaffirmed that position a year later.²³ The Commission thus “has long recognized” that Title VII’s definition of race “includes not only hair texture, but also a hairstyle that is physically or culturally linked to Black hair texture.”²⁴ That remains the EEOC’s conclusion to this day; the EEOC explains on its website that “[r]ace discrimination involves treating someone ... unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture ...).”²⁵

Some federal courts have reached similar conclusions. In 1976, the U.S. Court of Appeals for the Seventh Circuit, sitting en banc, concluded that a plaintiff successfully alleged race discrimination in an EEOC charge by explaining that her employer stated she “could never represent Blue Cross with [an] Afro.”²⁶ As the court explained, “A lay person’s description of

¹⁸ See, e.g., N.Y.C. Hair Guidance, *supra* note 3, at 4; Onwuachi-Willig, *supra* note 6, at 1107; Greene, *Splitting Hairs*, *supra* note 9, at 990.

¹⁹ N.Y.C. Hair Guidance, *supra* note 3, at 5; Onwuachi-Willig, *supra* note 6, at 1120.

²⁰ See Onwuachi-Willig, *supra* note 6, at 1114-20.

²¹ Br. of the Equal Employment Opportunity Commission, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482 at *26 (11th Cir. Sept. 22, 2014), available at 2014 WL 4795874 [hereinafter EEOC Br.].

²² EEOC Dec. No. 71-2444, 1971 WL 3898, 4 Fair Empl. Prac. Cas. (BNA) 18 (1971).

²³ EEOC Dec. No. 72-979, 1972 WL 3999, 4 Fair Empl. Prac. Cas. (BNA) 840 (1972).

²⁴ EEOC Br., *supra* note 21, at *26.

²⁵ U.S. Equal Employment Opportunity Commission, *Race/Color Discrimination*, https://www.eeoc.gov/laws/types/race_color.cfm (last visited Sept. 10, 2019); see also EEOC Compliance Manual, § 15.VII.B.5 (2006), available at <https://www.eeoc.gov/policy/docs/race-color.html#VIIB5> (“Employers can impose neutral hairstyle rules – e.g., that hair be neat, clean, and well-groomed – as long as the rules respect racial differences in hair textures and are applied evenhandedly.”).

²⁶ *Jenkins v. Blue Cross Mut. Hosp. Ins., Inc.*, 538 F.2d 164, 168 (1976); see Onwuachi-Willig, *supra* note 6, at 1097 (discussing *Jenkins*). Although *EEOC v. Catastrophe Management Solutions*, 852 F.3d 1018, 1021 (11th Cir. 2016),

racial discrimination could hardly be more explicit. The reference to the Afro hairstyle was merely the method by which the plaintiff’s supervisor allegedly expressed the employer’s racial discrimination.”²⁷

More recently, the New York City Commission on Human Rights (NYCCHR) released a guidance document clarifying that, “with very few exceptions,” hair policies that restrict natural hair or hairstyles associated with Black people discriminate on the basis of race and therefore are prohibited under the New York City Human Rights Law (NYCHRL).²⁸ The guidance explained that “Black hairstyles are protected racial characteristics under the NYCHRL because they are an inherent part of Black identity.”²⁹

Two state legislatures followed suit. In July 2019, California amended its Fair Employment and Housing Act and its Education Code to clarify that race includes “hair texture and protective hairstyles,” including “braids, locks, and twists.”³⁰ The purpose of the legislation was to clarify that existing prohibitions on racial discrimination also prohibit discrimination against Black people because of hairstyles closely associated with being Black.³¹ New York State followed California’s lead later in the same month, amending its civil rights and education laws to clarify that the existing definition of race includes “traits historically associated with race,” including “hair texture and protective hairstyles” such as “braids, locks, and twists.”³² And there is a similar bill currently pending before the New Jersey Legislature.³³

found that Title VII was not violated when a job applicant was asked to cut off her locs because locs were not an “immutable characteristic” of all black persons, the New Jersey Supreme Court has never held that only “immutable characteristics” of race are protected by the LAD and has repeatedly emphasized that in interpreting the LAD, it will not hesitate to depart “from federal precedent if a rigid application of its standards is inappropriate under the circumstances.” *L.W. v. Toms River Regional Schools Bd. of Educ.*, 189 N.J. 381, 405 (2007) (quoting *Lehmann v. Toys R Us, Inc.*, 132 N.J. 587, 600 (1993), and citing *Grigoletti v. Ortho Pharm. Corp.*, 118 N.J. 89, 107 (1990)).

²⁷ *Jenkins*, 538 F.2d at 168.

²⁸ N.Y.C. Hair Guidance, *supra* note 3, at 1 & n.2, 6-10.

²⁹ *Id.* at 6.

³⁰ Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act, 2019 Cal. Stat. ch. 58, *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB18.

³¹ California Senate Judiciary Committee, Analysis of SB 188 (2019-2020 Reg. Sess.), as amended March 13, 2019, at 1 (Mar. 25, 2019), *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB188 (“This bill would clarify that, for the purposes of FEHA’s workplace protections against discrimination, the term “race” includes traits historically associated with race, including hair texture and protective hairstyles.”); California Assembly, Floor Analysis (Senate Third Reading) of SB 188 (2019-2020 Reg. Sess.), as amended April 2, 2019, at 2 (June 21, 2019), *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB188 (“This bill will usefully clarify that an employment practice that discriminates against persons based on traits historically associated with race is a form of racial discrimination.”).

³² 2019 Laws of New York ch. 95 (passed July 12, 2019), codified at N.Y. Exec. Law § 292(37)-(38) and N.Y. Educ. L. § 11(9)-(10).

³³ *S. 3945/A. 5564* (2019).

The LAD’s Prohibition on Race Discrimination Includes Discrimination Based on Hairstyles Closely Associated with Race

The New Jersey Legislature created the New Jersey Division on Civil Rights (DCR) nearly seventy-five years ago to enforce the New Jersey Law Against Discrimination (LAD) and to “prevent and eliminate discrimination” in the State of New Jersey.³⁴ The LAD prohibits discrimination and harassment in housing, employment, and places of public accommodations on the basis of race, religion, gender, sexual orientation, gender identity or expression, national origin, disability, and other protected characteristics.³⁵

The LAD prohibits discrimination in employment, housing, and places of public accommodation either as a result of disparate treatment or disparate impact. Disparate treatment occurs when a covered entity (i.e., an employer, place of public accommodation, or housing provider) takes an adverse action against a person at least in part because of their actual or perceived membership in an LAD-protected class.

Bias on the basis of race, religion, or other protected characteristics can take many forms. It can be both explicit or implicit, conscious or unconscious. The LAD not only prohibits discrimination that is explicitly based on a protected characteristic, but also discrimination that is ostensibly based on something that is inextricably intertwined or closely associated with a protected characteristic. So, for example, discrimination based on gender includes not only explicit discrimination because a person is a man or woman, but also discrimination that is based on gender stereotypes regarding how men and women should behave.³⁶ And discrimination based on religion includes not only explicit discrimination because a person is Jewish or Muslim or Sikh, but also discrimination because of a person’s religious hairstyle or religious garb.³⁷

Discrimination that is ostensibly based on hair can inflict the very kinds of harms and “personal hardships” that the LAD highlights as consequences of discrimination, including “economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma ... or other irreparable harm resulting from the strain of employment controversies.”³⁸

Therefore, just as it would likely violate the LAD to refuse to hire an Orthodox Jewish man because he wears payot, or to refuse to hire a Muslim woman because she wears a hijab, or to refuse to hire a Sikh person because they wear uncut hair, it is unlawful to refuse to hire or to

³⁴ N.J.S.A. 10:5-6.

³⁵ N.J.S.A. 10:5-12.

³⁶ See, e.g., *Zalewski v. Overlook Hospital*, 300 N.J. Super, 202, 210-212 (discrimination against a man who others believed “did not behave as they perceived a male should behave” was actionable under the LAD).

³⁷ See, e.g., *Tisby v. Camden Cty. Correctional Facility*, 448 N.J. Super. 241, 245-46, 249 (N.J. App. Div. 2017) (Muslim woman stated a prima facie claim under the LAD for discrimination based on religion where she alleged that she was terminated because she wore a hijab); *E.E.O.C. v. United Galaxy, Inc.*, Civ. No. 10-4987 (ES), 2013 WL 3223626, at *6-*7 (D.N.J. June 25, 2013) (Sikh man stated a claim under the LAD for failure to hire based on religion where he alleged that he was not hired as a sales associate because he wore a turban and maintained an unshaven beard).

³⁸ N.J.S.A. 10:5-3; see N.Y.C. Hair Guidance, *supra* note 3, at 5-6; Onwuachi-Willig, *supra* note 6, at 1114-20.

otherwise treat a Black person differently because they wear their hair in a style that is closely associated with being Black.

That means that as a general matter, employers, housing providers, and places of public accommodation covered by the LAD—including schools—may not enforce grooming or appearance policies that ban, limit, or restrict hair styled into twists, braids, cornrows, Afros, locs, Bantu knots, fades, or other hairstyles closely associated with Black racial, cultural, and ethnic identity. Any policy specifically singling out such a hairstyle will generally constitute direct evidence of disparate treatment under the LAD and unlawful discrimination on the basis of race.

In addition, hair-related policies that are facially neutral—such as requirements to maintain a “professional” or “tidy” appearance—will likely violate the LAD if they are discriminatorily applied or selectively enforced against Black people, such as if Black people with shoulder-length locs or braids are told that they cannot maintain their hairstyle because it is not “tidy,” whereas white people with shoulder-length hair are not told to change their hair.³⁹ Similarly, if a retail store has a policy that only employees with a “neat and tidy appearance” may work on the sales floor, but the store uses that policy to station all employees with locs or Afros in the stockroom rather than the sales floor, the store will likely be liable for race-based discrimination under the LAD. And if a school handbook requires students to maintain “appropriate” hair and lists Black hairstyles as examples of “inappropriate” hairstyles, the school has likely violated the LAD. Such policies either explicitly or in application rest on invidious racial stereotypes that hairstyles closely associated with Black people are inherently messy, unkempt, or disorderly.

Covered entities also may not justify policies that, explicitly or in practice, ban, limit, or restrict natural hair or hairstyles associated with Black people based on a desire to project a certain “corporate image,” because of concerns about “customer preference” or customer complaints, or because of speculative health or safety concerns. And any legitimate health and safety justification would need to be rooted in objective, factual evidence—not generalized assumptions—that the hairstyle in question would actually present a materially enhanced risk of harm to the wearer or to others.⁴⁰ Even then, there would generally be no health and safety concerns that would justify a policy that exclusively banned, limited, or restricted natural hair or hairstyles associated with Black people. And covered entities must consider whether the legitimate health or safety risk can be eliminated or reduced by reasonable alternatives other than banning or restricting a hairstyle. In addition, less restrictive alternatives like hair ties, hairnets, and head coverings must be required without regard to race or religion. For example, if a fast-food restaurant requires cooks with hair longer than shoulder-length to wear hairnets, it cannot require only employees with long locs to wear hairnets, while allowing employees with long straight hair to wear it loose.

³⁹ The Appellate Division recently applied analogous reasoning in a gender-discrimination case, explaining that “[g]rooming policies applicable to all, but not evenhandedly enforced between men and women, may disadvantage one gender over the other and violate the LAD.” *Schiavo v. Marina Dist. Dev’t Co.*, 442 N.J. Super. 346, 384 (2015).

⁴⁰ *Cf. Grande v. St. Clare’s Health System*, 230 N.J. 1, 29 (2017); N.J.S.A. 10:5-12(q)(3)(a); N.J.A.C. 13:13-2.8(a).

Additionally, covered entities may not retaliate against employees, tenants, customers, patrons, or students for objecting to discrimination under the LAD, including objecting to discriminatory hair policies or objecting to facially neutral hair policies that are enforced in a discriminatory fashion.⁴¹

In sum, when a covered entity has taken an adverse action (including enforcing a discriminatory policy) against someone because of a hairstyle closely associated with being Black, that entity may have violated the LAD by engaging in unlawful discrimination on the basis of race. The following examples, in addition to those discussed above, may be violations of the LAD for the reasons explained in this guidance:

- A school administrator selectively applying a facially neutral hair-length policy only to Black students or only to students with braids, while not applying the policy to white students with long hair.
- An employer denying a promotion or bonus to, failing to address harassment or a hostile work environment against, imposing unfair work conditions on, or otherwise adversely disadvantaging an employee for wearing locs.
- A dance school requiring a child to change or cut her Afro in order to attend class because it is a “distraction” to other students.
- A restaurant or bar refusing entry to a patron with braids because it does not conform to the establishment’s dress code.

The Division on Civil Rights is committed to preventing and eliminating discrimination on the basis of race, religion, gender, sexual orientation, gender identity or expression, national origin, disability, and other protected characteristics. If you believe you have been subject to discrimination, harassment, or retaliation in violation of the LAD, you may either (1) file a lawsuit in court (within two years of the violation); or (2) file a complaint with DCR (within 180 days of the violation) by visiting NJCivilRights.gov or by calling (973) 648-2700.



Rachel Wainer Apter
Director, New Jersey Division on Civil Rights
September 2019

⁴¹ See N.J.S.A. 10:5-12(d).