

# Obesity is a Disability According to Recent Northern District of Illinois Decision

## Labor & Employment Law Update

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The Americans with Disabilities Act (ADA, ADAAA) prohibits, among other things, an employer from discriminating against an employee with a disability on the basis of that disability. The Federal District Court for the Northern District of Illinois recently interpreted the definition of disability to include obesity.

While the EEOC's ADA interpretive guidelines provide that obesity is a disability in "rare circumstances" only, the court in this case mused that an administrative assistant who claimed to have had weight-related difficulty walking across a parking lot near the end of her employment might be one of those rare circumstances with sufficient evidence to establish an ADA-covered disability had the case gone to a jury. The court further found that the plaintiff's claims that a supervisor allegedly cursed, made derogatory statements, and commented that "[the plaintiff's] big fat needs to concentrate on losing weight" were possible evidence of the supervisor's animus towards overweight individuals. The court ultimately granted summary judgment to the employer, confirming a labor arbitrator's determination that the plaintiff's termination was based on fraudulent time theft and insubordination and not based on weight-related issues.

While the ADA (and anti-discrimination laws, generally) are not "codes of conduct," *Luster-Malone* is an example of a court giving credence to a potential ADA claim where there otherwise should have been little reason to question an employer's motivation for termination: the employee's fraudulent time theft and insubordination. Here, the combination of an employee who happened to be obese and her supervisor who allegedly had an animus towards overweight people resulted in more than four years of agency inquiry and subsequent litigation before the employer obtained summary judgment.

### Best practices:

Employers should understand that the ADA prohibits all forms of disability-based discrimination, which may include conditions not always regarded as a disability. Supervisors and managers should be trained to treat everyone, especially

subordinates, with respect and courtesy. Derogatory comments, regardless of their nature, have no role in the workplace and are contrary to the expectations of an employee with supervisory or managerial authority. Failure to properly train supervisors and managers could lead to years of costly litigation.

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