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UPDATE: New York City Enacts Law Prohibiting Height and Weight Discrimination

By Bryn Goodman and Carolyn D. Richmond

On May 26, 2023, Mayor Eric Adams signed into law [a bill](#) that expands New York City anti-discrimination laws by adding an individual's height and weight to the list of protected characteristics under the New York City Human Rights Law.

This new law becomes effective on Nov. 22, 2023 and prohibits discrimination in employment, housing and public accommodations on the basis of an individual's height and weight.:

- Required by federal, state or local law or regulation; or
- Permitted by regulation adopted by the New York City Human Rights Commission where:
- A person's height or weight could prevent them from performing the essential functions of the job; or
- A certain height or weight is reasonably necessary for the normal operation of the business.

The law also provides that even where there is no exemption, employers could defend against claims of discrimination by showing that height and weight are necessary criteria to perform a particular job. Also, the law specifically allows employers to offer incentives through wellness programs that support weight management.

New York City joins six other jurisdictions that have enacted similar legislation protecting individuals against height and/or weight discrimination: Binghamton, New

York; Madison, Wisconsin; San Francisco, California; Santa Cruz, California; Urbana, Illinois and the State of Michigan.

Washington, D.C. prohibits discrimination based on personal appearance, which could cover height and weight. In addition, the Washington Supreme Court has recognized obesity as covered by Washington State's Law Against Discrimination. State legislatures in Massachusetts, New York, New Jersey and Vermont are considering enacting similar laws.

Given this trend, employers should ensure that their hiring practices remove reference to height and weight unless the requirements are necessary for normal operation of the business. If and when the law takes effect, New York City employers should also update their handbooks and trainings to include these new protected categories and review other policies for unintended violations of the new law. In addition, certain businesses (including but not limited to hospitality and retail) will need to consider how these protections affect policies for guests and customers who would also be protected from discrimination based on height and weight in places of public accommodation.

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