

Employment Law

MONTHLY

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December 2012

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Wait, Watch Her: Obesity as a Disability under the ADA

By Suzanne E. Peters, Esq.

This year, the U.S. Equal Employment Opportunity Commission ("EEOC") settled two cases involving alleged discrimination based on an employee's obesity. In these cases, *Resources for Human Development, Inc.* and *BAE Systems*, the employees claimed that their employers discriminated against them based on their obesity and failed to provide reasonable accommodations, in violation of the Americans with Disabilities Act (the "ADA"). The EEOC's position signals that employers may face heightened liability if they fail to provide reasonable accommodations or discriminate against obese employees.

Background: The ADA and the ADAAMA

For the ADA to apply, an employee must have a disability, a record of disability, or be regarded as disabled. In 2008, Congress amended the ADA by passing the ADA Amendments Act of 2008 (the "ADAAA"), signaling Congress's intent that the definition of disability be construed broadly. Under the ADAAA, the definition of "regarded as" no longer requires the employee to demonstrate that an employer perceived him or her to be substantially limited in a major life activity. Instead, the employee must only demonstrate that an employer took a prohibited adverse action on its belief that the employee had an actual or perceived impairment. Prior to the ADAAA, the EEOC's Interpretive Guidance included the statement that, "except in rare circumstances, obesity is not considered a disabling impairment." The EEOC has since removed that language.

The EEOC Settlements

EEOC v. Resources for Human Development, Inc.

Earlier this year, the EEOC settled a disability discrimination suit with Resources for Human Development, Inc. ("RHD"), d/b/a Family House of Louisiana. In this case, Lisa Harrison was hired as a "Prevention/Intervention Specialist" by Family House of Louisiana, a long-term residential treatment facility for chemically dependent women and their children. At the time she was hired, Harrison weighed more than 400 pounds. Eight years later, Harrison was terminated from her position, despite receiving ratings of "excellent" in her performance evaluations. At the time of her termination, she weighed 527 pounds. Harrison filed a charge with the EEOC, claiming that she had been terminated because RHD regarded her as disabled due to her obesity, even though she was able to perform the essential functions of her job. Harrison passed away two years later -- the official cause of death being

morbid obesity. The EEOC filed a claim on behalf of Harrison's estate, alleging that because Harrison was obese and RHD regarded her as disabled, her termination was a violation of Title I of the ADA.

RHD moved for summary judgment in the U.S. District Court for the Eastern District of Louisiana, arguing that obesity is not an impairment. In support of its position, RHD pointed to the EEOC regulations, which exclude physical characteristics -- including weight that is "within the normal range and is not a result of a physiological disorder" -- from the definition of impairment.

The District Court, relying on the EEOC's Interpretive Guidance, ruled that severe obesity -- defined as body weight more than 100% over the norm -- is an impairment. The Court, again relying on prior EEOC guidance, also explained that an obese person may have an underlying or resultant physiological disorder that is an impairment. As a result, the court concluded that a physiological cause is only required when the charging party's weight is within the normal range. Thus, if a charging party is severely obese, there is no requirement that the obesity be based on a physiological impairment.^[1] Because Harrison was severely obese, the Court found that her obesity qualified as a disability under the ADA and denied RHD's motion for summary judgment.

Four months after the District Court's ruling, the parties settled for \$125,000. Under the court-ordered consent decree, RHD is required to provide annual training on federal disability law to all human resources personnel and corporate directors. Additionally, it must report all complaints of disability discrimination and all denials of requests for reasonable accommodations of a disability to the EEOC for three years.

EEOC v. BAE Systems

In July, the EEOC settled a disability discrimination lawsuit with BAE Systems Tactical Vehicle Systems, LP ("BAE"). In this case, Ronald Kratz II had been employed with BAE since 1994. He was promoted in 2001 to the position of material handler. As a material handler, 90% of Kratz's job consisted of desk work, while the remaining 10% of work was performed standing or driving a forklift. While driving the forklift, Kratz asked for a seatbelt extender, but never received one. In October 2009, Kratz met with his supervisor, a human resources official and an inventory manager and was informed that the company felt he could no longer perform his job duties because of his weight. When Kratz asked whether he could be transferred to a different position or be provided with other reasonable accommodations, BAE allegedly refused his request. At the time of the termination, Kratz weighed 680 pounds. The EEOC filed a lawsuit in the U.S. District Court for the Southern District of Texas, alleging disability discrimination and failure to provide reasonable accommodations.

The parties later reached a settlement agreement that required BAE to pay \$55,000 to Kratz and provide him with six months of outplacement services. Additionally, BAE must train its company's managers and human resources professionals on equal employment opportunity compliance, disability discrimination law, and responsibilities regarding reasonable accommodations. BAE is also required to post an anti-discrimination notice.

Lessons Learned from BAE Systems and Resources for Human Development, Inc.

These two cases demonstrate the EEOC's position that severely obese employees who are able to do their jobs are as protected by the ADA as

any other employee with a qualifying disability. It is still unclear, however, whether the EEOC will take the same position if the employee is slightly obese, rather than severely or morbidly obese. Thus, employers should treat employees and applicants of all levels of obesity with the same standards they use when dealing with any disabled employee or applicant. Employers should also provide reasonable accommodations to those employees who require assistance in performing essential job functions. Further, employers should document all accommodations provided to the obese employee and exhaust all accommodations before taking any adverse action against him or her.

Additionally, employers would be wise to revisit their current training practices for their managers and human resources professionals. The settlement agreements of both cases provide helpful guidance as to the type of training employers are expected to provide. Specifically, all employers should ensure that their training of company managers and human resources personnel include training on (1) equal opportunity compliance, (2) disability discrimination laws, including obesity as a disability, and (3) responsibilities regarding reasonable accommodations.

[1] In June, the Montana Supreme Court reached an identical conclusion in *BNSF Railway v. Feit*, 281 P.3d 225 (2012), explaining that obesity is an impairment that can qualify as a protected disability even if it is self imposed and not related to a physiological condition or disorder. The Court held that obesity that is not the symptom of a physiological disorder or condition may constitute an impairment if the individual's weight is outside normal range and affects "one or more body systems."

The Porzio Employment Law Monthly is a summary of recent developments in employment law. It provides employers with an overview of the various legal issues confronting them as well as practical tips for ensuring compliance with the law and sound business practices. This newsletter, however, should not be relied upon for legal advice in any particular matter.