

New York City Council Approves Ordinance Prohibiting Discrimination Based on a Person's Height or Weight

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The New York City Council has approved an [ordinance](#) that, if enacted, would amend the New York City Human Rights Law ("NYCHRL") to prohibit discrimination in employment, housing and access to public accommodation based on an individual's height or weight. The ordinance is currently before Mayor Eric Adams, who has previously expressed support.

Among other things, the ordinance would make it an unlawful discriminatory practice for an employer covered by the NYCHRL to take any of the following steps based on the height or weight of candidates or employees:

- (1) represent that any employment or position is not available when in fact it is available;
- (2) refuse to hire or employ or to bar or to discharge from employment such person; or
- (3) discriminate against such person in compensation or in terms, conditions or privileges of employment.

Furthermore, it would be unlawful for any employer, labor organization or employment agency to publish "any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination" as to height or weight.

The ordinance includes several exceptions, including when an action is:

- Required by applicable law or regulation;
- Permitted by regulation adopted by the NYC Commission on Human Rights (the "Commission") identifying particular jobs or categories of jobs for which (i) a person's height or weight could prevent performing the essential requisites of the

job; and (ii) the Commission has not found alternative action that covered entities could reasonably take to allow persons who do not meet the height or weight criteria to perform the essential requisites of the job or categories of jobs; or

- Permitted by regulation adopted by the Commission identifying particular jobs or categories of jobs for which consideration of height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity.

In situations where a covered entity's action is not covered by an exception described above, the ordinance provides that "it shall be an affirmative defense that (a) 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 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 the job; or (b) the covered entity's decision based on height or weight criteria is reasonably necessary for the execution of the covered entity's normal operations. The ordinance also makes clear that covered entities are still permitted to offer incentives "that support weight management as part of a voluntary wellness program."

If enacted, the ordinance would take effect 180 days after it becomes law. Similar bills have previously been introduced in the [New Jersey](#) and [New York](#) state legislatures, but appear to have stalled. Protections on the basis of height and/or weight presently exist in other jurisdictions, including [Washington, DC](#), [San Francisco](#), [Michigan](#) and [Washington State](#).

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