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## **New York City Human Rights Law Update: Size Discrimination**

### Updates to the New York City Human Rights Law

On May 26, 2023, Mayor Eric Adams signed Int. No. 209-A, prohibiting discrimination on the basis of a person's height or weight in employment, housing, and public accommodations<sup>1</sup> under the New York City Human Rights Law (NYCHRL). The law goes into effect on November 22, 2023.

Like other provisions within the NYCHRL, employers with four or more employees will be subject to the update. Under the NYCHRL, independent contractors are considered employees if they are individuals employed to work in furtherance of the employer's business<sup>2</sup>.

### Impact on Employers

The recent updates to the NYCHRL mirror the protections afforded to other protected traits. Employers are prohibited from making hiring or firing decisions based on membership to a protected class. In other words, employers cannot reject applicants or terminate workers based on their "size" (i.e., height or weight). Likewise, employers cannot use size to determine compensation or any other term of employment. This protection expands to training programs and internships.

Like other protected traits, size discrimination also comes with the retaliation prohibitions found within the NYCHRL. Employers are prohibited from retaliating or discriminating against anyone who opposes a practice prohibited by the NYCHRL<sup>3</sup>.

While expansive, the new protected traits are subject to several exceptions. The protections do not apply when such size discrimination is required by federal, state, or local law or regulation or permitted by the New York City Commission on Human Rights. Further, the Commission on Human Rights allows considerations of height and weight if the characteristics are essential requirements to perform the job and there are no other alternatives. Lastly, the new regulation does not prohibit an employer from offering incentives that support weight management as part of a voluntary wellness program<sup>4</sup>.

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<sup>1</sup> <https://www.nyc.gov/office-of-the-mayor/news/364-23/mayor-adams-signs-legislation-prohibit-height-weight-discrimination-employment-housing-#/0>

<sup>2</sup> New York City, N.Y., Code § 8-102

<sup>3</sup> New York City, N.Y., Code § 8-107(7)

<sup>4</sup> New York City, N.Y., Code § 8-107(1)(g)

### Best Practices for Employers

There are several actions an employer can take to mitigate the risk of violating the NYCHRL. Employers should review job descriptions to ensure they accurately describe the duties and are limited to permissible, non-discriminatory qualifications. Revise any equal employment opportunity statements or anti-discrimination clauses or policies to include a person's "height" and "weight" among the list of protected classes. Employers should train hiring personnel on understanding the policies under NYCHRL and should document and maintain consistency in the application process. Lastly, when possible include more than one person during the hiring process to help eliminate individual bias.

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Jonal Hendrickson at [jhendrickson@lawyersalliance.org](mailto:jhendrickson@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

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