Appearance Discrimination
in the United States of America and
Why We Should Think About It

Patricia Ruth McWilliam*

I. Introduction

The United States of America has worked very hard to level the playing field in public life for those classes of people that were once considered unequal. At one time, women were considered the property of their fathers, and then they became the property of their husbands. Minorities were not considered citizens and were afforded very little protection under the law. This situation changed after the Civil War; all enslaved persons were freed and the Fourteenth and Fifteenth Amendments were passed. The Civil Rights movement was the push the United States needed to ensure that the rights guaranteed by the Fourteenth and Fifteenth Amendments were being upheld.1)

* Assistant professor at Law School, Konkuk University.
Appearance Discrimination in the United States of America and Why We Should Think About It

The Civil Rights Act gave Congress the power to prohibit discrimination on the basis of race, religion, national origin and sex. 2) The Americans with Disabilities Act (ADA) made it illegal for discrimination on the basis of disability. 3) The Age Discrimination in Employment Act 4) and Genetic Information Nondiscrimination Act 5) also afford protection against discrimination based on age and genetic information. Looking at the situation in the United States of America today, it is clear that anti-discrimination laws are still needed, but also that there has also been real progress.

Society says that people should not be discriminated against because of physical traits they have no control over. It is much easier to find support to protect immutable traits and much harder to argue for protection of mutable traits. At one end of the spectrum, there is sex, race and ethnicity and at the other end are purely voluntary characteristics, such as grooming and fashion choices. 6) The most well-known local ordinance against appearance-related bias is from Santa Cruz, California. The law in Santa Cruz makes discrimination on physical characteristics outside of a person’s control illegal. 7) Even though discrimination on physical characteristics is not allowed by the local law, an employee’s personal choices can be subject to discrimination, such as

1) The 14th Amendment freed the slaves and made everyone born or naturalized by the government an American citizen. The 15th Amendment gave all men the right to vote, regardless of race. U. S. Const. amend. XIV–XV.