

Employment Law Update: Two New Protected Classes in New York City

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On November 22, 2023, New York City will add height and weight to its list of protected classes.

The law creates exemptions for employers when:

- the employer needs to consider height or weight in employment decisions because it is required by federal, state, or local laws or regulations; or
- when the Commission on Human Rights permits such considerations because height or weight may prevent a person from performing the essential functions of a job and no alternative is available, or the criteria is reasonably necessary for normal business operations; or
- when the Commission on Human Rights identifies particular categories of jobs for which height or weight criteria are reasonably necessary for the business's normal operations.

Employers will have affirmative defenses if:

- an individual cannot perform the essential functions of the job due to the individual's height or weight, and the employer cannot reasonably take an alternative action that would allow the individual to perform the essential functions of the job; or
- the employer's decision, based on height or weight, is reasonably necessary for the business's normal operations.

Please note an employer can offer incentives that support weight management as part of a voluntary wellness program.

In June 2022, a similar law was proposed in the New Jersey Senate. The law would prohibit discrimination based on height and weight; however, employers could consider height and or weight in instances where "the height or weight of an individual is a bona fide occupational qualification."

Takeaway: If you are an employer with questions regarding protected classes, please contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

Attorney

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Practice

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