

## Seventh Circuit: Obesity Alone Is Not A Disability Under the ADA (US)

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As we previously reported [here](#), the issue of whether obesity is a legally-protected impairment is complex, and jurisdictions differ on the extent to which they consider obesity to be a disability under the Americans with Disabilities Act (“ADA”).

On June 12, 2019, the United States Court of Appeals for the Seventh Circuit joined the Second, Sixth, and Eighth Circuits in holding that without evidence that an underlying physiological disorder caused the individual’s extreme obesity, a plaintiff’s weight does not qualify as an impairment under the ADA or the Equal Employment Opportunity Commission’s (“EEOC”) interpretive guidance.

In [Richardson v. Chicago Transit Authority](#), the plaintiff, a bus driver weighing nearly 600 pounds, claimed that his employer took adverse action against him because of his morbid obesity in violation of the ADA. However, his employer – the Chicago Transit Authority, Chicago’s mass transit operator – countered that it had a legitimate, nondiscriminatory reason for its employment decision because Richardson exceeded the weight requirement to operate the bus, making it difficult, and potentially unsafe, for him to do so. The court considered two issues: (1) whether the Richardson’s obesity is an actual impairment under the ADA; and (2) alternatively, whether the employer *perceived* his extreme obesity to be an impairment.

Richardson argued that under Congress’s 2008 amendment to the ADA, courts must broadly construe “impairment” to include extreme obesity, with or without evidence of an underlying physiological condition causing or contributing to the obesity. However, the Seventh Circuit disagreed, reasoning that Congress had instructed the EEOC to alter some of its definitions, but made no such instruction with respect to the agency’s definition of impairment. Further, the court held that Richardson’s preferred interpretation of the EEOC’s guidance regarding the definition of the term “impairment” was overbroad. Instead, the court relied on the Eighth Circuit’s interpretation, which favors a “more natural reading of the interpretative guidance” and holds that an individual’s weight only qualifies as a physical impairment if it falls outside the normal range **and** it occurs as the result of a physiological disorder.

The court also rejected Richardson’s argument that his employer took adverse action against him because it *perceived* his obesity to be a disability. (Recall that the ADA protects individuals who are actually disabled, as well as those that may not be actually disabled but perceived by their employer to be disabled.) For Richardson to succeed on this claim, he had to prove that his employer discriminated against him not just based on its knowledge of his physical characteristic (obesity) but also based on its belief that this characteristic was an impairment under the ADA. The court found that Richardson failed to make this showing because the evidence suggested that his employer perceived Richardson’s weight as a physical characteristic that made it unsafe for him to drive, not as a disability. Further, the court rejected Richardson’s reliance on a First Circuit holding that a jury could find that an employer perceived an employee’s extreme obesity to be a physical impairment where the plaintiff presented expert testimony that obesity is a physiological disorder. The court reasoned that Richardson’s reading of that case was overbroad and he presented no such evidence; thus, he could not prove that his employer perceived his obesity to be a legally-protected impairment.

The Seventh Circuit is the fourth federal appeals court to hold that obesity, by itself, is not a physical impairment



Article By

[Melissa Legault](#)

[Squire Patton Boggs \(US\) LLP](#)  
[Employment Law Worldview](#)

[Labor & Employment](#)

[Litigation / Trial Practice](#)

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[8th Circuit \(incl. bankruptcy\)](#)

under the ADAA. However, other jurisdictions have reached the opposite conclusion, and this issue remains unsettled in others. Therefore, employers should continue to be cautious when making employment decisions involving this issue and should consult with counsel to ensure compliance in their particular jurisdiction.

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