

May 18, 2023

UPDATED: New York City Makes Moves to Expand Protections Against Appearance-Based Discrimination

UPDATE (05/26/2023): New York City Mayor Eric Adams signed Int. No. 0209-2022-A today, which will prohibit discrimination on the basis of a person's weight or height in employment, housing, and access to public accommodations. Mayor Adams stated, "This law will help level the playing field for all New Yorkers, create more inclusive workplaces and living environments, and it protects against discrimination." The law will take effect on November 22, 2023.

New York City may soon prohibit discrimination in employment on the basis of a person's weight or height under a bill passed on May 11 by the City Council. The bill is now awaiting New York City Mayor Eric Adams' signature. The effective date is 180 days after Mayor Adams signs it into law.

The bill, [Int. No. 0209-2022-A](#), would amend New York City's Human Rights Law to add a person's weight and height to the list of characteristics that are protected from discrimination. The bill prevents this type of appearance-based discrimination on the basis of a person's size in opportunities of employment, housing and access to public accommodations. In the workplace, the bill is applicable to applicants and employees. However, the bill provides for an exemption for employers that need to consider height or weight as bona fide occupational qualifications for employment decisions.

Advocates of the bill say that the issue of appearance-based discrimination is most prevalent in front-facing industries and roles where the employee interacts with the general public, often in positions where the employer's image is based upon the image of its staff. The bill is supported by several unions and community groups.

New York City is the second city in the state of New York to prohibit weight and height discrimination, following [Binghamton](#). Weight and height discrimination is prohibited by only a handful of other cities and states, including [San Francisco](#); [Washington, DC](#); and the state of [Michigan](#). A similar bill has been introduced at the state level in New York, as well as in New Jersey and Massachusetts.

The New York City Council is also considering a similar appearance-based measure that would ban discrimination against [people with tattoos in the workplace](#).

Employers in New York City should keep an eye on these developing protections against appearance-based discrimination and update their handbooks and policies accordingly. Moreover, employers who do require weight and/or height as an essential function of the job must be able to establish that a certain weight and/or height are necessary for the job, and not merely a preference of the employer.

Authors



Lindsey A. McCarthy
Associate

Hartford, CT | (860) 275-0211
lmccarthy@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201
New York, NY | (212) 297-5800
rgonzalez@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199
New York, NY | (212)-297-5800
hbrochin@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570
gwdowd@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275
fesposito@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168
tkelly@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com