

Obesity Not An ADA Disability Without Underlying Physiological Condition

Darin Williams
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On June 12, 2019, the Seventh Circuit Court of Appeals held in *Richardson v. Chicago Transit Authority* that extreme obesity only qualifies as a disability under the Americans with Disabilities Act (ADA) if it was caused by an underlying physiological disorder or condition, thus joining the Second, Sixth, and Eighth Circuits.

In *Richardson*, an employee worked as a bus operator for the Chicago Transit Authority (CTA). The employee weighed over 400 pounds and contended on appeal that the CTA discriminated against him because of an actual or perceived physical impairment in violation of the ADA. Thus, the Court focused its analysis on the parameters of impairment and asked “whether [the employee] can demonstrate either: (1) his extreme obesity is an actual impairment; or (2) CTA perceived his extreme obesity to be an impairment.”

Ultimately, the Seventh Circuit relied on the EEOC’s regulatory definition of “physical impairment” as “[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems” to hold that obesity is not a disability for purposes of the ADA without an underlying physiological condition. Because the employee offered no evidence that his obesity was caused by an underlying physiological disorder or condition and no evidence that the CTA perceived his obesity to be caused by an underlying physiological disorder or condition, the court upheld summary judgment for the CTA.

Attorneys

Darin M. Williams

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Employers should remain aware of potential differences in the law of other federal circuits and states, however. For instance, on July 11, 2019, the Washington State Supreme Court held in *Taylor v. Burlington Northern Railroad Holdings, Inc.*, on a certified question from the United States Court of Appeals for the Ninth Circuit, that obesity is always a protected disability under the Washington Law Against Discrimination because obesity is itself a physiological disorder.