

# Is Obesity a “Disability” Under Human Rights Laws?



Given the growing numbers of obese people in the workforce the question of whether obesity is a disability has major legal ramifications for employers. Under human rights laws, individuals with “disabilities” are protected from employment discrimination and entitled to reasonable accommodations necessary to ensure equal opportunity. Because the human rights laws themselves don’t specifically address the question, we need to look to court rulings for guidance. The short answer: Although obesity is not automatically considered a disability, there are certain cases where discriminating against employees/job applicants may lead to liability under human right. The following cases illustrate the approaches used by courts to extend disability discrimination protection to the obese. (Note that the approaches aren’t one-or-the-other; both apply in all parts of Canada.)

## **OBESITY = PHYSICAL DISABILITY**

### **WHAT HAPPENED**

A saleswoman at a shoe store stands 5 feet, 4 inches tall. During her 17 years of excellent service, her weight has fluctuated between 177 and 200 pounds. One day, she receives a disturbing message from her boss: Lose weight or lose your job. She resigns and sues the store for disability discrimination.

### **DECISION**

The Ontario Human Rights Commission agreed that obesity could be grounds for disability discrimination but wasn’t in this case.

### **EXPLANATION**

People who are obese live under a stigma and catch a lot of social grief, the Board acknowledged. However, it continued, obesity doesn’t count as a disability under human rights laws unless:

- It’s an ongoing condition;
- It’s beyond the employee’s control; and
- It limits the employee’s physical capabilities.

Since the saleswoman’s weight didn’t limit her capabilities, her obesity wasn’t a disability, the Board concluded.

## **OBESITY = PERCEIVED DISABILITY**

### **WHAT HAPPENED**

A new employee travels from Saskatchewan to take a job as a carnival ride operator in BC without actually meeting with the employer. When the operator gets to the site, the boss decides he's "too big and heavy" for the job. And there's no uniform big enough to fit him. So the very next day, the operator is handed a pink slip and a one-way ticket back to Regina. He claims the employer discriminated against him on the basis of his weight.

### **DECISION**

The BC Human Rights Tribunal finds the employer liable for disability discrimination.

### **EXPLANATION**

In *Vogue Shoes*, the Board paid lip service to stereotypes about obesity but ultimately focused on the employee's actual physical condition; by contrast, the Tribunal in this case was more interested in *perceptions* by employer about the employee's physical condition. Specifically, the boss perceived that the operator couldn't do the job solely on the basis of his weight. And adverse treatment on the basis of perceived disability is just as illegal as discrimination for a genuine disability, the Tribunal ruled.

*Rogal v. Dagliesh*, 2000 B.C.H.R.T. 22, 37 C.H.R.R. D/178