

New York City Enacts Legislation Prohibiting Discrimination Based on Height, Weight

By Richard I. Greenberg, Daniel J. Jacobs, Henry S. Shapiro &

June 6, 2023

Meet the Authors



Richard I. Greenberg

(Rich)

Principal

(212) 545-4080

Richard.Greenberg@jacksonlewis.com



Daniel J. Jacobs

(He/Him)

Principal

(212) 545-4049

Daniel.Jacobs@jacksonlewis.com



New York City Mayor Eric Adams has signed [legislation amending the New York City Human Rights Law](#) to prohibit discrimination based on a person's height or weight in employment, housing, and public accommodations. The new law will become effective on November 22, 2023.

As stated by Mayor Adams:

No one should ever be discriminated against based on their height and weight. We all deserve the same access to employment, housing, and public accommodations, regardless of our appearance. It shouldn't matter how tall you are or how much you weigh when you're looking for a job, are out on the town, or trying to rent an apartment. This law will help level the playing field for all New Yorkers, create more inclusive workplaces and living environments, and protect against discrimination.

The legislation does not prevent employers from offering incentives in connection with voluntary wellness programs.

Prohibitions

Once effective, a New York City employer generally may not deny an employment opportunity or take an adverse action based on the actual or perceived height or weight of an applicant or employee. As a best practice, New York City employers should ensure that employees are not subject to workplace harassment based on height or weight.

Likewise, any job advertisements or similar documents that directly or indirectly set limitations based on height or weight are prohibited.

Exemption; Affirmative Defense

The new enactment contains certain exemptions:

- Employers need to consider height or weight in employment decisions when required by federal, state, or local laws or regulations;
- Height and weight may be considered as reasonably necessary for the normal operation of the business as per regulations the City Commission is empowered to issue.

Additionally, even if an exemption is not applicable, in defending any claim, it will be an affirmative defense that:

- A person's height or weight prevents the person from performing the essential requisites of the job, and there is no alternative action the covered entity could reasonably take that would allow the person to perform the essential requisites of

Henry S. Shapiro

Principal

(631) 247-4651

Henry.Shapiro@jacksonlewis.com

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the job; or

- The covered entity's decision based on height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity.

Other Jurisdictions

New York City joins jurisdictions including Binghamton, New York; Madison, Wisconsin; Urbana, Illinois; Washington, D.C.; San Francisco and Santa Cruz, California; and the State of Michigan in expressly protecting individuals against height and weight discrimination in the workplace.

There is similar legislation pending in many states, including New York, New Jersey, Massachusetts, and Vermont.

Next Steps

New York City employers should ensure their organizations apply all of their equal employment opportunity and anti-harassment principles to height and weight. In addition, New York City employers should review any applicable written policies and training materials.

If you have any questions regarding this or other legislation affecting the workplace, please contact the Jackson Lewis attorney with whom you regularly work.

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