



Montana Supreme Court Holds Obesity Alone Is An Impairment

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On July 6, 2012, the Montana Supreme Court held that obesity alone, without any underlying physiological disorder or condition, constitutes an impairment for purposes of the Montana Human Rights Act (MHRA).

In *BNSF Railway v. Feit*, Feit, an applicant for employment at BNSF, filed an administrative complaint with the Montana Department of Labor and Industry (the “Department”) claiming that BNSF discriminated against him because of a perceived disability—obesity—in violation of the MHRA. The Department found in Feit’s favor, and the Montana Human Rights Commission (the “Commission”) agreed. BNSF then asked the U.S. District Court for the District of Montana to review the Commission’s decision. The U.S. District Court sent a certified question to the Montana Supreme Court, asking it to determine whether obesity that is not the symptom of a physiological condition constitutes an impairment under the MHRA.

The Montana Supreme Court held that obesity is an impairment, even if the obesity did not result from an underlying physiological disorder or condition. The Court relied on an interpretive guidance from the EEOC which states that weight is not an impairment when it is “within ‘normal range’ and [is] not the result of a physiological disorder.” The Court interpreted this guidance to mean that if the individual’s weight was outside the normal range, it constituted an impairment, regardless of whether there was a physiological disorder present. The Court did not rule on whether this impairment rose to the level of a disability. Instead, the Court noted that such an impairment will constitute a disability if the individual’s weight “substantially limits . . . or is regarded as substantially limiting, a major life activity.”

Although this decision dealt with the application of Montana state law, the decision may affect employers across the country as it relies upon the

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EEOC's regulations and interpretive guidance under the ADA. Should other courts adopt this interpretation of these regulations, obesity alone, without any underlying physiological disorder or condition, could form the basis of lawsuits under the ADA.