



KD Alert: Are Obesity-Related Disability Claims the Next Weighty Issue Facing Employers?

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If the outcomes of three recent federal cases are any indication, the answer is yes. The original Americans with Disability Act ("ADA") provided protection to individuals who were morbidly obese, where the obesity was the result of a physiological condition or disorder and the obesity substantially limits one or more major life activities. In 2008 the ADA was amended to expand the definition of disability. Now, employees no longer have to demonstrate their obesity is caused by a physiological disorder; the fact that an individual is classified as obese – not just morbidly or severely obese – based on their weight, and that their weight impacts a major life activity such as walking or breathing, is sufficient to categorize an employee as disabled.

The Cases.

In EEOC v. Resources for Human Development, the U.S. Equal Employment Opportunity Commission ("EEOC") filed a claim against a treatment facility on behalf of a 500-pound woman. Plaintiff was allegedly terminated because her employer felt she could no longer perform the "essential functions" of her job. The court twice rejected Defendant's argument that Plaintiff was not a "disabled" individual under the ADA because Plaintiff failed to establish her weight was due to a physiological condition. Ultimately, it held severe obesity is a disability under the ADA regardless whether it is caused by a physiological disorder. The employer ultimately settled the case for \$125,000.00.

In EEOC v. BAE System, the Agency sued on behalf of a 600-lb forklift operator who was fired because of his morbid obesity. Plaintiff sat at a desk 90% of the time and actually operated a forklift only 10% of the time. According to Company regulations, employees operating the forklift were required to wear seat-belts for safety. Two weeks after he requested a seat-belt extender he was fired on the ground that he could not perform the essential job functions of his position. The Company subsequently resolved the case by agreeing to pay Plaintiff \$55,000.00; six (6) months of outplacement services and training its managers and human resource personnel on discrimination laws and compliance.

Finally, in Feit v. BNSF Railway, Plaintiff filed a complaint against BNSF after it offered him a job as a train conductor but conditioned his employment on successful completion of a physical examination. After the examination, BNSF notified Plaintiff that it could not hire him due to risks associated with his extreme obesity. Plaintiff filed an administrative complaint with the Montana Department of Labor and Industry. The Department hearing officer ruled in Plaintiff's favor finding, BNSF discriminated against him because it perceived him to be disabled. Plaintiff was awarded damages for lost wages and benefits, interest and emotional distress. Following appeals by BNSF, the Montana Supreme Court upheld the hearing officer's determination.

The Impact.

Recent statistics reveal that more than two-thirds of U.S. adults are considered overweight and one-third are classified as obese, i.e., an individual whose body weight is 50% to 100 % higher than "normal." By 2030, it is anticipated that as many as 50% of the adult population may be classified as obese. Those adults are becoming litigants. Since 2008, the number of disability bias claims filed has steadily increased. The EEOC has confirmed that claims alleging disability discrimination are steadily increasing. Indeed, the EEOC notes that its ADA enforcement initiatives "produced the highest increase in monetary relief among all statutes" that the Agency enforces. The financial relief obtained by the EEOC increased in 2011 by 35.9% to \$103.4 million, compared to \$76.1 million in 2010.

Best Practices.

With rapidly rising obesity rates, recent federal attention to these claims, and the amendments to the ADA (which make it easier for plaintiffs to establish they are "disabled") employers must be prepared to efficiently deal with more obesity related claims, as well as more employees requesting work accommodations due to physical limitations caused by their expanding waistlines. Employers should examine accommodation requests on a case-by-case basis and be careful not to make assumptions about what "essential functions" an

employee can or cannot perform based on the employee's weight. If an employer must implement weight restrictions, it is critical that the restriction is directly related to the essential functions of the job, and required to ensure that employees can safely perform their jobs without endangering themselves or others. Employers should also consult experienced employment counsel to ensure their actions comply with the law.

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