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## Extreme Obesity Not Necessarily A Disability Under ADA, Says Seventh Circuit

June 20, 2019 | [Employee Health Issues, Labor And Employment](#)



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The U.S. Court of Appeals for the Seventh Circuit recently held that extreme obesity is not an actionable “impairment” under the Americans with Disabilities Act (ADA) unless caused by an underlying physiological disorder or condition. Interpreting the ADA otherwise, the court reasoned, would result in all obese individuals (nearly 40% of the American adult population) automatically having an impairment under the ADA. Though this was issue of first impression in the Seventh Circuit, the court ultimately agreed with the Second, Sixth, and [Eighth Circuits](#), which had previously ruled on the issue.

In [Richardson v. Chicago Transit Authority](#), the Seventh Circuit affirmed the district court’s summary judgment ruling in favor of the defendant employer. The plaintiff, a former bus operator, was prevented from returning to work after an absence because he had uncontrolled hypertension, influenza, and weighed over 400 pounds. After conducting a special safety assessment, the defendant concluded that the plaintiff could not operate a bus safely due to his weight and size. The defendant transferred the plaintiff to temporary medical disability status. After two years on this inactive status, the plaintiff failed to extend his time on temporary medical disability by submitting medical documentation. As a result, and per the defendant’s policy, the plaintiff was terminated. The plaintiff filed a Charge of Discrimination, and filed his ADA discrimination suit after the Equal Employment Opportunity Commission (EEOC) issued a Right to Sue letter.

At the close of discovery, the defendant moved for summary judgment on the

grounds that the plaintiff had not demonstrated that a physiological disorder or condition caused his obesity. The district court agreed, granting summary judgment for the defendant. The plaintiff appealed, and the Seventh Circuit affirmed.

Looking to the EEOC's regulations and interpretive guidance concerning the definition of "physical impairment," the court found that "obesity is an ADA impairment *only* if it is the result of an underlying 'physiological disorder or condition,'" rejecting the plaintiff's assertion that the 2008 amendments to the ADA required a broader reading. To hold otherwise, the court reasoned, would unduly expand the ADA such that any individual whose weight was even slightly outside the "normal" range would be deemed to have an actionable physical impairment under the ADA.

Notably, the court rejected the arguments put forth by [medical and scientific professional organizations](#), writing as amici curiae, that obesity is a physiological disorder in and of itself; the court noted that the ADA is an anti-discrimination statute – not a public health law. The plaintiff's failure to put forth evidence suggesting an underlying physiological disorder or condition caused his obesity was fatal to his claim.

Despite the court's conclusive holding in the defendant employer's favor, in distinguishing a First Circuit case cited by the plaintiff, the court left open the possibility that an employee could potentially demonstrate an impairment by presenting evidence that his or her obesity was caused by a physiological disorder or condition.

Employers faced with an ADA claim based on an employee's physical characteristics would be well served by bearing in mind the contours regarding what qualifies as a "physical impairment" under the ADA set forth in this case.

Significantly, however, the court provided a roadmap concerning a "perceived impairment" claim under the ADA. While the plaintiff here failed to make a sufficient showing, expert or other evidence that a plaintiff's obesity was caused by a physiological disorder or condition may potentially clear the hurdle for a plaintiff's claim that he or she was "regarded as" disabled under the ADA.