

# Weight Discrimination In The Workplace: Realities And Legalities

There's no denying that Americans are getting heavier and heavier. Statistics from the Centers for Disease Control show that, in 1996, no state had a prevalence of obesity equal to or great than 20%. Just 10 years later, only four states had a prevalence of obesity under 20%, while two states had a prevalence equal to or greater than 30%. Today, 34% of adults in the U.S. are considered obese, defined as having a body mass index (BMI) of 30 or higher.

Also on the rise: weight discrimination. A recent study from Yale University found that weight discrimination occurs in employment settings and daily interpersonal relationships as often as race discrimination — the top charge filed with the Equal Employment Opportunity Commission (EEOC) annually — and, in some cases, even more frequently than age or gender discrimination.

While no federal employment laws and only one state law (Michigan) specifically prohibit weight discrimination, obesity may fall under the Americans with Disabilities Act (ADA).

## Is Obesity A Disability?

Whether obesity is covered by the ADA depends on whom you ask, though it's generally agreed that merely being overweight or even obese doesn't entitle an employee to ADA protection.

The EEOC's position is that the ADA covers *morbid obesity* (defined as having a body weight more than 100% over the norm) and *obesity caused by a physiological disorder*.

Courts don't have to follow the EEOC's lead, however. Some have rejected the view that morbid obesity, in and of itself, is an ADA impairment. For example, the 6th Circuit Court of Appeals has ruled that "...to constitute an ADA impairment, a person's obesity, even morbid obesity, must be the result of a physiological condition." (EEOC v. Watkins Motor Lines, Inc., 6th Cir., No. 05-3218, 2006)

## Weight Discrimination Comes In All Shapes And Sizes

Whether or not obesity is a protected characteristic, discrimination claims may result under the following circumstances.

**The employee has a related health condition.** Health conditions related to weight, such as diabetes, heart disease, and hypertension, may be substantially limiting impairments that afford the employee ADA protection, regardless of the degree or cause of obesity.

**The employer acts on stereotypes and assumptions.** The ADA excludes individuals who pose a direct threat to the health or safety of themselves or others. You can't simply assume that, because an individual is obese or morbidly obese, a threat exists; you must establish through objective, medically supportable methods that there is indeed a significant risk that substantial harm could occur if the employee were to carry out the

essential functions of their job.

*Case in point:* A truck driver won \$109,000 in damages after his employer suspended him without pay based on the assumption that his morbid obesity made him unfit to drive a truck. (McDuffy v. Interstate Distributor Co., Multnomah Cty. Cir. Ct., No. 0409-09172, 2005)

**Men and women are held to different weight standards.** In 2000, the 9th Circuit held that an airline's weight-limit requirement that applied less favorably to female employees than male employees and that could not be justified as a *bona fide* occupational qualification was discriminatory on its face. Men were limited to maximum weights that corresponded to large body frames for men; women were limited to maximum weights that corresponded to medium body frames for women. The U.S. Supreme Court declined to review the decision. (Frank v. United Airlines, Inc., 9th Cir., No. 98-15638, 2000)

The Yale study found that overweight women are twice as likely to face discrimination than overweight men. Plus, the discrimination starts earlier in women's weight gain. According to the study, discrimination becomes a more serious risk for men when their BMI reaches 35; for women, at BMI 27.

## Bottom-Line Concerns

What about employers that wish to avoid discriminating against obese employees and job applicants, both legally and ethically, but are legitimately concerned about the rising costs associated with obesity in the workplace? According to a new report from The Conference Board, obese employees are costing U.S. employers approximately \$45 billion each year in medical expenses and lost productivity. Consider these non-discriminatory solutions:

- **Implement a weight reduction program.** According to The Conference Board report, more than 40% of U.S. companies have already implemented such a [wellness program](#), and an additional 24% plan to do so this year. *Tips:* Keep program participation voluntary and private, and involve employees in the planning.
- **Maintain a healthy workplace culture.** *Ideas:* Get vending machines stocked with bottled water and healthy snacks, instead of sodas and candy; offer annual health fairs with cardiovascular screenings; reach out to local health clubs to obtain employee discounts; sponsor a company softball team, as well as other activities that may attract employees of all fitness levels.