



# Update

## Maine Legal Developments: Hairstyle Discrimination, Agreements Prohibiting Disclosure of Unlawful Discrimination, and Payment of Accrued Vacation

On August 8, 2022, three pieces of newly enacted state legislation go into effect, directly impacting private employers operating within the state. First, along with a number of other states,<sup>1</sup> Maine has enacted Creating a Respectful and Open World for Natural Hair (“**CROWN**”) Act, which bans discrimination on the basis of natural, protective, or cultural hairstyles within the workplace. Second, Maine enacted legislation limiting mandatory non-disclosure agreements by private employers for applicants or employees waiving or limiting any right to report or discuss unlawful discrimination, retaliation, or harassment that occurs in the workplace or at work-related events. Finally, Maine enacted H.P. 160 - L.D. 225, which requires that private employers operating within the state pay out all accrued, unused vacation leave upon an individual’s employment separation.

In preparation for updating existing employee handbooks, policies, and training procedures, here is what Maine employers need to know.

### *Maine Adopts Employment Protections for Protected Hairstyles*

In April 2022, Maine Governor Janet Mills signed into law L.D. 598, formally entitled “An Act To Prohibit Discrimination in Employment and School Based on Hair Texture or Hairstyle,” which amends the existing Maine Human Rights Act to expand employment protections against discrimination on the basis of “race” to expressly include “traits associated with race, including hair texture, Afro hairstyles and protective hairstyles.” This expansion is purposed—as Governor Mills remarked on May 2, 2022—to “address systemic racism and remove barriers that keep non-white Mainers from advancing in academic or work careers.”<sup>2</sup>[2] This law is effective throughout Maine on August 8, 2022.

The Maine version of the CROWN Act protects both applicants and current employees from discrimination based on ethnic traits, such as hair texture, Afro hairstyles, and other protective hairstyles, including hairstyles worn to minimize manipulation and/or damage to natural hair – including braids, twists, and locs. Maine employers should act promptly to ensure that equal employment opportunity policies include traits associated with race, including hair texture and protected hairstyles in all prohibitions on workplace discrimination and harassment, as well as train human resources personnel to investigate and remedy

<sup>1</sup> Currently in addition to Maine, 16 other states have enacted versions of the CROWN Act, including California, New York, New Jersey, Maryland, Virginia, Colorado, Washington, Connecticut, Delaware, New Mexico, Nevada, Nebraska, Oregon, Illinois, Tennessee, and Massachusetts.

<sup>2</sup> See Gov. Mills Signs Sen. Daughtry’s Bill to Protect Mariners from Discrimination Based on Hair Texture or Hairstyle, Maine Senate Democrats, available at <https://www.mainesenate.org/gov-mills-signs-sen-daughtrys-bill-to-protect-mainers-from-discrimination-based-on-hair-texture-or-hairstyle/>.

### Authors:



#### **Angelo Spinola**

Home Health, Home Care and  
Hospice Chair  
404.253.6280  
[aspinola@polsinelli.com](mailto:aspinola@polsinelli.com)



#### **William C. Vail**

Shareholder  
404.253.6282  
[wvail@polsinelli.com](mailto:wvail@polsinelli.com)



#### **Burton F. Peebles**

Associate  
404.253.6289  
[bpeebles@polsinelli.com](mailto:bpeebles@polsinelli.com)



alleged violations of these expanded protections, including refusals to offer or offering employees or applicants less favorable compensation, terms, conditions, or employment opportunities.

*Mandatory NDAs May Not Prohibit Disclosure of Unlawful Workplace Discrimination*

Effective August 8, 2022, H.P. 711, “An Act Concerning Nondisclosure Agreements in Employment”, will prohibit private employers operating in Maine from requiring applicants, employees, and interns to enter into contracts or agreements, including severance, settlement, or separation agreements, that waive or limit rights to report, testify, provide evidence, or discuss unlawful discrimination, retaliation, or harassment occurring in the workplace or at work-related events to a law enforcement agency, a state or federal investigative agency that enforces employment or discrimination laws, or in a federal or state court proceeding.

The newly enacted law does, however, permit severance, settlement, or separation agreements with terms prohibiting future disclosure of information regarding claims of unlawful discrimination in certain circumstances. Specifically, such limits are permitted where all parties to the agreement are subject to the non-disclosure requirement, the terms clearly provide that the employee retains the right to report/testify/provide evidence to federal and state agencies and to testify and/or provide evidence in federal or state court, the agreement provides for separate monetary consideration for the guarantee of non-disclosure, the employer retains a copy of the agreement for six years from the later of execution or the affected employee’s separation, and the terms permit applicants, employees, and interns to waive their right to report or discuss unlawful discrimination within the workplace or a work-related events.

Notably, Maine’s law does not impact non-disclosure agreements purposed to protect trade secrets, proprietary information, or other data or information that is considered confidential by law or regulation.

Maine employers should consider whether separation and severance agreements to be executed on or after August 8 need updating. Violations of this new law may result in fines up to \$1,000 per violation from the Maine Department of Labor.

*Accrued Vacation Time? Pay it Out at Employment Separation.*

Finally, effective August 8, 2022, and according to the newly enacted H.P. 160 - L.D. 225, all private employers operating in the State of Maine with 11 or more employees must pay out all accrued, vacation time to an employee upon their separation of employment no later than the next established pay date where the terms of employment or established practices provides for paid vacation time off. Where policies provide for paid vacation time off, vacation pay is treated with the same status as wages earned. The new laws also apply where employment separation results from the sale of a business; in such circumstances, the selling employer must pay all accrued vacation pay to the affected employee within two weeks after the sale.

With the passage of H.P. 160 - L.D. 225, Maine now sits amongst a minority of states that restrict a private employer’s ability to withhold payments for accrued vacation leave at the end of the employment relationship. Maine’s mandatory Earned Paid Leave (“EPL”) law, which applies to employers with at least 10 employees for 120 days in a calendar year, requires the accrual of one hour of paid leave for every 40 hours worked as of January 1, 2021, or upon hire for new employees. The Maine Department of Labor has yet to issue further guidance on the impact of the new law and the existing EPL law (and regulations), which presently state that the balance of unused vacation need not to be paid at separation if employers maintain [vacation policies](#) that state that such unused vacation is not paid out upon separation.

Nonetheless, the new law directly contradicts the prior rules implementing the EPL law in Maine, and employers with at least 11 employees in the State of Maine may need to ensure handbooks and practices are updated to provide for the payment of unused, accrued paid vacation leave upon separation on or before the next regularly scheduled pay date.

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### *What's Next?*

Maine employers (particularly those with 11 or more employees) may need to (a) review and update their employee handbooks and documents (including, antidiscrimination, dress code, grooming and final wages policies), and employment agreements practices; (b) publicize and circulate any such updates amongst employees; and (c) train employees on these new employment laws.

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