

Seventh Circuit Finds Obesity Alone is Not a Disability Under the ADA

Article

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On June 12, 2019, the Seventh Circuit Court of Appeals issued a decision in the case of *Richardson v. Chicago Transit Authority* holding among other things, that obesity is not an impairment under the Americans with Disabilities Act (ADA) absent the showing of an underlying physiological cause. As 32% of adults in Wisconsin are defined as obese, a decision that almost one third of the labor force does not have a disability for ADA purposes has to be viewed as good news for employers, however, employers must still be wary.

To understand the importance and limitations of the *Richardson* decision, a quick review of typical ADA protections and definitions is helpful. The ADA prohibits employers from discriminating against "qualified individuals" with disabilities, and defines such individuals as applicants or employees who, with or without reasonable accommodation, can perform the essential functions of the job. The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment or are regarded as having the impairment, even if they do not currently have a disability. Major life activities include a wide array of activities including walking, standing, sleeping, and working etc.

One concern when interpreting the ADA is that Congress did not define "impairment". That void was filled by the Equal Employment Opportunities Commission (EEOC) whose confusing definition was the crux of the *Richardson* case.

Mark Richardson was a bus driver who weighed just under 600 lbs. After a lengthy medical leave, he was sent to a safety assessment to see if he could safely perform his job. During the assessment it was discovered that because of his size, Richardson could not do hand over hand steering, cross pedaled (kept his foot on the brake and accelerator at the same time) and his leg rested on the lever that opened the rear door while he was driving. There was no question that his obesity impaired several major life activities, including the ability of Mr. Richardson to do his job.

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Richardson cited to the court the EEOC interpretive guidance that states "impairment does not include the physical characteristic of weight if both of the following elements are present: (1) the weight [is] within the normal range; and (2) the weight is not the result of a physiological disorder." Richardson argued that the double negatives cancel each other out and therefore the guidance is best interpreted to read: "[i]mpairment does include the physical characteristic of weight if either of the following elements are true: (1) the weight is not within the normal range; or (2) the weight is the result of a physiological disorder." The court rejected Richardson's argument pointing out that under Richardson's interpretation even an employee whose weight was slightly outside the normal range would be regarded as having a disability.

Richardson also argued that obesity is in and of itself a physiological disorder, and therefore an impairment under the ADA. The court noted that the ADA is an anti-discrimination statute, not a public health regulation. The court stated that what Congress desires with regard to discrimination protection does not necessarily align with medical community goals. The court emphasized this point by noting that if all obesity was an ADA impairment, nearly 40 percent of the American adult population would automatically have an ADA impairment, and that is a "nonrealistic result."

Richardson also attempted to argue his employer regarded him as having a disability as demonstrated by sending him to testing. The court responded that in order for the employer to have regarded Richardson as disabled, he would need to present sufficient evidence to permit a reasonable jury to infer that his employer perceived his extreme obesity was caused by an underlying physiological disorder or condition. The court concluded the decision here was based entirely on Richardson's extreme size, and that there was no evidence of an underlying physiological condition including the considerations of reasonable accommodations.

The *Richardson* case is not without limitations. A small percentage of obese individuals suffer from hyperthyroidism, adrenal issues or other underlying physiological conditions. Those people are in a position to claim obesity as a disability upon bringing forward proof of those conditions, and upon such proof are entitled to the protections of the ADA.

Also, employers still remain aware that overweight or obese employees often suffer from other conditions because of their weight. Diabetes, hypertension, heart disease, and many other long term conditions often accompany even mild obesity and constitute impairments under the ADA. Where those impairments are present, whether or not the person is obese does not affect the employer's duties and the employee's protections under the ADA.

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