

Compliance Guidelines To Prohibit Weight and Height Discrimination

San Francisco Administrative Code Chapters 12A, 12B and 12C

and

San Francisco Municipal/Police Code Article 33



CITY AND COUNTY OF SAN FRANCISCO

HUMAN RIGHTS COMMISSION

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Table of Contents

I.	INTENT	3
II.	DEFINITIONS	3
A.	WEIGHT.....	3
B.	HEIGHT.....	3
C.	REASONABLE ACCOMMODATION.....	3
III.	CONDUCT AND DEMEANOR	3
A.	POLICY IMPLEMENTATION AND PUBLICATION	3
B.	CONTINUING EDUCATION AND DIVERSITY TRAINING	4
C.	SUPERVISION.....	4
IV.	SERVICES AND ACCOMMODATIONS	4
A.	EQUITABLE ACCOMMODATIONS	4
B.	ACCESS AND EQUAL TREATMENT	4
C.	REASONABLE ACCOMMODATION.....	5
V.	EMPLOYMENT	5
A.	NON-DISCRIMINATION	5
B.	HOSTILE ENVIRONMENT AND HARASSMENT	5
C.	STANDARDS	6
D.	PHYSICAL WORKPLACE.....	6
VI.	HOUSING	6
A.	NON-DISCRIMINATION	6
B.	ACCOMMODATIONS AND ALTERATIONS.....	6

I. INTENT

It is the intent of the Human Rights Commission that programs, services, and facilities are accessible to and functional for people of all weights and heights.

II. DEFINITIONS

The following definitions will apply in the construction and implementation of the guidelines described herein:

A. WEIGHT

Weight is a numerical measurement of total body weight, the ratio of a person's weight in relation to height or an individual's unique physical composition of weight through body size, shape, and proportions.

"Weight" encompasses, but is not limited to, an impression of a person as fat or thin regardless of the numerical measurement. An individual's body size, shape, proportions, and composition may make them appear fat or thin regardless of numerical weight.

B. HEIGHT

Height is a numerical measurement of total body height, an expression of a person's height in relation to weight, or an individual's unique physical composition of height through body size, shape, and proportions.

"Height" encompasses, but is not limited to an impression of a person as tall or short regardless of numerical measurement. The length of a person's limbs in proportion to the person's body may create an impression that the person is short, tall, or atypically proportioned, independent of numerical measurements of height.

C. REASONABLE ACCOMMODATION

An accommodation is a change in structure, policy, practice or procedure necessary to avoid discrimination. An accommodation is reasonable unless an entity can demonstrate that making the accommodation would fundamentally alter the nature of the service, program or activity or the accommodation constitutes an undue burden defined as a significant difficulty or expense, taking into account the entity's resources.

III. CONDUCT AND DEMEANOR

A. POLICY IMPLEMENTATION AND PUBLICATION

City contractors, subcontractors, agencies, business establishments, and organizations should implement and clearly communicate a non-discrimination policy regarding weight and height to all staff including managers. The non-discrimination policy should be communicated to customers, clients or third parties

who propose a discriminatory practice. San Francisco employers and City contractors must post the Human Rights Commission's anti-discrimination notice in a location visible to all employees.

B. CONTINUING EDUCATION AND DIVERSITY TRAINING

The Human Rights Commission recommends that agencies, business establishments, and organizations require all staff including managers to receive continuing education in weight and height related discrimination issues. The Commission further recommends that weight and height be included in comprehensive diversity training programs.

C. SUPERVISION

An individual, employer, agency, landlord, or business establishment must prevent the use of disrespectful language or behavior related to weight or height by its staff, including managers, or by customers and clients at their place of business or while under their control. The person in charge must take corrective action to assure compliance such as telling the person making an offensive remark that the behavior is not allowed.

IV. SERVICES AND ACCOMMODATIONS

A. EQUITABLE ACCOMMODATIONS

Agencies, business establishments and organizations will provide appropriate and equitable accommodations, so all people, regardless of their weight or height, may share in the equal enjoyment of goods, services, facilities, privileges, and advantages of any place of public accommodation. In the event there is a surcharge to cover the cost of accommodation, this increase may be applied across the board but may not be passed on solely to the person or class of persons being accommodated. The following examples are meant to be illustrative, not exhaustive.

Example 1: Fixed seats are often too small for large or tall people. Businesses, such as theaters, with fixed seating will provide an adequate amount of seating without arms and with extra leg room. There must be an adequate supply of seats with various lines of sight and choices of admission prices.

Example 2: Swimming pools shall provide steps, handrails, or other appropriate entry and exit architecture to accommodate swimmers of all sizes.

Example 3: Hair salons, medical offices, and other organizations or establishments that provide dressing gowns or uniforms, will provide gowns or uniforms that fit. One size does not fit all.

B. ACCESS AND EQUAL TREATMENT

Agencies, business establishments and organizations will not obstruct access or deny participation in any service, facility, privilege, advantage, accommodation, or opportunity to individuals based on their weight or height, including but not limited to social services, health services, educational and training

services, recreation services and programs. (Exceptions may apply only upon a showing of a bona fide need.)

Example: Medical providers shall have an adequate supply of large blood pressure cuffs and shall provide access to scales that accommodate a wide range of weights.

Medical providers must not deny treatment based on a person's weight or height. Further, medical providers must not make weight loss or weight gain related intervention a condition for treatment. People are often discouraged from seeking medical care because providers lecture them about weight loss rather than treating the condition they came in for. Medical providers may feel obligated to provide weight loss or gain information based on a belief that the information is medically necessary. At the same time, patients have the right to express disinterest in receiving that information and have the right to refuse treatment. The Commission urges medical providers to honor that choice.

C. REASONABLE ACCOMMODATION

A public accommodation shall make reasonable modifications in policies, practices and procedures when the modifications are necessary to avoid discrimination unless the organization can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity. A modification is reasonable unless it constitutes an undue burden defined as a significant difficulty or expense on the organization, taking into account the organization's resources.

V. EMPLOYMENT

A. NON-DISCRIMINATION

Employers may not discriminate against any individual because of their weight or height in any aspect of employment, including but not limited to recruitment, selection, hiring, wages, uniforms, hours and conditions of employment, promotion, training, development, or benefits.

It is not an automatic defense to a charge of weight based employment discrimination that a person of the same weight was hired. For example, it is impermissible to reject a candidate because she carries her weight around her abdomen, in favor of a candidate of the same weight and height who is differently proportioned.

An employer may not exclude a person from a "front office" position or any other position because the employer believes the employee's weight is not in keeping with a professional appearance. The wishes, tastes or preferences of other employees or customers may not be asserted to justify discrimination.

B. HOSTILE ENVIRONMENT AND HARASSMENT

Employers must strive to maintain a respectful, non-hostile environment related to weight and height. Verbal or written harassment against an employee based on weight or height is prohibited. Unsolicited comments, advice, or literature recommending weight loss or gain are inappropriate. For example, a poster that proclaims "No Fat Cops" and encourages officers to seek help from the department about losing weight is inappropriate. However, it is appropriate to advocate increased health and fitness for

people of all sizes. An employee must never be subjected to comments regarding weight or height once the employee has stated that such comments are unwelcome. An employee may not be retaliated against for expressing that preference or for insisting on the right to be free from weight and height-based discrimination and harassment.

C. STANDARDS

Employment decisions must be based on merit or fitness for the position. Weight or height standards may not be used unless weight or height is a bona fide occupational qualification. Weight may not be used as a measure of health, fitness, endurance, flexibility, strength, character or self-control. Individuals of all sizes must be provided an equal opportunity to demonstrate their knowledge and ability. The employer advocating the use of a weight or height standard bears the burden of proving the standard is a bona fide occupational qualification.

D. PHYSICAL WORKPLACE

Employers must undertake readily achievable modifications in the workplace including, but not limited to, accessible furnishings, workplace layout, and equipment. The employer shall give consideration to an employee seeking accommodation based on weight or height, unless the employer can demonstrate that another effective means exists or that the individual's expressed choice is not required. Employers shall ensure that common areas such as employee lounges, cafeterias, health units and exercise facilities are accessible to people of all sizes.

VI. HOUSING

A. NON-DISCRIMINATION

Homebuyers, rental applicants, tenants, and those utilizing housing-related services must not be discriminated against based on weight or height.

B. ACCOMMODATIONS AND ALTERATIONS

If a tenant needs and requests an accommodation because of weight or height, it must be made if it is readily achievable. Some examples of alterations that are usually readily achievable include: installing offset hinges to widen doorways, rearranging furnishings, lowering mirrors or replacing shower doors with shower curtains. The need or potential need to make an accommodation may not be considered as a factor in the decision to select a tenant.

A landlord shall not unreasonably withhold approval of alterations necessary to meet a tenant's needs related to weight and height.

For further assistance please call the Human Rights Commission at (415) 252-2500 (main number) or (415) 252-2550 (TTY/TTD).