

Obesity, By Itself, is not an Impairment Under the ADA

An issue that has generated a lot of discussion over the years and which has led to differing opinions by courts, medical experts, disability advocates, and government agencies has finally gained some clarity – at least for now.

The Seventh Circuit Court of Appeals (which covers Wisconsin) has ruled that extreme obesity not caused by an underlying physiological disorder or condition does not qualify as an impairment under the Americans with Disabilities Act (ADA). *Richardson v. Chicago Transit Authority*, (7th Cir. June 12, 2019). The Court held that proof that extreme obesity was caused by an underlying physiological disorder or condition was necessary for an employee to bring a claim under the ADA. The Court also held that the employer did not perceive the employee (a bus driver) to be disabled when it did not return him to driving work due to safety concerns.

DRIVER REMOVED FROM SERVICE DUE TO SAFETY CONCERNS

After a lengthy medical leave, Mark Richardson, a driver for the Chicago Transit Authority (CTA), was sent for a “special assessment” to see if he could safely operate a bus. Since he weighed well over 400 pounds, and the bus seats were not designed to accommodate drivers that weigh over 400 pounds, the CTA safety department performed a special assessment to determine whether Richardson could perform all standard operating procedures on six types of CTA buses. Richardson did not pass the special assessment due only to his size and was transferred back to a temporary assignment. He was later terminated when he failed to provide medical documentation after being on inactive status for two years.

Richardson filed an ADA lawsuit alleging the CTA violated the ADA by not returning him to work due to his obesity. The lower federal court dismissed the case, and Richardson filed an appeal.

EXTREME OBESITY NOT TYPICALLY COVERED BY THE ADA

After reviewing the necessary elements for an ADA claim, the Court of Appeals framed the issue as whether Richardson “can demonstrate either: (1) his extreme obesity is an actual impairment; or (2) CTA perceived his extreme obesity to be an impairment.” Noting that the ADA does not define the term “impairment,” the court turned to the Equal Employment Opportunity Commission’s (EEOC’s) definition of “impairment” set forth in its regulations implementing the ADA. The Court held that, “without evidence that Richardson’s extreme obesity was caused by a physiological disorder or condition, his obesity is not a physical impairment under the plain language of the EEOC regulation.” The Court rejected Richardson’s argument that extreme obesity should be deemed an impairment without proof of an underlying physiological disorder or condition in light of the 2008 amendments to the ADA. Those revisions called for a more expansive interpretation of the term disability, including the “regarded as” prong.

The Court noted, however, that Congress did not instruct the EEOC to change its definition of “actual

impairment” when it enacted the 2008 amendments to the ADA, and that the legislative history affirmed its continued use. The Court also examined the EEOC’s interpretative guidance (of the ADA and its regulations) and found it supported a finding that evidence of an underlying physiological disorder was required, thus rejecting Richardson’s argument that the presence of extreme obesity alone was sufficient.

Finally, the Court rejected the argument that extreme obesity standing alone should be deemed an ADA-covered impairment simply because the medical community and federal and state policymakers consider obesity to be a disease. On this point, the Court stated, “the ADA is an antidiscrimination — not a public health — statute, and Congress’s desires as it relates to the ADA do not necessarily align with those of the medical community.”

It is possible the Supreme Court may address this issue, or that there may be further efforts to amend the ADA. The American Medical Association designated “obesity” a disability in 2013, and the rate of obesity continues to increase. Some commentators argue this decision is inconsistent with the meaning and purpose of the ADA.

TAKEAWAYS FOR EMPLOYERS

This decision makes it harder for plaintiffs in ADA cases who claim that extreme obesity is a covered disability. In such cases, plaintiffs must offer proof that their extreme obesity is the result of an underlying physiological disorder or condition to constitute a physical impairment under the ADA.

Wisconsin courts have not specifically addressed this issue under the Wisconsin Fair Employment Act (WFEA), which also protects employees with certain disabilities, so it is unknown exactly how that issue may be decided under state law. However, the Labor Industry Review Commission, the administrative agency charged with reviewing complaints under Wisconsin’s anti-discrimination laws, has ruled that where there is no indication of a glandular disorder or other physiological disorder and the employee’s weight is “totally under [his/her] control” an employee does not have a disability under state law. Courts in other states have split as to whether obesity is protected under their state law, but the majority of federal courts who have addressed this issue under the ADA have decided it is not protected under federal law.

However, an employee who presents with extreme obesity may still have an ADA-covered disability either because the obesity is a symptom of a covered disability or because the obesity has led to a covered disability (such as diabetes). Therefore, you must be prepared to offer reasonable accommodations to such employees when necessary, absent undue hardship.

If you have questions about the best way to handle the reasonable accommodation process in cases of obesity or other possible ADA conditions, contact legal counsel.

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