

American Medical Association Recognizes Obesity As A Disease – A Windfall For The Plaintiffs' Bar?

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At the American Medical Association's annual meeting in June of this year, the AMA passed a resolution which defined obesity as a disease. Since then, commentators have worried that this decision could adversely affect employers by leading to an increase in lawsuits under the Americans with Disabilities Act (ADA) and Family Medical Leave Act (FMLA), or even lead to Workers' Compensation claims relating to obesity.

Following the AMA's decision, commentators have identified a new case filed in the United States District Court for the Eastern District of Missouri as the first ADA case involving obesity as a disability following the AMA's decision. In [Whittaker v. America's Car-Mart, Inc.](#), Joseph Whittaker claims that even though he could perform the essential functions of his job with or without accommodation, his employer improperly terminated him because of his "severe obesity." Whittaker's complaint does not mention the AMA's recent decision.

The *Whittaker* case illustrates the potential effect the AMA's decision could have upon ADA litigation. While the AMA's decision in no way changes the legal aspects of this claim, it does raise the public's consciousness regarding obesity, making the obese appear to be more sympathetic plaintiffs. Often plaintiff's attorneys, who frequently handle a large volume of cases, see these trends and become more aggressive in bringing claims which they always had the legal ability to bring, but not the interest to do so.

The bottom line for employers is that employees – and their potential attorneys – are more aware of the potential claims that could arise from obesity-related problems. In particular, employers should take care to use objective evidence to determine whether an employee can perform the essential functions of the job, rather than making assumptions based upon an employee's appearance. While the law in this area has not changed, interest from the plaintiffs' bar is on the rise.

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