



How to Weigh in Obesity in Employment Decisions

Publication

9.03.12

Imagine you are the Hiring Manager for a distribution warehouse and have just begun interviewing applicants for a materials handler position. The first candidate enters the room, standing at a height of 5'4," weighing more than 500 pounds. You continue the interview and learn that his qualifications are quite notable, but you can't help but consider how his weight may possibly affect his work performance. You anticipate that his obesity might put him at a greater risk of developing serious illnesses that may lead to absenteeism. You also fear that accommodations may be required for him to use the fork lift and other machinery, and you worry he may pose a safety threat if he were unable to move quickly enough to evacuate in the event of an emergency.

Based on these considerations, you decide not to hire this candidate. Was this proper or did you put too much emphasis on his obesity and risk liability? This is the question many business employers have had to face in light of the American with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA"). Recent cases brought by the EEOC under the ADA and ADAAA may shed light on whether severe obesity is a protectable disability, but the question still remains: when is obesity "severe" enough to constitute an ADA-protected disability?

There is no federal law explicitly prohibiting obesity discrimination, and the ADA doesn't specifically address obesity. Hence, the employees that have brought claims under the ADA for obesity discrimination have had mixed results. Whether obesity is a disability under the ADA and what proof is required for an obese employee to win his case are issues that have generated controversy over the years. The ADA's basic definition of "disability" is an impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment.

The EEOC Interpretative Guidance specifically excludes from the definition of impairment physical characteristics such as weight that 1) is within the normal range and 2) is not the result of a physiological disorder. Nonetheless, courts have disagreed about when an employee must establish that his obesity is the result of an underlying physiological disorder.

Given the ambiguity and uncertainty that currently exist with regard to whether obesity can be an impairment without an underlying physiological disorder – because morbidly obese and even less-obese employees may be considered disabled under the law – employers should tread lightly when

making employment decisions based on an individual being overweight and should avoid making weight too big of an issue.

This article appeared in the September 2012 issue of *HR Professionals of Greater Memphis*.

Related People



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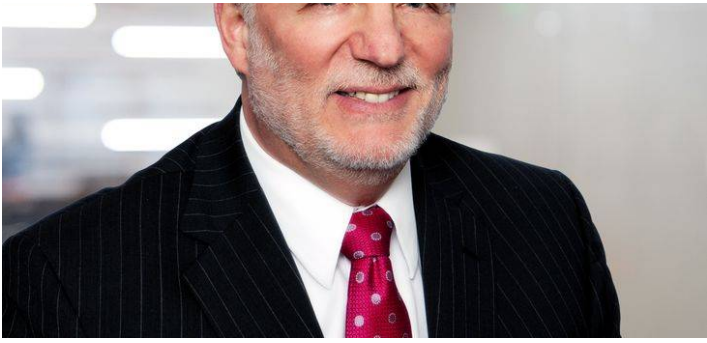
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