

Creating Inclusive Spaces at Membership-Based Clubs in Compliance with the NYC Human Rights Law

The NYC Human Rights Law prohibits discrimination in employment, housing, and public spaces on the basis of gender, race, disability, sexual orientation, national origin, and many other protected categories. Most membership-based clubs in New York City must comply with the NYC Human Rights Law as both a public accommodation and employer, and cannot exclude people from membership or employment based on their identity in a protected category.

If a membership-based club has less than 400 members, *and* does not provide regular meal service, *and* does not regularly receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from or on behalf of non-members for the furtherance of trade or business, then it is “distinctly private,” pursuant to N.Y.C. Admin. Code § 8-102, and therefore not a public accommodation under the NYC Human Rights Law.

Membership

Membership-based clubs can select members based on demonstrated interests, experiences, or a commitment to particular sets of values. For example, a club can determine that, in order to be a member, applicants must demonstrate interest in promoting authors of the African diaspora, or have experience building community garden spaces. Membership-based clubs can center their activities and programming around certain lived experiences, including, for example, a club that is committed to uplifting the voices of Black New Yorkers or a professional networking group that focuses on the advancement of LGBTQ entrepreneurs, so long as membership is not limited by protected category.

Membership-based clubs cannot, however, premise eligibility for membership on applicants’ race, gender, age, national origin, or other protected category. Clubs cannot exclude individuals from membership because they are not, or are perceived not to be, belonging to a particular protected category.

For example, a membership-based club may focus on improving the experiences of women in the legal profession. The club can require that applicants demonstrate an interest in improving the experiences of women in the legal profession either through one’s personal experience as a woman in the legal profession or other activities that demonstrate one’s interest in improving the experiences of women in the legal profession, such as hosting diversity and inclusion events at one’s law firm. The club cannot condition membership on being a woman. If a person who does not identify as a woman applies, the club cannot reject them for not being a woman. The club can reject anyone, both women and those who do not identify as women, if they are unable to demonstrate a commitment to improving the experiences of women in the legal profession.

Employment

Membership-based clubs are not exempt from the employment provisions of the NYC Human Rights Law. That means membership-based clubs cannot hire employees because they belong to a protected group or exclude individuals from employment because they belong or are perceived to belong to a particular protected group.