New Developments in the Law for Obesity Discrimination Protection

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Background: Obese individuals are frequent targets of weight-based discrimination, particularly in the employment setting. Victims of weight discrimination have sought legal restitution like others who have suffered from different forms of discrimination. However, in the vast majority of the United States, body weight is not a protected class and weight-based employment discrimination does not provide a basis for a legal claim. Some have attempted to seek legal recourse under the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990 (collectively, the ADA), which protect against discrimination based on mental or physical disabilities in a variety of settings. Until recently, claims of weight discrimination under the ADA have also been largely unsuccessful. However, Congress recently passed the ADA Amendments Act, expanding the definition of what constitutes a disability and incorporating a broad view of ADA's coverage.

Objective: This short communication provides an update of the law as it relates to employment based discrimination of obese people. The authors propose a legislative direction for future legal recourse.

Design and Methods: The authors conducted legal research into the ADA Amendments Act, and synthesized this work relating to discrimination against weight in the employment context.

Results: In light of the ADA Amendments Act, courts and the Equal Employment Opportunity Commission have provided protection for severely obese people from discrimination based on actual or perceived disability in the employment context.

Conclusion: The authors discuss this positive legal development and additionally propose a targeted solution to address weight discrimination in the employment setting. National polling suggests there is considerable public support for such a measure. The authors thus recommend the implementation of a “Weight Discrimination in Employment Act” modeled after the Age Discrimination in Employment Act to adequately address this pervasive and damaging injustice toward individuals who are affected by obesity.

Obese individuals are frequent targets of weight-based discrimination. Recent national estimates show that the prevalence of reported weight discrimination among obese individuals has increased by 66% over the past decade (1) and is now comparable to rates of racial discrimination in the United States, especially among women (2). Obese individuals are vulnerable to weight discrimination in many domains of daily living, including educational institutions, health care facilities, public accommodations, and the workplace (3). The presence of weight discrimination in employment settings has been particularly well documented and shows that obese employees face unfair hiring practices, prejudice from employers, lower wages, harsher discipline, and wrongful termination compared with thinner employees (4). In addition to the financial consequences of these inequities and unfair treatment, being a target of weight discrimination increases risk for negative outcomes including depression, social rejection, anxiety, suicidality, avoidance of health care, and unhealthy behaviors that can reinforce weight gain and impair weight loss (3). With two-thirds of Americans now overweight or obese (5), millions are vulnerable to weight discrimination and its numerous consequences for psychological, social, economic, and physical well-being.

Individuals who suffer from discriminatory practices may seek recourse from the US legal system. Victims of weight bias have sought restitution like others who have suffered from other forms of discrimination; however, most lawsuits based on weight have been unsuccessful. In the vast majority of the United States, weight is not a protected class (e.g., like race is) and weight-based employment discrimination does not provide a basis for a legal claim. There are few exceptions, including in the state of Michigan and several cities, including Madison, Wisconsin, Birmingham, New York, and Urbana, Illinois, where weight or appearance is included as a protected class in their civil and human rights statutes.

One avenue to address weight discrimination involves attempts to sue under the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990 (collectively, the ADA) (6). Together, these statutes protect against discrimination based on mental or physical
obesity. The ADA Amendments Act did not alter coverage for overweight or moderate obesity, but comorbidities of obesity, such as diabetes, are covered by the ADA because diabetes “substantially limits” the endocrine system (10). Further, even though the EEOC explained that severe obesity “is clearly an impairment,” the mere presence of an impairment does not automatically indicate that an individual is disabled under the ADA (9). However, the revised understanding of ADA coverage is an important step forward toward equal treatment for severely obese people who are disabled because of their obesity or who have suffered from weight bias because of a perceived inability to undertake a major life activity. Obesity that substantially limits a major life activity constitutes an impairment like any other disability, and obese people should be protected like other similarly situated persons.

It is important to note that there has never been a prerequisite under the ADA that a disability must have been caused by events or circumstances out of one’s personal control. Courts have noted that the Act applies to conditions that are “caused or exacerbated by voluntary conduct” (10). For example, cancer caused by cigarette smoking and disabilities arising from automobile accidents caused by reckless driving are covered by the ADA. Further, individuals who suffer from weight-based discrimination because of the misperception that their severe obesity limits their ability to perform tasks of a job or other covered life activities are entitled to compensation just as other people who have similarly suffered.

Of course, not all discrimination occurs in the face of disability or perceived disability. One method to rectify employment-based weight discrimination is to directly address it as a legitimate social injustice in this setting (13). Congress has legislated in the context of employment discrimination in the past. The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination based on a person’s age of more than 40 years (14). A similar measure may be warranted for weight discrimination. Polling results show that Americans support protective measures for obesity-related discrimination in the employment context more than the other areas surveyed (15). In particular, this poll found substantial public support for a hypothetical law proposed by these authors called the Weight Discrimination in Employment Act (WDEA) (13), which was viewed favorably by 81% of women and 65% of men in a national US sample (15). Higher support for this legislation among women could reflect their heightened vulnerability to weight discrimination, as evidenced by some research documenting that women report more weight discrimination than men, even at lower levels of overweight (1.2). If Congress enacted the WDEA to mirror the ADEA, it would be similarly interpreted and provide obese individuals the coverage they need (12). In light of the evolution of law, the revised understanding of the ADA, and a shift in public opinion, the time may be ripe for consideration of a WDEA. Meaningful legal remedies like this are necessary in efforts to reduce weight discrimination. Without improved legislation, weight discrimination will continue to prevent equal opportunities, reinforce disparities, and reduce quality of life for millions of individuals affected by obesity.

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