

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 13, 2019

TO: Honorable Members of the Rules, Elections & Intergovernmental Relations Committee

FROM: Sharon M. Tsoukas
Chief Legislative Analyst

Council File No: 19-0002-S79
Assignment No: 19-05-0434

SUBJECT: Resolution to SUPPORT SB 188 (Mitchell)

CLA RECOMMENDATION: Adopt Resolution (Harris-Dawson – Price – Rodriguez – Wesson) to include in the City’s 2019-2020 State Legislative Program, SUPPORT for SB 188 (Mitchell) which would make discrimination based on traits historically associated with race, including hair texture and protective hairstyles, unlawful under Fair Employment and Housing Act (FEHA) and the Educational Equity provisions of the California Education Code.

SUMMARY

The Resolution (Harris-Dawson – Price – Rodriguez – Wesson), introduced May 1, 2019, advises that FEHA and the Educational Equity provisions of the California Education Code make it unlawful to discriminate against individuals based on immutable characteristics in employment, housing, and education. Certain physical traits, including hairstyles and hair textures, have been associated with racial, ethnic, or cultural identity. In order to combat the implicit bias created by a history of discrimination and prejudice, individuals are forced to alter physical characteristics in degrading or harmful ways in order to access opportunities that should be equally available to all. In 2016, the 11th US Circuit Court of Appeals denied an appeal of EEOC vs. Catastrophe Management Solutions, and the Supreme Court declined to hear the case, allowing for discrimination based on hair texture or hairstyle.

The Resolution further advises that pending in the California State Senate is SB 188 (Mitchell) which would make discrimination based on traits historically associated with race, including hair texture and protective hairstyles, unlawful under FEHA and the Educational Equity provisions of the California Education Code. The bill would amend the definition of “race or ethnicity” in FEHA as including physical characteristics which have been historically associated with race. Women of color are the most common victims of this kind of discrimination, and these protections will help to improve the opportunities available to women and the gender pay gap. Providing relief for discrimination which is not provided by federal laws will ensure equal opportunity, protect individuals from harmful grooming practices, and contribute to the deterioration of implicit biases that have been prevalent for decades.

The Resolution recommends that the City support SB 188 (Mitchell) which would make discrimination based on traits historically associated with race, including hair texture and protective hairstyles, unlawful under FEHA and the Educational Equity provisions of the California Education Code.

BACKGROUND

Title VII of the 1964 Civil Rights Act prohibits workplace discrimination based on protected classes including race, sex, religion, or national origin. Federal anti-discrimination law is enforced by the Equal

Employment Opportunity Commission (EEOC). Workplace rules that discriminate based on hairstyle have been challenged several times under Title VII but remain in place due to courts applying an “immutability doctrine” by which protections against racial discrimination only apply to aspects of racial identity that an individual has no control over or ability to change. In 1981, *Rogers v. American Airline, Inc.* established that because an airline stewardess had the ability to choose whether or not to braid her hair in cornrows, they were not a protected component of her race. More recently in 2011, the decision in *EEOC v. Catastrophe Management Solutions* stated that while discrimination on the basis of hair texture is prohibited, discrimination “on the basis of black hairstyle” is not, as it was a matter of birth, not culture.

The State’s anti-discrimination law, FEHA, is considered one of the most expansive anti-discrimination laws in the country, covering housing and employment discrimination for sixteen protected classes. FEHA is enforced by the Department of Fair Employment and Housing (DFEH) which accepts and investigates complaints, mediates cases, and provides remedies for complainants who have experienced discrimination.

SB 188 would include in FEHA’s definition of race, hair textures and protective hairstyles which have been historically associated with race. Protective hairstyles include braids, locks, and twists. The bill would prevent employers from instituting policies that ban or limit natural hair that have historical associations with race. As long as grooming rules are imposed for valid, non-discriminatory reasons and uniformly applied, those grooming policies would remain legal.

Support for SB 188 is consistent with City policy to protect individual from any kind of discrimination, promote racial and cultural diversity, and ensure safe and fair workplace rules.

DEPARTMENTS NOTIFIED

Bureau of Contract Administration

BILL STATUS:

01/30/19	Introduced in the California State Senate
02/06/19	Referred to Judiciary Committee
03/14/19	Amended by author and re-referred to Judiciary Committee
03/26/19	Approved by Judiciary Committee and referred to Appropriations Committee
04/02/19	Amended and re-referred to Appropriation Committee
04/22/19	Read third time, passed by the Senate, and ordered to the Assembly
04/22/19	Read first time in Assembly
05/06/19	Referred to Judiciary Committee


Andy Galan
Analyst

Attachments: 1. Resolution (Harris-Dawson – Price – Rodriguez – Wesson)

RESOLUTION RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Fair Employment and Housing Act (FEHA) and the Educational Equity provisions of the California Educational Code make it unlawful to discriminate against individuals based on immutable characteristics in employment, housing, and education; and

WHEREAS, certain physical traits, including hairstyles and hair textures, have been associated with racial, ethnic, or cultural identity; and

WHEREAS, a history of discrimination and prejudice has led to an implicit bias against these physical characteristics which have served to deny economic and educational opportunities for individuals of color; and

WHEREAS, in order to mitigate prejudice, individuals are forced to alter their hair or other physical characteristics in degrading or harmful ways in order to access opportunities that should be equally accessible to all; and

WHEREAS, in 2016, the 11th US Circuit Court of Appeals denied an appeal of EEOC vs. Catastrophe Management Solutions and the Supreme Court subsequently declined to hear the case, allowing for discrimination based hair texture or hairstyle nationwide; and

WHEREAS, currently pending before the California State Senate is SB 188 (Mitchell) which would make discrimination based on traits historically associated with race, including hair texture and protective hairstyles, unlawful under the Fair Employment and Housing Act and the Educational Equity provisions of the California Education Code; and

WHEREAS, the bill would provide protection which has been deferred by the courts by defining "race or ethnicity" in FEHA as including physical characteristics, including hairstyles, which have been associated with race; and

WHEREAS, women of color are the most common victims of this kind of discrimination, and these protections will help to improve the opportunities for women of color and the overall gender pay gap; and

WHEREAS, providing relief for discrimination not covered by federal laws will ensure equal opportunity, protect individuals from harmful grooming practices, and result in the deterioration of implicit biases that have been prevalent for decades;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT for SB 188 (Mitchell) which would make discrimination based on traits historically associated with race, including hair texture and protective hairstyles, unlawful under the Fair Employment and Housing Act and the Educational Equity provisions of the California Education Code.

PRESENTED BY: _____
MARQUEECE HARRIS-DAWSON
Councilmember, 8th District

19-0002-579

MAY 01 2019

SECONDED BY: _____