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Jennifer Staman

Congressional Research Service

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Obesity Discrimination and the Americans with Disabilities Act

Abstract

[Excerpt] The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection for individuals with disabilities. However, to be covered under the statute, an individual must first meet the definition of an individual with a disability. Questions have been raised as to whether and to what extent obesity is a disability under the ADA and whether the ADA protects obese individuals from discrimination. This report provides background regarding how obesity is covered under the ADA and its supporting regulations. It also discusses some of the ways in which courts have applied the ADA to obesity discrimination claims.

Keywords

ADA, protection, disabilities, obesity, discrimination, court

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Comments

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CRS Report for Congress

Obesity Discrimination and the Americans with Disabilities Act

Jennifer Staman
Legislative Attorney
American Law Division

Summary

The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection for individuals with disabilities. However, to be covered under the statute, an individual must first meet the definition of an individual with a disability. Questions have been raised as to whether and to what extent obesity is a disability under the ADA and whether the ADA protects obese individuals from discrimination. This report provides background regarding how obesity is covered under the ADA and its supporting regulations. It also discusses some of the ways in which courts have applied the ADA to obesity discrimination claims.

Background

Obesity is a condition that has been deemed an epidemic in the United States.¹ Results of a survey by the National Center for Health Statistics found that in the years 2003 to 2004, an estimated 66% of U.S. adults were either overweight or obese.² The American Obesity Association estimates that approximately 127 million adults in the

¹ See *Foreword From the Surgeon General, 2001 Report on Overweight and Obesity*, U.S. Department of Health and Human Services. Obesity is often measured using a body mass index (BMI), which is a number calculated using an individual's height and weight. A BMI of over 30 is considered obese. For information on calculating BMI, see Centers for Disease Control and Prevention, BMI — Body Mass Index: About BMI for Adults, at [http://www.cdc.gov/nccdphp/dnpa/bmi/adult_BMI/about_adult_BMI.htm#Definition].

² National Center for Health Statistics, *Prevalence of Overweight and Obesity Among Adults: United States, 2003-2004*, at [http://www.cdc.gov/nchs/products/pubs/pubd/hestats/obese03_04/overwght_adult_03.htm].

United States are overweight, 60 million obese, and 9 million severely obese.³ It has been argued that obese individuals have been the targets of discrimination.⁴

There is no federal law that specifically prohibits obesity discrimination. However, some obese individuals have argued that their weight can be considered a disability for purposes of the Americans with Disabilities Act (ADA) or the Rehabilitation Act of 1973 and, therefore, they have legal protection against weight discrimination.⁵ Courts have evaluated numerous claims of obesity discrimination brought under the ADA and the Rehabilitation Act.

The ADA and Related Guidance on Obesity

Congress enacted the ADA in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.⁶ The ADA prohibits discrimination based on disability in the areas of employment, public services, public accommodations, and services operated by private entities, transportation, and telecommunications.⁷ In order to prevail in a discrimination case, the plaintiff must prove, among other things, that he or she has a disability within the meaning of the ADA. The ADA defines “disability” with respect to an individual as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual [such as walking, or working]; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”⁸ The Equal Employment Opportunity Commission (EEOC) has promulgated ADA regulations that give insight as to what constitutes an impairment within the meaning of the term “disability,” as well as what is considered to be “substantially limit[ing] a major life activity.”⁹ The ADA regulations have been used by the courts in determining the validity of obesity discrimination claims.

³ American Obesity Association, Fact Sheet, at [http://www.obesity.org/subs/fastfacts/obesity_US.shtml].

⁴ For additional discussion of the obesity discrimination issue, *see, e.g.*, SONDRÁ SOLOVAY, *TIPPING THE SCALES OF JUSTICE* 134 (2000).

⁵ State and local disability laws have also afforded some legal protection for overweight workers. *See, e.g.*, Michigan’s Elliott-Larsen Civil Rights Act of 1977, Act 162, Public Acts of 1977. Title VII of the Civil Rights Act of 1964 is another avenue that plaintiffs have pursued for bringing obesity discrimination claims. *See generally*, Kate Sablosky, Article: *Probative “Weight”: Rethinking Evidentiary Standards in Title VII Sex Discrimination Cases*, 30 N.Y.U. Rev. L. & Soc. Change 325 (2006). This report does not address Title VII claims.

⁶ 42 U.S.C. § 12101(b)(1).

⁷ Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213. For a more in-depth discussion of the ADA, *see* CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

⁸ 42 U.S.C. §§12101 et seq. The meaning of “physical impairment” is defined in the ADA regulations, as “any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory ..., cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.” 29 C.F.R. § 1630.2(h)(1).

⁹ *See* 29 C.F.R. §§1630 et seq.

Obesity discrimination cases have also been brought under the Rehabilitation Act of 1973.¹⁰ Section 504 of the Rehabilitation Act states that “no otherwise qualified individual ... shall, solely by reason of her or his disability, ... be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹¹ Courts have often applied the same standard when deciding cases arising under the ADA or section 504 of the Rehabilitation Act.¹² Also, the standards for determining employment discrimination under the Rehabilitation Act are identical to those used in title I of the ADA.¹³

The ADA regulations address whether obesity can be an impairment that qualifies as a disability under the ADA. In general, the regulations suggest that the ADA offers limited protection to obese individuals. The ADA regulations state that

temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints [and] concussions.... *Similarly, except in rare circumstances, obesity is not considered a disabling impairment.*¹⁴

The EEOC has expounded on how obesity is to be covered under the ADA. In its ADA compliance manual, the EEOC states that

being overweight, in and of itself, generally is not an impairment. On the other hand, severe obesity, which has been defined as body weight more than 100% over the norm is clearly an impairment. In addition, a person with obesity may have an underlying or resultant physiological disorder, such as hypertension or a thyroid disorder. A physiological disorder is an impairment.¹⁵

Based on the ADA regulations and EEOC guidance, it may be difficult for an obese plaintiff to successfully bring a discrimination claim.¹⁶ Still, courts have found some plaintiffs entitled to protection under the ADA.

Selected Obesity Discrimination Decisions

Both state and federal courts have considered whether the ADA or section 504 applies to obesity and have used varying (and sometimes conflicting) lines of reasoning and conclusions. Courts have disagreed on issues such as (1) whether a plaintiff must

¹⁰ See, e.g., *Cook v. Rhode Island, Dept. of Mental Health, Retardation and Hospitals*, 10 F.3d 17 (1st Cir. 1993).

¹¹ 29 U.S.C. § 794(a).

¹² See *E.E.O.C. v. Texas Bus Lines*, 923 F.Supp. 965, 975 (S.D. Tex., 1996).

¹³ 29 U.S.C. § 794(d).

¹⁴ 29 C.F.R. 1630 App. (2006)(emphasis added).

¹⁵ See Equal Employment Opportunity Commission Compliance Manual (1995), at [<http://www.eeoc.gov/policy/compliance.html>].

¹⁶ See, e.g., *Smaw v. Commonwealth of Virginia*, 862 F. Supp. 1469, 1475 (E.D. Va. 1994) (“... the regulations ... point unrelentingly to the conclusion that a claim based on obesity is not likely to succeed under the ADA.”).

have a physiological disorder in order for the plaintiff's morbid obesity to be covered under the ADA¹⁷ and (2) whether a plaintiff's obesity can cause a "substantial limitation of a major life activity."¹⁸ The following cases include some of the different arguments that courts have used in finding that a plaintiff is eligible (or non-eligible) for ADA or section 504 protection.¹⁹

Cook v. Rhode Island Department of Mental Health, Retardation, and Hospitals. One of the first appellate decisions to address weight discrimination as a disability was *Cook*, which established that an obese plaintiff can be considered disabled.²⁰ In *Cook*, the plaintiff applied for a position she had previously held as an institutional attendant. At the time Cook applied, she was five feet two inches tall and weighed 320 pounds. The institution refused to rehire Cook, claiming that Cook's weight compromised her ability to evacuate patients in an emergency situation and increased her chances of developing ailments that could lead to Cook to be out of work or claim workers' compensation.

Cook brought a claim under section 504 of the Rehabilitation Act of 1973, as well as certain state statutes, claiming that the failure to hire her was based on an unlawful perceived disability — although she was fully able to perform the job, the institution considered her physically impaired. The First Circuit Court of Appeals agreed with Cook. However, the court acknowledged that Cook could also prevail because she had an actual physical impairment.²¹ The court pointed to the fact that Cook had admitted that she was morbidly obese, and had presented expert testimony that morbid obesity is a physiological disorder, a dysfunction of the metabolic system. The institution argued that Cook's claims failed because her weight was a condition that was both "mutable" and "voluntary." The court rejected the institution's arguments and noted that nowhere in the Rehabilitation Act, nor in the regulations implementing the Act, was there a mention of either characteristic disqualifying a claim.

The court also discussed whether Cook's weight "substantially limited one or more [of Cook's] major life activities." The court pointed to evidence introduced by the institution demonstrating that Cook was not hired because the institution believed that her morbid obesity interfered with her ability to undertake physical activities such as walking,

¹⁷ See, e.g., *EEOC v. Watkins*, 463 F.3d 436 (6th Cir. 2006); *Connor v. McDonald's Restaurants*, 14 Am. Disabilities Cas. (BNA) 204 (D. Conn. 2003).

¹⁸ See, e.g., *Cook v. Rhode Island, Dept. of Mental Health, Retardation and Hospitals*, 10 F.3d 17 (1st Cir. 1993); *Ridge v. Cape Elizabeth School Department*, 77 F. Supp. 2d 149 (D. Me. 1999).

¹⁹ It should be noted that while the cases discussed in this report all alleged employment discrimination, covered under Title I of the ADA, courts may consider obesity discrimination cases under Titles II and III of ADA as well. See e.g., *Torcasio v. Murray*, 57 F.3d 1340 (4th Cir. 1995) (460-pound prison inmate brought suit against prison officials under Title II of the ADA and the Rehabilitation Act, claiming that the prison failed make modifications to its facility in order to accommodate his size).

²⁰ *Cook v. Rhode Island, Dept. of Mental Health, Retardation and Hospitals*, 10 F.3d 17 (1st Cir. 1993), *aff'g* 783 F. Supp. 1569 (D.R.I. 1992).

²¹ *Id.* at 11-12.

lifting, or bending. On this basis alone, the court stated, a jury could find that the institution perceived the plaintiff's impairment to interfere with a major life activity. In addition, the court explained that the plaintiff could be found substantially limited, without having to seek out other jobs that she was qualified to perform. The court stated that "denying an applicant ... a job that requires no unique physical skills, due solely to the perception that the applicant suffers from a physical limitations that would keep her from qualifying for a broad spectrum of jobs, can constitute treating an applicant as if her condition substantially limited a major life activity, viz., working."²² The First Circuit also concluded that there was no evidence that Cook could not perform the job, and it upheld the district court's decision for Cook.²³

Francis v. City of Meriden. The Second Circuit in *Francis* also examined claims of obesity discrimination under disability law.²⁴ In this case, the City of Meriden disciplined Francis, a firefighter employed by the city, after he failed to meet certain weight guidelines.²⁵ Francis claimed that this discipline was discrimination based on a perceived disability in violation of the ADA and the Rehabilitation Act. The court found that Francis' claims failed because Francis only alleged that the city disciplined him for not meeting a weight standard, not because he suffered from an impairment within the meaning of the disability statutes.

In its analysis, the court discussed the applicability of the ADA and the Rehabilitation Act to obesity. The Second Circuit stated that Francis's claim failed because "obesity, except in special cases where obesity relates to a physiological disorder, is not an impairment within the meaning of [the ADA or the Rehabilitation Act]." The court also pointed out, in dicta, that a cause of action may exist against an employer who discriminates against an employee based on the perception that the employee is morbidly obese.²⁶ Still, the court concluded that simply failing to meet weight guidelines was insufficient for ADA protection.²⁷

²² *Id.* at 26.

²³ *Id.* at 31. *See also EEOC v. Texas Bus Lines In Texas Bus Lines* in which the EEOC filed suit on behalf of Arazella Manuel, alleging that the bus company violated the ADA when it did not hire Manuel as bus driver because she was morbidly obese. During a required physical examination, the physician noticed that Manuel had difficulty getting out of her seat in the waiting area, and that she "waddled" to the examining room. Because of the results of the examination, the bus company did not hire her. The EEOC argued that the company wrongfully relied on the results of this examination in violation of the ADA. The court found that the company's reliance on the limited findings of the medical examination demonstrated that the company improperly regarded Manuel as having a substantially limiting impairment, and denied summary judgment to the bus company.

²⁴ *Francis v. City of Meriden*, 129 F.3d 281 (2nd Cir. 1997).

²⁵ *Francis*, 129 F.3d at 282-83. The facts of the case state that Francis' maximum acceptable weight for his job was 188 pounds, and Francis' weight fluctuated between 217 and 247 pounds.

²⁶ *See Connor v. McDonald's Restaurants*, 14 Am. Disabilities Cas. (BNA) 204 (D. Conn. 2003)(citing *Francis*, 129 F.3d at 286)(morbidly obese plaintiff did not have to have physiological disorder in order to state a claim under the ADA).

²⁷ A number of lower courts have found a plaintiff's obesity not covered under disability law. *See*, (continued...)

EEOC v. Watkins. In 2006, the Sixth Circuit took up the issue of obesity discrimination in *EEOC v. Watkins*.²⁸ In *Watkins*, the EEOC claimed that the defendant company violated the ADA when it discharged a morbidly obese employee after the employee sustained an injury on the job. The employee, whose weight fluctuated between 340 and 450 pounds during his employment, was injured during a routine job activity. The employee claimed he was unaware of any physiological or psychological cause for his heavy weight. After taking a leave of absence following his injury, the employee's personal doctor cleared him to work. However, a company doctor found that the employee weighed more than 400 pounds, had a limited range of motion, and shortness of breath after a few steps. The doctor determined that even though the employee met the Department of Transportation's standards for truck drivers, the employee could not safely perform the requirements of his job. The employee was terminated as a result.

The EEOC argued under a "regarded as" theory, claiming that although the employee had an actual impairment, the impairment was erroneously regarded as an inability to perform his job. In its analysis, however, the Sixth Circuit did not focus on how the company regarded the employee, but instead on whether morbid obesity qualified as an ADA impairment. The court cited the ADA regulations²⁹ stating that an impairment is defined in relevant part as "any physiological disorder or condition." The court interpreted this definition to require evidence of a physiological cause of morbid obesity in order for an impairment to exist under the ADA. Because the EEOC did not produce any evidence that the employee suffered from a physiological condition, the Sixth Circuit affirmed summary judgment for *Watkins*.

It is likely that courts will continue to look at obesity discrimination under the ADA. Based on the various ways in which courts have interpreted the Act and its supporting regulations, the outcome of these cases will remain an open question.

²⁷ (...continued)

e.g., *Ridge v. Cape Elizabeth School Department*, 77 F. Supp. 2d 149 (D. Me. 1999)(obese plaintiff's ADA claim failed because she did not demonstrate that defendant school department perceived her to have an impairment that substantially limited a major life activity); *Hazeldine v. Beverage Media*, 954 F. Supp. 697, 704 (S.D.N.Y. 1997)(obese plaintiff failed to present evidence that defendant regarded her as disabled, or substantially limited in her ability to work; plaintiff was not disabled because, among other things, she was able to engage in activities that allowed her to "carry on her daily life"); *Fredregill v. Nationwide Agribusiness Ins. Co.* 992 F. Supp. 1082 (S.D. Iowa 1997)(court stated that "[o]besity alone is generally not a disability").

²⁸ *EEOC v. Watkins*, 463 F.3d 436 (6th Cir. 2006).

²⁹ 29 C.F.R. § 1630.2(h)(1).