

# PUBLICATION

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## Courts Cut the Fat, Clarify When Obesity is a Disability Under the ADA

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The ADA prohibits discrimination based upon actual or perceived medical disabilities and requires employers to accommodate employees with disabilities subject to certain exceptions. The ADA Amendments Act of 2008 effectively overturned four United States Supreme Court rulings that had narrowed the scope and coverage of the ADA. The ADAAA did this by substantially broadening the statutory language of the ADA. Under the now-amended ADA, it is much, much easier to establish a disability otherwise covered (and therefore protected) by the ADA.

Under the ADA, as amended by the ADAAA, a disability is most commonly defined and very broadly interpreted as "a physical or mental impairment that substantially limits one or more major life activities" or "being regarded as [i.e., perceived as] having a physical or mental impairment that substantially limits one or more major life activities." Life activities are most easily thought of as routine activities that people do on a daily basis: eat, sleep, breathe, walk, see, hear, go to work, etc.

"Perceived as" claims are usually based on comments in the workplace, most often a supervisor or manager telling an employee that she should be careful doing something because she is overweight (or too fat or too heavy). "Perceived as" claims can also be based on actions that are not necessarily ill-intended. For example, an employer may not place an obese employee in a higher paying position that requires the employee to stand for long periods of time because the employer assumes that prolonged standing will be difficult for the obese employee.

Does this mean that every employee in the workplace that could stand to lose a few pounds is now part of a protected class? No, not at all. Courts have been clear that medical conditions, not physical characteristics, are what the ADA protects. Weight gain (or simply being overweight) is more appropriately treated as a physical characteristic, compared, for example, with hypothyroidism, which is a medical condition that often causes weight gain. Weight gain is not a protected disability, but the hypothyroidism (which causes weight gain) likely is.

Does an employer need to engage in the interactive process if an overweight employee requests an accommodation? As a practical matter, yes. Employers should have a written, well-disseminated policy outlining how a request for accommodation should be made. If a request for accommodation is made, then the employer should engage in the interactive process with the employee. The interactive process should, at a minimum, reveal the nature of and the reasons for the requested accommodation. Then the employer can evaluate whether and to what extent an accommodation needs to be made.

Must an employer provide an accommodation if one is requested by an overweight employee? No. Regardless of the employee's condition, employers are only required to make reasonable accommodations – i.e., only those accommodations that do not work an undue hardship on the employer or its business. Whether an accommodation is reasonable is a fact intensive inquiry. When faced with such an inquiry, employers are strongly advised to involve employment counsel or informed HR personnel.

Should an employer respond to complaints of harassment by an overweight employee? Yes, employers should promptly respond to all complaints of harassment regardless of the employee's shape, size or appearance. Notably, promptly responding to complaints of harassment is a key factor in whether the employer can successfully defend against later filed lawsuits.

If you want more information on obesity and the ADA or copies of the court decisions generally referenced above, feel free to contact us or your regular Baker Donelson attorney.