

## > Client Alert

### New York City Mayor Adams Signs Bill Amending NYC Human Rights Law to Prohibit Weight and Height Discrimination

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On May 26, 2023, New York City Mayor Eric Adams signed into law a bill which prohibits workplace discrimination, as well as discrimination in public accommodations and housing, on the basis of an individual's actual or perceived height or weight. While certain localities, such as Michigan, San Francisco, CA and Washington, DC, have already implemented explicit weight or size-based protections, lawmakers in several jurisdictions, including Vermont, New Jersey and New York, are considering similar legislation.

The new law amends the existing New York City Human Rights Law ("NYCHRL"), which prohibits New York City employers with four or more employees from discriminating against employees based on their protected traits, including age, race, creed, color, national origin, gender, disability, marital status, partnership status, pregnancy, caregiver status, sexual and reproductive health decisions, sexual orientation, status as a victim of domestic violence, uniformed service or immigration or citizenship status. Beginning in November 2023, it will also be considered an unlawful discriminatory practice for those employers to refuse to hire, discharge, or otherwise discriminate against employees in the terms, conditions or privileges of employment based on their actual or perceived weight or height. As with other types of prohibited discrimination, the NYCHRL prohibits retaliation against employees who raise actual or perceived violations of the law based on the newly protected classes of weight and height.

Studies have found that employees who have a higher body weight generally encounter unfair hiring practices, lower wages, fewer promotions, harassment from co-workers and wrongful termination. Further, studies also demonstrate that weight discrimination disproportionately affects women, especially women of color. Particular height and weight can also be attributed to other protected characteristics, such as pregnancy or disability. While the legislation is intended to combat stigmas associated with being heavier or conditions affecting height such as dwarfism, the law protects all individuals regardless of whether their height and/or weight is considered to be greater or lesser than the average person.

The law provides certain exemptions for employers that need to consider height or weight where: (1) such considerations are required by federal, state, or local laws or regulations; (2) the New York City Commission on Human Rights permits such considerations because a person's height or weight could prevent

the person from performing essential functions of a job and no alternative is available; or 3) the New York City Commission on Human Rights permits such considerations because height or weight criteria are reasonably and legitimately necessary for the execution of the normal operation of the business.

Notably, the new law does not prohibit employers from offering incentives that support weight management as part of a voluntary wellness program.<sup>1</sup> For example, employers may continue to offer benefits that include exercise classes, subscriptions to nutrition and weight management applications or programs, or in-person weight management support groups or classes.

### **Employer Takeaways**

Employers should review and update their employee handbooks, employment applications, job descriptions and overall hiring policies and practices to ensure that they are in compliance with the new law. Employers should also provide managers and supervisors with updated training addressing all of the NYCHRL's anti-discrimination and anti-retaliation provisions, including those related to height and weight.

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The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice and consultation related to workplace discrimination, employee policies and any additional labor and employment law questions you may have.

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<sup>1</sup> A "wellness program" generally refers to programs and activities offered through an employer-sponsored group health insurance plan or separate employer benefit aimed at promoting health and preventing disease. Wellness programs may also provide educational health-related information, nutrition classes, onsite exercise facilities or coaching to help employees meet health goals.