Does the Law Protect the Obese from Employment Discrimination?

Although the current legal basis for treating obesity as a disability protected from discrimination is a bit shaky, this is where the law is heading

4 FACTS

- **Fact 1:** Almost 14 million Canadian adults say they are overweight or obese (Statscan);
- **Fact 2:** By 2019, 21% of Canadian adults will be obese (2014 Memorial University study);
- **Fact 3:** It's illegal to discriminate against job applicants or employees because they have a physical disability.
- **Fact 4:** The American Medical Association has recognized obesity as a disease; the Canadian Medical Association has not but may do so in the future.

QUESTION

These facts raise an important legal question:

Does the current human rights ban on physical disability discrimination cover discrimination against job applicants and employees because they're obese?

[learn_more caption="**Answer**"]

Officially, no. But then again . . .

EXPLANATION

Socially, obesity is recognized as a physical problem and source of derision. Legally, though, obesity isn't universally or officially recognized as a physical disability protected from discrimination. At least, not currently; but that's starting to change.

The Legislation: Although exact definitions vary by jurisdiction, most human rights laws define physical disability as a condition *caused by* bodily injury, birth defect or illness. This definition is narrow and covers only obesity caused by distinct medical defects like hypothyroid; it leaves out the people for whom obesity is

genetic.

But some jurisdictions define disability more broadly:

- **The 4 Non-Causal Jurisdictions:** Four provinces—SK, MB, NS and NL—don't include a causal element in their definition of physical disability. And in NS, protection applies to "actual *or perceived*"
- **Québec:** Québec defines a "handicapped person" as one "with a deficiency causing a significant and persistent disability, who is liable to encounter barriers in performing everyday activities."
- **BC:** Is the only jurisdiction that expressly defines obesity as a disability. More precisely, obesity is one of the conditions listed as impairing a person's ability to carry out normal functions of life (other listed conditions are addiction, asthma, acne, cancer, diabetes, epilepsy, high blood pressure, hypertension and impairments to hearing, speech, vision and mobility).

The Cases: Human rights laws are designed to evolve with social conditions. Accordingly, courts and human rights tribunals interpret the laws broadly to effect the greatest possible protection. That includes courts and tribunals in provinces like Ontario where disability is defined narrowly. A notable example is the 2012 ruling by the Ontario Human Rights Tribunal that obesity is included in the Code's definition of "disability." In finding for an employee harassed because he was obese, the Tribunal said that the definition of disability must be "interpreted in a broad manner and extended to the actual or perceived possibility that an individual has or may develop a disability in the future" [*Lombardi v. Walton Enterprises*, 2012 HRTO 1675 (CanLII), Sept. 5, 2012].

BOTTOM LINE

Although the current legal basis for treating obesity as a physical disability protected from discrimination is a bit shaky, this is clearly where the law is heading. Accordingly, treating obesity as a disability is the smart move from a risk management standpoint—especially if you're in SK, MB, QC, NS or NL or another province if the obesity can be traced back to a physical cause. And if you're in BC, treating obesity as a physical disability is a must.

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