

Cutting the Fat: Can Employers Just Say 'No' to Obese Applicants?

In the past decade, two things have definitely grown: Americans' waistlines and the desire for U.S. employers to reduce their employee-related health care costs.

Those two trends have more employers considering a legally risky thought: Can we refuse to hire overweight people?

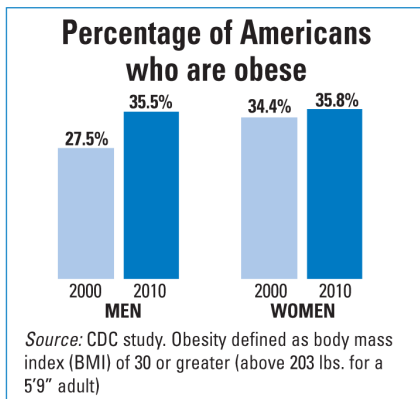
A Texas hospital made [headlines](#) when it decided to stop hiring people with a body mass index (BMI) of 35 or higher. Bad publicity led the hospital to suspend its policy.

Still, with nearly [36% of adults](#) in this country considered obese, according to the CDC, this issue isn't going away.

What does the ADA say?

No federal employment law, only one state (Michigan) and a handful of cities specifically prohibit employers from discriminating against overweight people in hiring, firing and job conditions.

That means the debate typically comes down to a question of whether obesity is a covered "disability" under the ADA. (The ADA protected disabled people from on-the-job discrimination.)



Simply being overweight or even obese doesn't typically entitle an employee to ADA protection. But the EEOC has said that the ADA does protect people who are *morbidly obese*. And the ADA Amendments Act of 2008 broadened the definition of "disabled."

Whether or not obesity is a protected ADA characteristic, overweight employees have brought successful ADA claims under the following arguments:

The employee has a related health condition. Weight-related conditions—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.

Plus, some ADA-recognized disabilities such as depression can trigger weight gain, as can certain medications that people take for ADA-covered conditions (diabetes, seizures, etc.).

The employer acts on stereotypes and assumptions. If you *perceive* employees or applicants to be disabled, they will earn ADA protection.

For example, a truck driver won \$109,000 in damages after his employer suspended him without pay based on the assumption that his obesity made him unfit to drive a truck. (*McDuffy v. Interstate Distributor*)

Men and women are held to different weight standards. A Yale study found that overweight women are twice as likely to face discrimination than overweight men. If you treat overweight women differently, you could face a sex bias lawsuit.

Here's the skinny

The legally safe bet is to ignore applicants' weight, unless it could prevent a candidate from performing the essential functions of the job. There's a good chance that the weight problem could be tied to a medical condition—or causing a medical condition—which would then cause that person to be protected under the ADA.

Instead, focus on positive actions your organization can take to improve employees' overall health. Two tips:

- **Implement a weight reduction program.** Keep program participation voluntary and private, and involve employees in the planning.
- **Maintain a healthy workplace culture.** *Ideas:* Stock vending machines with healthy snacks; offer annual health fairs with cardiovascular screenings; obtain discounts for staff to local health clubs; or other activities that attract employees of all fitness levels.