Avoiding Discrimination Against Overweight Workers

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Recent statistics indicate that approximately 65 percent of people in the United States are overweight, and many of them have difficulty keeping off the excess pounds. This struggle with weight has carried over into the workplace, where overweight individuals encounter discrimination. Overweight individuals are subject to harassment about their weight by their employers in subtle, and sometimes not-so-subtle, ways: they are kept in jobs beneath their abilities, and they are often demoted or fired because of stated or unstated weight prejudice. Prospective employers refuse to hire overweight individuals, especially in jobs where employees do physical work or where employees interact with the public.

Although Title VII of the Civil Rights Act prohibits discrimination based on race, color, religion, sex, and national origin, it does not extend protection based on weight. Only a few cities and states include weight as a protected status under antidiscrimination laws. However, relatively recent weight-discrimination cases have set a precedent for considering obesity a disability or a “perceived” disability.

This article explores reasons for increased instances of weight discrimination, presents an overview of legal claims of weight discrimination, and provides some practical tips to avoiding weight discrimination in the workplace.

SOCIOCULTURAL PERCEPTIONS OF BODY WEIGHT ENTER THE WORKPLACE

Whether someone is classified as overweight is determined by a body mass index (BMI), a number that is calculated from a person’s weight and height to estimate body fat and associated health risks. The BMI categories are 18.5–24.9, normal weight; 25–29.9, overweight; 30–39.9, obesity; and greater than 40, morbid obesity. Currently, 64 percent of U.S. adults are classified as overweight or obese. However, a clinical measure of obesity is not the only designation necessary for employees to experience negative psychological effects of their weight status. These data demonstrate the vast number of people in the United States who may experience weight dissatisfaction or prejudicial treatment.

Sociocultural standards of body image suggest that being overweight is undesirable and unattractive, whereas being attractive is highly valued and associated with a number of positive qualities that spill over into the workplace, such as being more productive, intelligent, and successful. Because of the health risks associated with being overweight, obesity is often viewed as an economic burden, causing an increase in healthcare claims and absences from the job. At work, overweight workers are often labeled as unqualified and as exercising poor work habits.
According to a 2003 survey conducted by the Employment Law Alliance\(^4\) of over 600 workers, almost 50 percent of respondents believed that overweight employees are treated differently by their coworkers and are discriminated against on the job. This survey was one of the first to highlight U.S. workers’ perceptions of the overweight workforce. Significant findings of this nationally conducted survey include the following: 32 percent of the individuals surveyed believe that overweight workers are less likely to be respected and taken seriously on the job, 31 percent stated that overweight workers should be protected by the government against weight-related discrimination, 30 percent feel that overweight employees have a very slim chance of being hired or promoted, and 11 percent who include themselves in the overweight work population expressed that they have been the victim of weight-based discrimination in either former or current job settings.

**THE LEGAL FRAMEWORK PROHIBITING WEIGHT DISCRIMINATION**

The Americans with Disabilities Act (ADA) protects applicants and employees from discrimination based on a physical or mental impairment that falls within the Act’s definition of *disability*; that is, the impairment must substantially limit one or more major life activities and must be a legitimate medical condition or psychological in nature. Major life activities can include anything from caring for one’s self and performing daily tasks to walking, speaking, and breathing. Therefore, overweight employees cannot be considered disabled under the ADA unless their obesity substantially limits at least one major life activity.

Because of the negative perceptions that exist with regard to being overweight, obese people maintain that numerous employers assume overweight applicants cannot perform tasks and are unproductive despite their educational background and job qualifications. Therefore, an employer’s refusal to consider an overweight individual’s application for employment based solely on a perceived belief that the individual’s obesity will interfere with his or her ability to perform the job may be construed as discrimination under the ADA. An individual need not be morbidly obese (but simply overweight) to assert a claim that he or she was regarded as having some kind of physiological impairment that was perceived by the employer to be a hindrance in his or her ability to perform a job.

The Equal Employment Opportunity Commission (EEOC) has declared obesity a protected category under the ADA if the overweight worker can show that his or her obesity is the direct result of a physiological impairment. The EEOC has taken this position on weight-related discrimination in the workplace as a result of a broadening legal push by overweight individuals who want equality in the workplace. The EEOC has determined that although overweight individuals can diet and lose weight, if they have been overweight for a long period of time, they may qualify for federal protection.

A recent brief\(^5\) filed by the EEOC has asked that courts consider the length of time...
an overweight individual has been affected by the condition and the amount of difficulty that the individual would face in attempting to lose weight. Although the EEOC guidelines clearly allow morbid obesity to be a protected disability, future court cases and juries will have to reach their own conclusions on whether to adopt the EEOC’s interpretation.

WEIGHT-RELATED DISCRIMINATION CASES

Although, as mentioned previously, Title VII of the Civil Rights Act does not specifically extend its protection against discrimination based on weight, Title VII has been used by plaintiffs, such as Carole A. Gerdon, in disparate treatment cases, asserting that weight standards were applied differently to different employees. However, there have been numerous instances in which overweight workers were disciplined, denied promotions, terminated, or denied employment based on their weight, often resulting in widely publicized discrimination claims against their employers.

A review of weight-discrimination cases should begin with one of the most publicized court cases: Cook v. Rhode Island Department of Mental Health. In 1988, Bonnie Cook filed a lawsuit against the Rhode Island Department of Mental Health, Retardation, and Hospitals (MHRH) after not being rehired as an institutional attendant for the mentally retarded, a job she had successfully performed several years prior. Cook was 5'2" and 300 pounds when she was advised that because she was morbidly obese she would not be rehired for a position she had held several years prior. Although a nurse employed by MHRH found no limitations on Cook’s ability to do the job during a routine prehire physical, she was advised that she was morbidly obese by the hospital. MHRH claimed that Cook’s obesity compromised her ability to evacuate patients in case of an emergency and put her at greater risk of developing serious ailments. MHRH speculated that Cook’s condition would promote absenteeism and increase the likelihood of workers’ compensation claims. A jury determined that Cook had been illegally discriminated against and awarded Cook $100,000 in damages. The U.S. District Court upheld the jury’s award and ordered the state to give Cook the next available job and to award her seniority retroactive to the date of application.

Although Cook brought her action under the Rehabilitation Act (which preceded the ADA [1990] and doesn’t specifically include obesity as protected disability), the court’s decision in this case has broader implications because of the close relationship between the Rehabilitation Act and the ADA in defining disability. The Rehabilitation Act of 1973 is the federal legislation that authorizes grant programs for vocational rehabilitation, supported employment, and other programs for disabled individuals. It’s prohibition against discrimination of individuals with disabilities focuses on federal programs or federally funded programs, but its definition of a disability is similar to the definition under the ADA, which prohibits disability in the private sector as well.

The court in the Cook case based its analysis on the Rehabilitation Act’s regulatory framework
for a “perceived” disability, under which a person is regarded as having an impairment if he or she (1) has a physical impairment that does not substantially limit a major life activity but that is perceived by an employer as constituting such a limitation; (2) has a physical impairment that substantially limits major life activities only as the result of the attitudes of others toward such impairment; or (3) has none of the impairments but is treated as having such an impairment. (As mentioned previously, the ADA also protects the rights of individuals who are discriminated against because of “perceived” disabilities.)

The appellate court found that Cook had produced sufficient evidence for a jury to find that she had a physical impairment under (2) above (where an employer perceives an impairment to be substantially limiting). Also, the court noted that Cook admittedly suffered from morbid obesity. Expert testimony included in the trial asserted that morbid obesity is a physiological disorder involving a dysfunction of both the metabolic system and the neurological appetite-suppressing signal system, capable of causing adverse effects within the musculoskeletal, respiratory, and cardiovascular systems. Moreover, MHRH’s own decision maker, a doctor, stated that Cook’s condition foreclosed a broad range of employment options in the health-care industry. Although the decision in Cook’s case revolved around a “perceived-disability” standard, it warned employers at that time that morbid obesity might also constitute an “actual” physical impairment.

Nevertheless, the EEOC takes the position that obesity cases should be determined on a case-by-case basis. The EEOC suggests that whether an individual’s obesity is a covered disability turns on the duration of the condition and its long-term impact. In Cook, the EEOC argued that since morbid obesity is a rare, chronic condition that by definition exceeds the “normal” range, it is a disabling impairment if it has a significant long-term impact on a major life activity.

A more recent weight-discrimination case was the first one filed in San Francisco since the city passed a formal ban on weight discrimination in 2000. The case involved Jennifer Portnick, a 5’8”, 240-pound woman, who sought to work as an aerobics instructor at Jazzercise. The company turned her down, citing the company’s policy that instructors possess a fit appearance. Her case was brought before the San Francisco Human Rights Commission, which enforces the city’s ordinance that bars discrimination on the basis of height or weight. Portnick reached a settlement with the company, and Jazzercise said it would no longer require instructors to look trim.

Another instance of weight discrimination involved Steve Pasanski, who during his tenure at Continental Rental, Inc., was promoted to manager and was named manager of the year for the whole chain. When Continental informed Pasanski of a layoff, he was told not to return to work without a clean bill of health. The 360-pound Pasanski underwent a battery of tests with a doctor, and all came back within a healthy range; however, Continental terminated Pasanski. In 2005, a jury in the U.S. District Court in Michigan awarded Pasanski $284,000 in damages after he had been wrongfully discharged by Continental Rental, Inc.

In another case, Stephen Grindle, a driver and freight handler for Watkins Motor Lines, Inc., was at work one day climbing a ladder...
when a rung broke. He suffered a knee injury, which required his taking time off to recuperate. A doctor examined Grindle and concluded that Grindle could not safely perform the climbing and bending duties required to do the job, citing his weight of 405 pounds. Grindle was not allowed to return to work and was later terminated. He filed a complaint with the EEOC. However, the Sixth Circuit Court did not accept the EEOC’s claim that Grindle had an impairment.10

In 2007, Patrick J. Ronayne, a 5’11”, 225-pound salesman for Winston Golf and Winston Manufacturing in Michigan, filed a lawsuit in the Sixth Circuit Court when his employer terminated him with a statement that he was not a “flat belly.” He was replaced by a thinner person. A trial date is set for 2010.11

**STEPS TO AVOID WEIGHT DISCRIMINATION**

If employers ignore instances of weight discrimination in their workplaces, the effects on their organizations could be catastrophic. Employees who consider themselves victims of discrimination or harassment may have a higher incidence of absenteeism and turnover. They are likely to have lower morale and productivity. The psychological wear on them may lead to higher error and inefficiency rates and a possible increase in accident rates, resulting in a larger number of compensation claims, thus increasing costs to the organization. And although the results of legal actions against employers for weight discrimination have varied, claims made against employers for discriminatory employment practices could cost their companies a great deal—in related legal fees and settlements and negative publicity that could damage the reputation of the organization.

The increase in discrimination claims based on obesity should signal to employers and HR managers the importance of reexamining their workplace culture and policies to ensure that they avoid all forms of discrimination and make reasonable accommodations when necessary. The following basic steps can help to avoid all claims of discrimination:

1. **Modify your organization’s nondiscrimination policies to include obese and overweight employees.** Your organization must set clear standards and establish how significant violations can be. It is vital that these policies be in writing and distributed to all existing employees and new hires—especially managers and supervisors.

2. **Offer nondiscrimination training.** Distribution of nondiscrimination policies will not assure employees understand the policies. Training opportunities should be offered to all employees, and in the case of nondiscrimination policies, they should be required. Your organization should discuss the impact of stereotypes and biases, what is and is not discrimination, and the rights and responsibilities of supervisors, managers, and other employees. Weight-related issues should be included in anti-harrassment trainings and seminars.

3. **Keep accurate records.** Recruitment and selection of new employees should be based entirely on the skills and abilities needed to do the job. Concentrate on objective and quantifiable evaluation of skills and abilities and avoid perceptions of employees’ abilities to perform a job. Promotions should be based on the ability, or
demonstrated potential, to do the job. Performance evaluations should be conducted and documented regularly, and employees should be provided with appropriate feedback on performance. Downsizing decisions should be based on clearly communicated, objective, job-related criteria to ensure that the skills needed are retained.

4. **Investigate complaints.** Timely and thorough investigations will allow your organization to address allegations, will provide a prompt and decisive action, and will keep your workplace discrimination-free. It is crucial to keep all investigations confidential and limit involvement to those individuals with a “need to know.”

5. **Locate and utilize resources.** Draw on local, state, and federal agencies for help in presenting informational programs and conducting audits of your organization’s practices.

**NOTES**

7. Cook v. Rhode Island Department of Mental Health, 10 F.2d 17; 2 AD 1476 (1st Cir. 1993).

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