

OBESITY: NOT A DISABILITY IN ILLINOIS

The statistics are familiar to all of us. Adult obesity exceeds 35% in seven states, 30% in 29 states, and 25% in 48 [states](#). Understandably, some employees seek an accommodation under the ADA for their obesity because it affects their major life functions. This argument was recently rejected in the Seventh Circuit Court of Appeals in a case called [Richardson v. Chicago Transit Authority](#). The Seventh Circuit hears appeals of federal cases from Illinois, Indiana, and Wisconsin.

Richardson v. CTA (Illinois)

In *Richardson*, a bus driver for the Chicago Transit Authority took a lengthy leave of absence from his job due to uncontrolled hypertension and influenza. When the CTA learned that Richardson weighed over 400 pounds it conducted a special safety assessment. CTA bus seats are designed to hold a maximum of 400 pounds. The results of the assessment revealed that Richardson was unable to do hand-over-hand steering. Moreover, he kept his foot on both the brake and accelerator at the same time, and his leg pressed against the lever that opens the rear door. All of these driving irregularities were shown to be a result of the driver's obesity. They were also safety issues. The CTA placed Richardson on a temporary medical disability status.

After two years on medical disability status, Richardson was fired from his bus driving job. He sued under the ADA arguing that his obesity was a disability. The court rejected Richardson's argument and held that because Richardson had

not presented evidence that his obesity was caused by a physiological condition, it was not protected under the ADA.

The court noted that to interpret the ADA any other way would result in nearly 40% of the adult population in the U.S. being classified as “disabled” under the ADA.

Taylor v. Burlington Northern Railroad (Washington)

In [*Taylor v. Burlington Northern Railroad*](#), a job candidate sued a railway company for disability discrimination under that state’s anti-discrimination law, Washington Law Against Discrimination (WLAD). The applicant was given a conditional job offer contingent on a physical exam and medical history questionnaire. Results of the showed that the applicant had a body mass index (BMI) of 41.3. This is considered morbidly obese.

The railroad withdrew the job offer claiming that it did not hire anyone with a BMI over 35. It justified this policy on the grounds that extreme obesity posed significant health and safety risks. However, the company indicated that it would reconsider its decision if the job applicant would agree to pay for and participate in additional medical testing including a sleep study, blood work, and an exercise tolerance test. If the applicant did not wish to participate in the additional testing, the railroad offered to reconsider the job offer, provided the applicant lost 10% of his body weight and kept it off for at least six months. The applicant declined the company’s options.

The Washington Supreme Court determined that obesity qualifies as an impairment under WLAD because it is a disease and not a physical trait. It anchored its reasoning in

pronouncements made by the American Medical Association (AMA) in 2013.

What Should Illinois Employers Do?

As an initial matter, any obese applicant or employee seeking special treatment under the ADA should be asked for medical documentation substantiating their request. If the employee produces evidence that their obesity is caused by a physiological condition then they are covered by the ADA.

Employers should treat morbidly obese employees who do not provide medical documentation as occupying a “middle ground.” These employees should not be afforded the full panoply of protections under the ADA. But employers should try to accommodate these employees, if the accommodation is reasonable.

In the future, an Illinois state court, interpreting the Illinois’ Human Rights Act, may conclude that obesity is a protected category under the law. Moreover, given the ongoing skills shortage, and the prevalence of obesity, it makes sense to meet obese employees half way before concluding that they should be terminated or denied an accommodation altogether.

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