

Minnesota's CROWN Act, Affirmative Action and Developments in Race Discrimination Law

June 14, 2023



Where Law and Business Meet®



Today's Agenda

- Minnesota's CROWN Act and Hair Discrimination
- Recent Race Discrimination Cases
- Affirmative Action and What to Watch
- Q&A



CROWN Acts and Hair Discrimination

Creating
a Respectful
and Open
World
for Natural Hair



The **CROWN** Act

CROWN 2023 Workplace Research Study

- Black women's hair is 2.5x more likely to be perceived as unprofessional
- Approximately 2/3 of Black women change their hair for a job interview
- 25% of Black women believe they have been denied a job interview because of their hair
 - Increases to 33% when limited to ages 25-34
- Black women with coily/textured hair are 2x more likely to experience microaggressions in the workplace

Study by Dove and LinkedIn

○ THE CROWN ACT IS LAW

Beckley, WV
Charleston, WV
Huntington, WV
Lewisburg, WV
Morgantown, WV
Ann Arbor, MI

Philadelphia, PA
Pittsburgh, PA
Newburgh Heights, OH
Akron, OH
Columbus, OH
Cincinnati, OH

Covington, KY
Louisville, KY
Ashville, NC
Buncombe County, NC
Chatham County, NC
Charlotte, NC

Greensboro, NC
Raleigh, NC
Winston-Salem, NC
Albuquerque, NM
Kansas City, MO
St. Louis, MO

Tucson, AZ
Clayton County, GA
East Point, GA
Gwinnet County, GA
South Fulton, GA
Stockbridge, GA

Austin, TX
Harris County, TX
Shreveport, LA
New Orleans, LA
U.S. Virgin Islands

Minnesota Human Rights Act

- Prohibits discrimination in employment based on protected class:
 - race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age
- “Discrimination” may relate to hiring, tenure, compensation, terms of employment, conditions or privileges of employment, or facilities
- Federal counterpart: Title VII of the Civil Rights Act

Definitions of Protected Classes

- Minn. Stat. § 363A.03 defines the protected classes, for example:
 - “Sex” discrimination extends to:
 - Pregnancy and childbirth
 - Disabilities related to pregnancy
 - Sex harassment
 - “Disability” discrimination extends to:
 - Impairment which materially limits major life activities
 - A record of such an impairment
 - Regarded as having such an impairment

Minnesota's CROWN Act

Adds a new definition to Minn. Stat. § 363A.03:

Subd. 36a. **Race.** “Race” is inclusive of traits associated with race, including but not limited to hair texture and hair styles such as braids, locs, and twists.



Examples

- Employer fires a Black employee for wearing braids
- A school forces Black student athletes to shave their locs or forfeit their match
- A restaurant denies entry to a Black couple with twists because of the restaurant's policy that patrons "dress nicely"



Federal CROWN Act Legislation



- Federal CROWN Act would prohibit employers, employment agencies, and labor organizations from discriminating against current or prospective employees based upon hair texture or hairstyle
- President Biden announced support for the bill
- Passed the House in March 2022 with bipartisan support
- Companion bill did not succeed in the Senate in December 2022
- Unclear whether it will be reintroduced

CROWN Act Allegations in the Courts

- Supervisor made “several comments” about Black employee’s hair, including that she did not like the employee’s hair in braids and expressing a preference for “real” hair
 - Court denied motion to dismiss
- Supervisors made comments about employee’s hair not being “polished” or “nice,” and moved employee’s client-facing desk when she wore a natural afro
 - When coupled with other allegations, supported race discrimination claim
- Hiring manager told applicant with dreadlocks that he was qualified for the job but would have to cut his hair so it was “off the ears, eyes and shoulders”
 - Claim dismissed

Notable Court Decisions: Hair

[Miller v. Safeway, Inc., 170 P.3d 655 \(Alaska 2007\)](#)

- Male employee has long hair because he liked it and felt it expressed his Alaska Native tradition
- Upon transfer to new store, employee terminated for non-compliance with grooming policy that required men's hair to be above the collar
- Employee claims discrimination
- Court dismisses case
 - Employee failed to provide evidence that policy was discriminatory
 - Employee failed to notify ER of his beliefs
 - Employer “has a right and privilege as a private company to operate its business in a reasonable manner of its choosing” and its grooming policy outweighed employee's liberty and privacy interest in their hairstyle

Notable Court Decisions: Hair

Shelley v. State, 30 So. 3d 379 (Miss. Ct. App. 2010)

- State strikes male juror with long braids, claiming it showed “nonconformity”
- Holding: Strike was race neutral; analogizes to cases with unkempt hair

McCrea v. Gheraibeh, 380 S.C. 183, 669 S.E.2d 333 (2008)

- State strikes juror with dreadlocks, claiming it was based on “uneasiness”
- Holding: Strike was not race-neutral: “dreadlocks retain their roots as a religious and social symbol of historically black cultures”

Why this is Complicated

- “Race” is inclusive of **traits associated with race**, including but not limited to hair texture and hair styles such as braids, locs, and twists.
- What about...
 - Hair color
 - Height
 - Body structure
 - Eye color
 - Facial features
 - Skin pigmentation



Sticky Questions

Sticky Questions

- Can a white person bring a claim under the CROWN Act?
- How do employers know what hairstyles are “associated with race”?

Sticky Questions

- What about race-neutral dress codes?
- What if the hairstyle is a safety issue?
- Is there a reasonable accommodation requirement?
- What about hairstyles or headwear that are religious-based? What if race and religion overlap?



Recent Race Discrimination Cases

Black female sales representative claimed a hostile work environment after she sent a picture of her son crying on Santa's lap, and her co-workers responded:

Jim McNeil

I'd probably get a Bad Santa, knowing my luck.

JM









Amy Witt

AW

Hahaha!! I'm laughing too!

Jim McNeil

JM

   HO HO HO, Stick em up Jimmy !!   

Yah Douglas

YD



Jim McNeil

JM



No Hostile Work Environment


Text could have been perceived as racially offensive

- Emojis could imply that if colleague was robbed by a Santa, it would be by a Black person playing Santa, not a white person.
- Colleague may have been “drawing on the pernicious stereotype of [B]lack people as more likely to commit crimes than people of other races.”

But fell short of creating hostile work environment

- Infrequent and not particularly severe.
- Not directed at Plaintiff specifically and referenced race only indirectly.

Douglas v. Alfasigma USA, Inc., 19-CV-2272, 2022 WL 18027518 (N.D. Ill. Dec. 30, 2022)

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- Plaintiff-employee alleges he was given leads with names “that sounded Black.”
 - When plaintiff questioned whether he was being treated differently because of his race, another manager (not his own) responded affirmatively.
 - Dispute over whether Plaintiff was terminated or quit.
 - Plaintiff was not paid his bonus that was due.

SJ Denied on Discrimination Claim


Plaintiff met prima facie case

- Failure to pay any bonus when ER knew a bonus was due is an adverse action
- Dispute over whether EE quit or was fired was credibility question
- Circumstances presented inference of discrimination

Issue of Material Fact on Pretext for Termination

- Given the factual dispute over whether EE was terminated, and that the evidence could support conclusion that lead assignment was based on race, ER failed to meet SJ standard

Pridgen v. 651 Carpets, Inc., 20-CV-1987 (NEB/JFD), 2022 WL 4585441 (D. Minn. Sept. 29, 2022)

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- Plaintiff believed his loan servicer had mis-reported his payment history, which negatively affected his credit.
 - Plaintiff called customer service. The woman who answered in the executive office said: “you Black People... hate to pay bills.”
 - When Plaintiff called back, a second worker said, “you Black people make up a[n] excuse not to pay your bill.”

Not Discrimination



- No direct evidence
 - Comments not made by those with decision-making authority
- No indirect evidence
 - Plaintiff failed to plead under McDonnell Douglas that Defendant intended to discriminate against him on the basis of race such as identifying a similarly-situated individual who was treated better

Glover v. Am. Credit Acceptance, CV 22-1121 (JRT/TNL), 2023 WL 158198 (D. Minn. Jan. 11, 2023)



State struck potential juror who had gold teeth in
his “entire mouth”


Defendant brings motion for new trial

Not Race-Neutral



Court held striking was not race neutral: “we cannot ignore the fact that having a full mouth of gold teeth is a cultural proxy stereotypically associated with African-Americans”

Clayton v. State, 341 Ga. App. 193, 797 S.E.2d 639 (2017)

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- City hires Black woman over White woman for promotional position. City claimed the Black woman was better educated, more senior, and displayed greater professionalism.
 - Mayor publicly stated that Black woman's hiring exemplifies how the administration was "moving toward reflecting the city's demographics."
 - White woman uncovered evidence that mayor hired Black woman before seeing her resume.

Seventh Circuit Reverses SJ

- Court says that to prevail on reverse race discrimination claim, Plaintiff was required to show that either the City had reason or inclination to discriminate against white people, or there were fishy circumstances.
 - Plaintiff met this element by pointing to Mayor's statement.
 - Court also found it telling that mayor did not receive resume before offering role.

Plaintiff identified sufficient evidence to create issue of fact on pretext

- Mayor admitted he did not compare plaintiff to the other candidate.
- Jury could find City's justifications were pretext and dishonest.

Runkel v. City of Springfield, 51 F. 4th 736 (7th Cir. 2022)



Affirmative Action

Cases before the Supreme Court

- 2003: Supreme Court rules universities may consider race in their admissions process
- Students for Fair Admissions seek to overturn this policy, claiming a race-conscious admissions process violates Title VI of the Civil Rights Act and the 14th Amendment's equal protection clause



What it Means for Employers

- Justice Kagan asked whether judges can consider the benefits of diversity when choosing whom to hire for judicial clerkships, asking if businesses can use “race-conscious” means to achieve a diverse workforce if race-neutral means don’t work
- If affirmative action is struck down:
 - Could DEI goals could be interpreted as imposing race-based quotas?
 - Is a diversity statement encouraging race-based hiring?
 - Potential for state legislation restricting DEI training, policies, and practices
 - Voluntary affirmative action programs may be in jeopardy



Questions?

Presenter



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Thank you



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