

Weight and Height Discrimination in the Workplace

While federal law generally does not prohibit discrimination against workers because of their weight and height, a growing number of states and localities have or are considering passing laws to prohibit workplace weight and height discrimination. Even without mandatory legal protections or requirements, employers can consider how best to address weight and height discrimination in the workplace.

This article provides a general overview of weight and height discrimination and discusses how body size discrimination laws may impact employers.

What Is Weight and Height Discrimination?

Weight and height discrimination in the workplace refers to unfair treatment or prejudice of individuals based on their weight or height. This can manifest in various ways, such as being passed over for promotions, receiving lower wages, or experiencing harassment and negative or derogatory comments from supervisors and co-workers. As a result, workplace weight or height bias can often lead to certain workers earning less money or being more likely to work in low-paying, physically demanding positions.

Because weight and height discrimination is generally not illegal under federal law, the prevalence of these forms of discrimination in the workplace is often underestimated. A 2020 Harvard University [study](#) found that while unconscious bias against race and sexual orientation has steadily dropped over a 14-year period, implicit bias against overweight individuals remained level. According to industry surveys, approximately [50%](#) of managers say they tend to favor interactions with employees who have a “healthy” weight. Moreover, nearly [72%](#) of workers who have experienced unfair treatment at work because of their weight said it made them want to quit their job.

Weight and Height Discrimination Laws

New York City recently passed legislation making it illegal to discriminate against individuals based on their body size in employment, housing and public accommodations. This law will take effect on Nov. 22, 2023, and, as a result, weight and height will now be equally protected in New York City as other protected characteristics, such as age, race, gender and religion. The New York City law will likely prompt other states and localities to follow suit.

In addition to New York City, the following cities have banned discrimination based on an employee’s weight and physical or personal appearance:

- San Francisco, California
- Urbana, Illinois
- Binghamton, New York
- Madison, Wisconsin
- Santa Cruz, California
- Washington, D.C.

Moreover, Michigan recognizes weight as a protected class, and Washington’s Supreme Court has held that obesity always qualifies as a disability under the state’s anti-discrimination laws. Other states, including Massachusetts, New York, New Jersey, and Vermont, are considering prohibiting weight discrimination. More employers will likely be impacted as more jurisdictions enact laws protecting workers from discrimination based on their weight, height or personal appearance. Therefore, it’s important for employers to diligently monitor these laws to ensure compliance.

How Federal Anti-discrimination Laws Extend to Weight and Height

Although weight and height are not considered protected classes under federal anti-discrimination laws, there may be situations where an employee is protected from body size discrimination under existing laws. Health issues that cause or contribute to obesity could be considered a serious health condition under the Family and Medical Leave Act (FMLA) or a disability under the Americans with Disabilities Act (ADA).

For example, the ADA makes it illegal for covered employers to discriminate against qualified individuals with disabilities in all employment practices, including recruitment, compensation, hiring and firing, job assignments, training, leave and benefits. Under the ADA, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment and people regarded as having a substantially limiting impairment. Since the ADA's definition of disability includes medical conditions that render an individual disabled, medical conditions impacting an employee's weight or height may be protected. The majority of courts have found that obesity is not a disability under the ADA unless it's caused by an underlying condition, such as thyroid disease; however, some courts have held that obesity is a disability without any evidence of an underlying health condition.

Moreover, the U.S. Equal Employment Opportunity Commission (EEOC) has stated that height and weight requirements tend to disproportionately limit employment opportunities for some protected groups. Unless employers can demonstrate how height and weight requirements are related to the job, such requirements may be illegal under federal law. Consequently, the EEOC encourages employers to avoid height- and weight-related preemployment inquiries unless they are job-related.

What Can Employers Do?

Since medical conditions related to weight and height can be protected under the FMLA, the ADA and other federal laws in certain circumstances, employers should train managers to understand these laws and recognize when an employee's body size may trigger an employer's legal obligations. For example, managers should know when they must engage in the interactive process for employees who may need an accommodation or protected leave based on a medical condition related to weight or height.

In jurisdictions where weight and height discrimination is illegal, employers should familiarize themselves with these laws and implement policies and practices to ensure they're followed. In places with no such laws,

employers can still consider establishing workplace policies prohibiting discrimination based on physical appearance and providing training to educate managers and employees. Employers should consider reviewing job descriptions to ensure they accurately identify essential job functions and remove references to height and weight in their hiring practices unless where necessary. Organizations can also ensure their office spaces have adequate seating and space to accommodate different body types.

Takeaway

Employers should continue to monitor developments in weight and height workplace discrimination and related laws, as it's likely that more states and localities will adopt these regulations in the near future. Additionally, it's critical that employers understand their obligations under existing anti-discrimination laws as they pertain to an employee's body size. Employers can confer with local legal counsel if they have any questions or concerns regarding weight and height discrimination.

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