

## New York City Bans Employment Discrimination Based on Height and Weight

On May 26, 2023, Mayor Adams signed into law an amendment to the New York City Human Rights Law (NYCHRL), banning discrimination on the basis of an individual's height or weight. The law will become effective on November 22, 2023.

### ***What Does the Law Provide?***

The amendment, [Intro 209-A](#), prohibits discrimination on the basis of a person's height or weight in employment, housing, and public accommodations. This law expands the list of protected classes under the NYCHRL.

In passing this law, New York City joins a growing number of cities and states, including San Francisco, Michigan, and Washington, D.C., with laws designed to prohibit height and weight discrimination.

### ***Exceptions and Affirmative Defenses***

The law permits employers to consider an applicant or employee's height or weight under limited circumstances, including when consideration of such factor(s) is:

- Required by federal, state, or local law or regulation; or
- Permitted by regulations to be adopted by the New York City Commission on Human Rights (the "Commission") that identify particular jobs for which (i) the individual's height or weight could prevent the person from performing the essential requirements of the job and the Commission finds no other reasonable alternatives to allow the person to perform the essential requirements of the job or (ii) a certain height or weight is reasonably necessary for the normal operations of the business.

For employment decisions not covered by these exemptions, an employer will not be liable for height or weight discrimination if it can prove either of two affirmative defenses:

- The individual cannot perform the essential requirements of the job due to their height or weight, and the employer cannot reasonably take an alternative action that would allow the individual to perform the essential requirements of the job; or
- The employer's decision based on height or weight is reasonably necessary for the normal operations of the business.

The new ordinance also allows employers to offer incentives that support weight management as part of voluntary wellness programs.

### ***Takeaways***

In preparation for the law's November 22, 2023, effective date, New York City employers should update their employee handbooks and policies against discrimination and harassment to ensure that height and weight are added to the list of protected characteristics. Employers should also review their hiring practices and job postings for any explicit or implicit references to, or requirements regarding, an applicant's height or weight. Employers should use caution in workplace conversations regarding fitness or diets, and should avoid using terms linked to height or weight, such as "Napoleon

complex.” Finally, we urge employers to train all managers and supervisors about the requirements of this new law.

Lastly, although this law only applies to New York City employees, New York State is currently considering similar legislation to ban height and weight discrimination in employment, housing, and public accommodations across the state. We will continue to monitor the progress of that legislation.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

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