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SEVENTH CIRCUIT: OBESITY ALONE IS NOT PROTECTED UNDER THE ADA

On June 12, 2019, the United States Court of Appeals for the Seventh Circuit joined the Second, Sixth and Eighth Circuits in determining that without evidence of an underlying physiological disorder, a plaintiff's weight does not qualify as a disability under the Americans with Disabilities Act ("ADA").

In the Seventh Circuit case *Richardson v. Chicago Transit Authority*, the plaintiff, a bus driver weighing over 550 pounds and suffering from high blood pressure and sleep apnea, claimed that his employer fired him because of his obesity. However, his employer argued that the plaintiff exceeded the weight requirement to operate the bus safely and therefore had a legitimate reason for its employment decision.

In deciding the case, the court considered whether the plaintiff "can demonstrate: (1) his extreme obesity is an actual impairment; or (2) Chicago Transit Authority perceived his extreme obesity to be an impairment."

"Without evidence that [plaintiff's] extreme obesity was caused by a physiological disorder or condition, his obesity is not a physical impairment under the plain language of the EEOC regulation," the three-judge panel said, declining the plaintiff's argument that amendments made by Congress to the ADA in 2008 relaxed the standard for what qualifies as a disability.

The court also rejected the plaintiff's argument that his employer took adverse action against him because it *perceived* his obesity to be a disability. For the plaintiff's claim to succeed, he had to demonstrate that his employer discriminated against him not just based on its knowledge of his obesity but also on its certainty that this characteristic was an impairment under the ADA. The panel found that plaintiff failed to make this showing because the evidence suggested that his employer perceived the plaintiff's weight as a physical characteristic that made it unsafe for him to drive, not as a disability.

While the Seventh Circuit is the fourth circuit to hold that obesity is not a physical impairment under the ADA, the First Circuit, has reached the opposite conclusion. The First Circuit has held that morbid obesity, independent of an underlying physiological disorder or disease, can be a physical impairment. Therefore, employers should continue to be cautious when making employment decisions involving this subject and should consult with counsel to ensure compliance.

If you have questions about this case or managing employee disability matters, please contact **Kevin Stella** at kstella@hallrender.com or at (317) 977-1426 or your regular Hall Render attorney.

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