

A Tall Order: NYC Prohibits Height and Weight Discrimination in Employment

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On May 26, 2023, New York City Mayor Eric Adams signed a bill that will prohibit discrimination based on an applicant or employee's actual or perceived height or weight. This bill amends the New York City Human Rights Law by specifically adding "height" and "weight" to its list of protected classes. These additions will become effective on November 22, 2023.

There are several exemptions, including where height or weight restrictions are:

- Required by a federal, state, or local law or regulation;
- Permitted by any regulation adopted by the Commission that identifies particular categories of jobs for which the use of height or weight as a criteria is reasonably necessary for the normal operations of the business.
- Permitted by any regulation adopted by the City Commission on Human Rights that identifies certain jobs or job categories for which height or weight could prevent the person from performing the essential requirements of the job, and for which the Commission finds that no other reasonable alternative is available that would allow the person to perform the essential requirements of the job; or

In addition to the specific exemptions, the ordinance provides two affirmative defenses that will be available to employers:

- If the employer can demonstrate that there is no reasonable alternative action an employer could take that would allow an employee to perform the essential functions of a job, or
- If the employer's decision based on height or weight is necessary for the normal operations of the business.

The new law also expressly permits employers to adopt and maintain voluntary wellness programs for employees that offer incentives for weight management.

New York City is not the first municipality in the State to include height and weight among characteristics protected from discrimination—Binghamton already has such legislation in place, and similar protections exist in Madison, Wisconsin; Urbana, Illinois; and San Francisco and Santa Cruz, California. At the state level, Michigan has banned height and weight discrimination since 1976, and the Washington Supreme Court has recognized obesity as covered by the State Law Against Discrimination. State legislatures in Massachusetts, New York, New Jersey, and Vermont are considering enacting similar laws.

In advance of the New York City enactment going into effect in November, employers should review their employment policies and handbooks, and revise them to include height and weight as protected characteristics if they do not do so already. Employers should also review all current employment policies and practices to make certain that workers are evaluated on their skills and performance, rather than their physical appearance.

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