

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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NYC Council Passes Bill to Prohibit Height, Weight Discrimination

May 30, 2023 – UPDATE: On May 26, NYC Mayor Adams signed this bill into law, and it will go into effect 180 days later, on Nov. 22, 2023. Please feel free to reach out for steps your organization can take now to begin preparing.

On May 11, 2023, the New York City Council passed a bill which would prohibit height and weight discrimination within employment, housing and public accommodations under the New York City Human Rights Law (NYCHRL). As of this writing, the bill has been sent to Mayor Eric Adams for signature, who has 30 days to either sign the bill, take no action or veto it. If the mayor signs or takes no action, the bill becomes law and would take effect 180 days thereafter. In the event of a veto, the bill is sent back to the Council, which can override the veto with a two-thirds vote.

The key takeaway from the bill is that height and weight would be added as protected classes to the NYCHRL's already-listed categories. In other words, many of the practices already prohibited by the NYCHRL based on other protected classes would now be prohibited based on actual or perceived height and weight, as well.

The bill has carved out exceptions to when the provision would not apply to an action taken based on height or weight, including when such action is required by law or regulation, or when regulation from the Commission on Human Rights, who enforce the NYCHRL, permits such action by either "identifying particular jobs or categories of jobs for which a person's height or weight could prevent performing the essential requisites of the job, and 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 category of jobs," or where the Commission's regulations "identify[] 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."

Under the bill, employers also have an affirmative defense available if the action taken does not fall under the above exceptions if: "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, or the covered entity's decision based on height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity."

The bill also includes a statement that it does not "prevent a covered entity from offering incentives that support weight management as part of a voluntary wellness program."

The bill also provides similar exceptions to public accommodations restrictions, in that the provision would not apply to actions required by law or regulation; or which are permitted by Commission regulation "allowing consideration of height or weight because such action is reasonably necessary

for the normal operations of a particular place or provider of accommodation, or a category of such places or providers, and there is no alternative action the covered entity could reasonably take that would allow patrons to use or enjoy the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation.”

There is also an affirmative defense available with respect to public accommodations when the above exception would not apply, if the covered entity can demonstrate that “such action is reasonably necessary for its normal operations and there is no alternative action the covered entity could reasonably take that would allow patrons to use or enjoy the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation.”

Height and weight would also become protected classes in housing, with no exceptions or affirmative defenses added.

It is also worth noting that there is similar pending legislation at the state level on height and weight discrimination, and a related appearance-based discrimination bill on the city level which would prevent employment discrimination based on tattoos. In other words, prohibiting appearance discrimination is the clear legislative direction, and therefore, even employers who are not covered by the NYCHRL should take note and be mindful of these issues.

To discuss further how this bill could impact you, please contact [Lisa Feldman](#), any attorney in Bond’s [labor and employment practice](#) or the attorney at the firm with whom you are regularly in contact.

