

# Is obesity a disability under ADA?

More than one-third of American adults—some 72 million people—are obese, according to the Centers for Disease Control and Prevention. But generally, obesity alone does not qualify as a disability under the ADA. A recent federal appellate court decision agrees with that premise.

**Recent case:** Mark became a full-time bus driver for the Chicago Transit Authority in 1999. His weight climbed from about 350 pounds in 2005 to over 560 pounds just four years later.

Under the CDC's guidelines on obesity, Mark reached the level for extreme obesity when he passed the 315-pound mark, based on his body mass index (a measure of obesity that factors a person's weight and height).

Mark came down with the flu and took leave from work. He had to undergo a medical exam before returning. The doctor determined that he should not return to bus driving until he got his blood pressure under control. Once his blood pressure stabilized, he was told to come back to his old job.

But by then he could not fit in the driver's seat, which could not support more than 400 pounds. He was eventually terminated.

Mark sued, alleging that the transit authority violated the ADA by regarding him as too obese to drive a bus.

The trial court dismissed the case because Mark could not point to an underlying physiological condition that caused his obesity.

He appealed, arguing obesity itself was a disability. However, the 7th Circuit Court of Appeals refused to reinstate his lawsuit. (*Richardson v. CTA*, 7th Cir., 2019)

**Final note:** Some workers are protected from obesity discrimination; more may soon be.

Michigan has banned obesity discrimination in employment since 1977. Weight discrimination is unlawful in San Francisco; Santa Fe, N.M.; and Washington, D.C. Massachusetts is currently considering a bill to confer protected status on obesity.

## Study: Age, obesity trigger rise in disability claims

A study of 10 years' worth of claims data by the Unum insurance group shows an alarming jump in the number of disability claims related to joint disorders and other musculoskeletal problems:

- Joint disorders caused a 30% spike in long-term disability claims and a 27% increase in short-term claims.
- Musculoskeletal disorders caused a 35% increase in long-term disability claims and a 20% increase in short-term claims.
- Musculoskeletal injuries such as carpal tunnel syndrome, tendonitis and herniated disks cost employers more than \$50 billion per year, according to the Centers for Disease Control.

Unum attributes the claims increases to aging baby boomers staying in the workforce longer and the fact that

30% of U.S. adults are classified as obese. Both age and obesity contribute to orthopedic wear and tear.

The Bureau of Labor Statistics estimates that by 2022, more than 30% of people ages 65-74 will still be working, up from 20% in 2002.

One positive trend emerged from Unum's study: Long-term disability claims for back disorders have fallen 14% in the last 10 years, although back problems remain the third-most-common reason for long-term disability claims.

## **ADA covers temporary disabilities, too**

The ADA was enacted 18 years ago, but it's still one of the most misunderstood employment laws. The hard part isn't necessarily determining how to accommodate disabled employees. It's figuring out which employees are disabled.

Some cases are obvious. A blind applicant or an employee who uses a wheelchair are probably clearly disabled under the ADA, meeting the definition of having an impairment that substantially limits a major life function like seeing or walking.

It's more difficult to identify disabilities that are transient or periodic in nature. Nevertheless, the EEOC—the federal agency responsible for enforcing the ADA—has made it clear that many conditions that are temporary or episodic are covered disabilities.

Cancer is one such disability. After treatment, cancer can go into remission and a patient may be considered "cured" once enough time has passed.

**Recent case:** The EEOC sued ChenMed, which operates medical centers for elderly patients, for violating the ADA when it fired an employee instead of accommodating his transient disability. A sales manager had just completed treatment for colon cancer. His cancer was apparently in remission when he was terminated.

The parties settled the case, the manager receiving \$200,000 in damages. The company also agreed to conduct disability discrimination training for all officers, managers, supervisors and employees.

An EEOC statement noted that the ADA "offers protection to employees during all states of a disability," adding that "employees who have cancer or have cancer in remission are covered by the ADA's prohibition on disability discrimination." (*EEOC v. ChenMed, et al.*, ED VA, 2019)

**Final note:** Other transient conditions that may be covered ADA disabilities include:

- Heart disease that is controlled with medication or surgery
- Diabetes that is successfully controlled with diet, exercise and blood-sugar monitoring
- Countless conditions that may not always limit a major life function, but could resurface or flare up.