

New York City Prohibits Discrimination Based on Height or Weight

1 min read

Aug 14, 2023

Earlier this year, Mayor Eric Adams signed a bill amending the New York City Human Rights Law, prohibiting discrimination on the basis of an individual's height or weight. Set to go into effect on November 22, 2023, the bill does permit an employer to consider height or weight under the following limited situations:

1. When such action is required by federal, state, or local law or regulation; or
2. When permitted by regulation adopted by the New York City Commission on Human Rights (Commission), which identified particular jobs or categories of jobs for which:
 - a. An individual's height or weight could prevent performing the essential functions of the job, and
 - b. The Commission has not found alternative action that an employer could reasonably take to allow individuals who do not meet the height or weight criteria to perform the essential functions of the job or category of jobs; or
3. Such action is permitted by regulation adopted by the Commission identifying particular jobs or categories of jobs for which consideration of height or weight is reasonably necessary for the execution of the employer's normal operations.

In addition, the bill provides affirmative defenses for an employer whose action is based on height or weight and was not required by law or Commission regulation. The affirmative defenses include the following:

1. An individual's height or weight prevents the individual from performing the essential functions of the job, and there is no alternative action the employer could reasonably take that would allow the individual to perform the essential functions of the job; or
2. The employer's decision is reasonably necessary for the execution of the employer's normal operations.

Notably the bill does not prevent an employer from offering incentives that support weight management as part of a voluntary wellness program.

Before the bill goes into effect, New York City employers should review their job advertisements, applications, or similar documents to ensure that they have not placed a limitation or otherwise discriminated against an individual on the basis of height or weight. Additionally, employers should update their employee handbooks

and anti-discrimination policies to include height and weight as protected classes and prohibit any discrimination on said basis.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

New York, Discrimination, Anti-Discrimination Policy, New York City, Workplace Discrimination, New York City Human Rights Law