

PUBLICATION

Obesity as a Disease: Accommodation Required?

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Last month, the American Medical Association (AMA) adopted a new policy recognizing obesity as a disease. As approximately one in three Americans qualifies as obese, the AMA's newly adopted approach to this epidemic likely raises questions in the minds of American employers. Most importantly, does the AMA's new policy affect the legal obligations employers have to their obese employees?

At present, the answer to this question is unclear. Employers' obligations under the Americans with Disabilities Act (ADA) were already significantly expanded with the enactment of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which broadened the definition of "disabled" and thereby increased the number of employees who could qualify for the ADA's protections, the obese among them. In addition, prior to the AMA's announcement, the EEOC already viewed severe obesity – defined as 100% over the norm – as a disability. Conversely, many courts have taken a stricter view, declining to classify obesity as a disability unless it is accompanied by some other disabling symptom or side effect, such as hypertension or diabetes. Now, however, with the ADAAA's lower standard and the AMA's new categorization of obesity itself as a disease, courts may be more inclined to find obesity sufficient to qualify an individual as disabled under the ADA.

In light of this new development, employers should expect an increase in the number of accommodation requests (for larger furniture, expanded physical workspaces or time off for doctors' visits) from obese employees. Employers should handle these requests in the same manner as all other requests for disability accommodations. Further, employers should be sensitive to the risk of harassment or discrimination claims from their obese employees, as studies have long shown that many obese individuals believe they have experienced harassment or discrimination on account of their weight. Any reports or complaints of weight-related jokes or mistreatment from employees should be treated the same as complaints of racial or gender-based harassment under a company's anti-harassment policies. Until the legal ramifications of the AMA's new position can be concretely measured, employers are advised to proceed with caution with regard to their obese employees.

For questions about these or any employment-related issue, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.