



Federal Appeals Court Says Extreme Obesity Alone Is Not Enough For ADA Coverage

Insights

6.17.19

A federal Court of Appeals just ruled that extreme obesity not caused by an underlying physiological disorder or condition does not qualify as an impairment under the ADA. Under the 7th Circuit's June 12 ruling, proof that extreme obesity was caused by an underlying physiological disorder or condition is necessary to implicate coverage under the Americans with Disabilities Act. What can employers take from the *Richardson v. Chicago Transit Authority* decision?

Safety Concerns Lead To Driver Being Removed From Service

Mark Richardson, a driver for the Chicago Transit Authority (CTA), worked as a full-time operator from 1999 until his termination in 2012. According to his Body Mass Index, Richardson met the definition of extreme obesity whenever he weighed over 315 pounds – and he weighed 566 pounds in May 2009.

Richardson was absent from work in February 2010 due to the flu. When he attempted to return to work, CTA's third-party medical provider found Richardson "had uncontrolled hypertension and influenza, weighed over 400 pounds, and could not return to work until he controlled his blood pressure." Richardson was transferred to "Temporary Medical Disability," a "budgetary assignment for eligible union employees found medically unfit to perform the essential functions of their job classification due to an illness or injury."

In September 2010, the medical provider cleared Richardson to return to work, but indicated that he had to be "cleared by safety prior to operating 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 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 and was transferred back to the 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 CTA violated the ADA by regarding him as "being too obese" and not returning him to work. The lower federal court dismissed the case, and Richardson filed an appeal with the 7th Circuit Court of Appeals.

Court: Extreme Obesity Not Typically Covered By The ADA

After reviewing the necessary elements for an ADA claim, the 7th Circuit 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 7th Circuit turned to the Equal Employment Opportunity Commission’s (EEOC’s) definition of “impairment” set forth in its regulations implementing the ADA. The EEOC regulations define “physical impairment” as:

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

The 7th Circuit noted that the issue of whether extreme obesity is a physical impairment without an underlying physiological disorder was a question of first impression in the Circuit, but that the 2nd, 6th, and 8th Circuits had answered the question in the negative – as had a majority of lower federal courts.

The 7th Circuit Court of Appeals 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.” In so holding, the 7th Circuit 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.

However, the 7th Circuit noted that Congress did not instruct the EEOC to change its definition of “actual impairment” in enacting the 2008 amendments, but that the legislative history affirmed its continued use. Moreover, the 7th Circuit 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 7th Circuit rejected the argument that extreme obesity standing alone should be deemed an ADA-covered impairment simply because the medical community and federal and state policy makers consider obesity to be a disease. On this point, the 7th Circuit stated, among other things, “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.”

What Does This Decision Mean For Employers?

The 7th Circuit Court of Appeal’s decision effectively increases the burden of proof for plaintiffs in ADA cases who claim that extreme obesity is a covered disability within its jurisdiction – the states of Illinois, Indiana and Wisconsin – although three other circuit courts of appeal have come to the same conclusion. 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.

However, since an employee who presents with extreme obesity may still have an ADA-covered disability (provided there is an underlying physiological cause), 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 your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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