
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW

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November 5, 2020

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0481 Banning Discrimination Based on Hair Texture
and Protective Hairstyles

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0481 for form and legal sufficiency. This bill is for the purpose of prohibiting discrimination based on hair texture and protective hairstyles. Specifically, the bill adds to the definitions found in Article 4, Subtitle 1 of the City Code which prohibits certain discrimination, to include within the definition of discrimination, differential treatment based on those traits associated with hair texture and protective hairstyles. The bill adds (R-1) and (S-1) to the definitions to define "protective hairstyles" as "hairstyles that protect against split ends, knotting, or general damage, and also help retain the length of the hair" and provides examples of "braids, twists and locks." CCB 19-0481, p.2. The bill then defines "race" as "traits historically associated with race, including hair texture and protective hairstyles."

Similar federal legislation was introduced (H.R.5309, aka Crown Act of 2020) and passed the House, but not the Senate.

While Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 200e, protects against racial discrimination in the context of employment, federal courts have limited its protection to only those traits found to be "immutable" thereby denying protection for discrimination based on hairstyles like dreadlocks. *See, e.g. Equal Employment Opportunity Commission v. Catastrophe Management Solutions*, 852 F.3d 1018 (11th Cir. 2016). Other courts find no discrimination where the grooming policy is applied in a race-neutral manner. *See, e.g. Lynch v. Graul's Market*, 2007 WL 9780483 (D. Md.).

Acting to fill this void in federal discrimination laws, several states have passed legislation banning this type of discrimination, including Maryland. Montgomery County also recently passed similar legislation.

Maryland's law is similar to bill 19-481 because it extends the protections afforded under the state's antidiscrimination laws by adding to the definition of "race" "hair texture, afro hairstyles, and protective hairstyles." MD Code, State Gov. Art. § 20-101 (g). Maryland's law defines "protective hairstyle" to include "braids, twists and locks." § 20-101 (f). Like the City's antidiscrimination laws, which protect against acts in employment, places of public accommodation, education, health and welfare agencies, and housing, the state's law extends beyond discrimination in the workplace and covers acts in places of public accommodation, as well as acts in several other contexts. § 20-101 (d) (defining "discriminatory act" as including an act prohibited under subtitle 3, which covers behavior in places of public accommodation).

The City is not preempted by Maryland's antidiscrimination laws and can pass its own measures to protect against differential treatment based on hair texture. *See, e.g. National Asphalt Pavement Assoc. v. Prince George's County*, 292 Md. 75, 80-81 (1981) (General Assembly did not intend to preempt local antidiscrimination laws in the workplace).

To combat the problem of discrimination based on these traits, the City may add hair texture and protective hairstyles to the definition of race to extend the City's antidiscrimination laws to protect those with these traits. City Charter, Art. II § 47.

Any person aggrieved by an act of discrimination of this type can file a complaint with the Commission in accordance with Subtitle 4 of Article 4 of the City Code.

Sincerely,



Ashlea Brown
Assistant Solicitor

cc: Dana P. Moore, Acting City Solicitor
Matthew Stegman, Mayor's Office of Government Relations
Caylin Young, President's Legislative Director
Elena DiPietro, Chief Solicitor
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor