

Eye On Compliance: ADA Accommodations For Obesity

By **Lauren Stadler** (November 1, 2024)

This article is part of a monthly column that provides guidance on employers' top compliance concerns. In this installment, we discuss open questions concerning the classification of obesity as a disability under the Americans with Disabilities Act.



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In recent years, the rise of GLP-1 weight loss drugs — including those under registered trademarks such as Ozempic, Wegovy, Mounjaro and Trulicity, among others — has revived public pressure to classify obesity as a disability under the Americans with Disabilities Act. Accordingly, many employers are navigating the question of whether obesity is a disability under the ADA and, if so, whether they need to accommodate an employee who requests a workplace accommodation on the basis of their obesity.

As a reminder, "disability" is defined under the ADA in three ways: (1) "a physical or mental impairment that substantially limits one or more ... major life activities," (2) "being regarded as having such an impairment," and (3) having a record of such an impairment.

The question, then, is whether obesity is an "impairment."

Unfortunately, there is no definitive answer. While the U.S. Equal Employment Opportunity Commission considers obesity to be a disability only if it is caused by an underlying physiological health condition, such as Cushing's syndrome or diabetes, there is a trend in lower courts — i.e., federal district and state courts — to deviate from the EEOC guidelines.

Federal Circuit Court Opinions

A slim majority of federal courts — including the U.S. Courts of Appeals for the First, Second, Third, Sixth, Seventh, Eighth and Eleventh Circuits — have ruled on this issue and have followed the EEOC's guidelines. These courts have held that obesity is not a physical impairment under the ADA unless it is caused by, or is a symptom of, an actual or perceived underlying physiological disorder.

For example, in *Richardson v. Chicago Transit Authority*, a bus driver with "extreme" obesity sued the CTA after the authority terminated his employment for exceeding the weight requirement for safe operation of a city bus. The plaintiff did not present any evidence that his obesity was the result of an underlying physiological condition.

In 2019, the U.S. Court of Appeals for the Seventh Circuit ultimately rejected the plaintiff's argument that his obesity was, in and of itself, a disability, reasoning that such a decision would result in a "nonrealistic result" and an extreme tax on the judicial system, given that around 40% of Americans are considered obese.

No other circuit courts have addressed the issue, but it appears likely there soon may be a split among the circuits because various federal district courts and state courts seem willing to reject the EEOC's guidelines.

For now, the federal circuit courts appear to be relying in part on the EEOC's interpretive guidance on Title I of the ADA, which governs employment. The EEOC's guidance provides:

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments. The definition of the term 'impairment' does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight, or muscle tone that are within 'normal' range and are not the result of a physiological disorder.[1]

In other words, the EEOC's guidance appears to suggest that weight is an "impairment" under the ADA only if it (1) falls outside the "normal" range, and (2) is a result of an underlying physiological disorder.

Potential for Change

While no circuit courts have rendered decisions inconsistent with EEOC guidelines, several federal district courts, including those in Mississippi, Louisiana and Washington, D.C., and several state courts in California, Florida, Montana, New Jersey, New York, Oregon and Washington, have deemed obesity to be a qualifying impairment in and of itself.

Employers must remain aware that their state and municipal laws could provide broader definitions of qualifying conditions than those provided by the ADA. Several states and localities have passed laws prohibiting discrimination on the basis of height and weight — including cities in New York, California and Wisconsin, as well as the state of Michigan. Michigan proscribes "any weight-based discrimination," as opposed to discrimination on the basis of obesity.

In addition to potential claims raised under state and local laws, obesity-related claims could be raised under the ADA if the employee can come forward with a viable claim that their employer perceived them as disabled due to their obesity and discriminated against them as a result. Such a claim might be premised upon a job qualification, which excludes obese individuals without an identifiable legitimate business need, or upon a discrete employment decision, such as a failure-to-hire or failure-to-promote claim.

Takeaways

Given the evolving state of the law regarding classification of obesity as a disability under the ADA, it is always prudent to regularly review policies, practices, and employee manuals relating to equal employment opportunities and reasonable accommodations.

Care should be given to ensure compliance with federal as well as state and local laws, which may include height and weight protections, and job descriptions should be reviewed regularly to ensure all required qualifications are legitimate and appropriate for the positions, and do not perpetuate biases or stigma against employees managing obesity or other protected classes.

As always, in all jurisdictions, it is important to document, review and respond to all requests for reasonable accommodation in a timely manner.

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[1] 29 C.F.R. Pt. 1630, App. at 1630.2(h).