

PRACTICAL NEWS  
LEGAL ALERTS  
November 2023

## New York City Bans Discrimination Based on Height or Weight

Effective Wednesday, November 22, 2023, the New York City Human Rights Law (“NYCHRL”) has been amended to prohibit discrimination based on height or weight in employment, housing, and public accommodations. New York City now joins the following seven jurisdictions that include height and weight as classifications protected from unlawful discrimination and harassment:

(1) Binghamton, New York; (2) San Francisco, California; (3) Santa Cruz, California; (4) Washington, D.C.; (5) Urbana, Illinois; (6) Madison, Wisconsin; and (7) the State of Michigan. Similar legislation presently is pending in New York State, New Jersey, Massachusetts, and Vermont.

New York City employers covered by the NYCHRL now are prohibited from subjecting a job applicant or present employee to discrimination or harassment based on the actual or perceived height or weight of the individual. Employers now may not consider the height or weight of the job applicant during the interviewing, hiring or onboarding process or the height or weight of the current employee in the compensation, terms, conditions or privileges of employment. Only under the following limited circumstances will employers be exempt from or have an affirmative defense for basing or considering employment decisions on the height or weight of the job applicant or employee: (1) where required to do so by federal, state or local law or regulation; (2) where permitted to do so by regulations promulgated by the New York City Commission on Human Rights; (3) where the height or weight of the individual precludes that person from performing the essential requisites of the job with or without a reasonable accommodation; and (4) where such decisions are “reasonably necessary” for the “normal operations” of the employer.

The amendment further provides that nothing contained therein precludes employers from offering incentives that support weight management as part of a voluntary wellness program.

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This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

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Protected Classification Reminders

The NYCHRL includes and incorporates specifically-designated protected classifications against discrimination and harassment in the workplace. In addition to the newly-enacted amendment on height and weight, the NYCHRL prohibits discrimination based on actual or perceived age, race, creed, color, national origin, gender, gender identity, sexual orientation, pregnancy, disability, criminal arrest or conviction record, salary history, credit history, sexual and reproductive health decisions, pre-employment marijuana testing, marital status, partnership status, caregiver status, status as a victim of domestic violence, stalking, and sex offenses, immigration or citizenship status, status as a veteran or active military service member, and unemployment status.

Key Takeaways

New York City employers should update their interviewing, hiring, onboarding, and employment practices, policies, procedures, and documents (i.e., application forms; job descriptions; advertisements; postings; employee handbooks; training materials) to reflect and comply with this most recent local legislative amendment.

For more information about this amendment or any other legislative, regulatory or judicial developments, please feel free to contact the attorneys within our Employment & Labor Law Practice.

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