

## OBESITY AND THE AMERICANS WITH DISABILITIES ACT - ARE YOU PREPARED?

By Jeff Seibert

The U.S. Equal Employment Opportunity Commission recently filed a lawsuit in Federal District Court in Louisiana under the Americans with Disabilities Act (ADA), alleging that a company illegally fired an employee because of the person's obesity. The lawsuit argues that the employee had a federally protected disability.

This case is of interest because the employee was terminated before the *Amendments* to the Americans with Disabilities Act (signed into law on September 25, 2008) took effect January 1, 2009. Therefore, the EEOC will have to prove not only that the employer was aware of the employee's physical impairment, but those responsible for her termination believed that her impairment substantially limited her in one or more major life activities.

The 2008 amendments to the ADA were intended to provide clarification and reiterate who is covered by the Act. It revises the definition of "disability" to more broadly encompass impairments that substantially limit a major life activity. One requirement of the 2008 Amendment that impacts weight-related cases is that an individual is "regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or

perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

So, if the termination had taken place after the effective date of the 2008 Amendment, the EEOC would **only** have to establish that the decision makers knew of or believed that the employee had a physical impairment, not that they had any specific belief as to the effect of that impairment on her life activities.

The question is: How can an overweight person file an ADA action against their employer? The ADA was written to protect employees and applicants from discrimination based on both actual disabilities and the employer's perception that the individual is disabled. The perception approach is referred to as "regarded as" claims – although not actually disabled, they were regarded as being disabled by their employer. The 2008 ADA Amendment requires a perception of limits caused by his or her weight. Therefore, the person might be able to satisfy the Act's requirements even if obesity or simply being overweight is not considered "impairment" under the Act.

Figures from the National Center for Health Statistics (2007-2008) show 34% of Americans age 20 and older are obese. Add in those that are considered overweight and the

**This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Strategic Outcomes Practice Associate.**





number is 68%. For adults, overweight is defined as a body mass index of 25 to 29.9. Obesity is defined as a BMI of 30 or higher. So, considering the number of people that are obese and the developing trend with overweight-related ADA actions, are there any defenses to weight-related claims? The answer is “yes,” if a weight requirement for employees is directly related to the essential requirements of the job, then an employer may be able to defend its weight-related policies.

The key is to work closely with your Human Resource Department and Employment Attorney to develop and establish proper procedures and protocols to address this exposure.

## **CONTACT**

To learn more about this issue, please contact your local Willis Client Advocate®/Property Risk Control Consultant or:

**Jeff Seibert**

National Technical Director

Casualty Claims

757 628 2304

**[jeff.seibert@willis.com](mailto:jeff.seibert@willis.com)**

For information on other claim and loss prevention issues, please visit **[willis.com](http://willis.com)**.

*The observations, comments and suggestions we have made in this publication are advisory and are not intended nor should they be taken as legal advice. Please contact your own legal adviser for an analysis of your specific facts and circumstances.*