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## EMPLOYMENT LAW LETTER

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### DISABILITY DISCRIMINATION

## AMA says obesity is a disease: What does this mean for you?

by Jonathan R. Mook

*Last month, the American Medical Association (AMA) officially designated obesity as a disease. In doing so, it explained that obesity is a “multi-metabolic and hormonal disease state” that leads to unfavorable outcomes like type 2 diabetes and cardiovascular disease.*

*The AMA’s action has focused renewed attention on the so-called obesity epidemic and likely will result in increased insurance coverage for obesity treatments, such as weight-loss drugs, surgery, and even counseling. The AMA’s designation also will have implications for HR professionals by increasing the likelihood that obesity now will be deemed a disability under the Americans with Disabilities Act (ADA).*

### **ADA implications of AMA designation**

In the past, the Equal Employment Opportunity Commission (EEOC), which enforces the ADA, has said that persons who are morbidly obese—that is, individuals who have a body weight more than 100 percent over the norm—have a physical impairment that may rise to the level of a disability. So far, the courts have reached varying conclusions about whether obese individuals can pursue disability discrimination claims.

Many courts have taken the position that excessive weight or obesity isn’t a disability except in specific instances when there is an underlying physiological disorder that constitutes a physical impairment. Other courts, however, have held that persons who are severely obese are disabled without requiring any proof of physiological cause.

Most of the court decisions addressing whether obesity is a disability were decided under the ADA as originally passed by Congress in 1990. In 2008, Congress enacted the ADA Amendments Act (ADAAA), which

greatly broadens coverage under the statute and promotes a less restrictive interpretation of the definition of disability. The AMA’s recent designation of obesity as a disease coupled with Congress’s intent in the ADA Amendments Act to broaden the scope of ADA coverage likely will lead courts to hold that a person diagnosed as being obese under the AMA’s standards has a physical impairment rising to the level of an ADA disability.

### **Leave and other accommodations**

What does this mean for you as an HR professional? The short answer: more work. According to the Centers for Disease Control and Prevention (CDC), more than one-third of all U.S. adults can be classified as obese. That translates to many more potentially disabled employees in the workplace. Those employees will be entitled not only to the nondiscrimination protections of the ADA but also to reasonable accommodations in appropriate situations. Thus, if an obese employee requests a special ergonomic chair because of his obesity, you will need to consider such a request as a potential reasonable accommodation under the ADA.

In addition to obesity being a disability, it may be a serious health condition for purposes of providing leave under the Family and Medical Leave Act (FMLA). Clearly, if an employee reveals to you that a doctor has diagnosed him as obese and requests leave for treatment, that request will trigger your responsibilities under the FMLA. It also may trigger your ADA obligations should additional leave over and above the FMLA’s 12-week entitlement be requested.

### **Impact on wellness plans**

Finally, don’t forget the potential impact on wellness plans. If you offer a wellness program to your employees, you may need to consider providing obese

employees with reasonable accommodations to assist them in achieving various wellness targets such as weight-loss goals. What accommodations are required is yet to be clearly defined by the EEOC.

This year, the EEOC issued an opinion letter stating that employers could offer voluntary wellness programs that reward participants for achieving certain health goals. Such rewards can include monetary payments and reduced healthcare premiums. For such a program to pass muster under the ADA, however, the EEOC said that the employer must provide reasonable accommodations, absent undue hardship, to disabled individuals who are unable to meet or have difficulty meeting the targeted goals. The opinion letter didn't specify what those reasonable accommodations would be. Instead, the specific accommodations that may be required will need to be identified and assessed through the interactive reasonable accommodation process between you and the disabled employee.

### ***Pros and cons of AMA designation***

In many ways, the AMA's designation of obesity as a disease is a positive development. The designation should help all Americans receive treatment for a condition that has become a significant public health problem and a matter of national concern. In the last several years,

the number of persons diagnosed with type 2 diabetes, hypertension, and high cholesterol has risen to alarming levels. If recognizing obesity as a disease leads to effective treatment, the AMA's designation should result in a healthier public and a reduction in medical costs.

On the other hand, the legal implications of the AMA's action place increased pressure on HR professionals to deal appropriately with employees who are obese and may need workplace accommodations. Remember, always take an employee's accommodation request seriously. If you can't provide the accommodation, explain why that is so and consider various alternatives. The last thing you need is to be on the receiving end of an ADA lawsuit claiming you failed to accommodate an employee who had been diagnosed with obesity as well as any other disabling condition.

One thing remains clear: The only certainty about the ADA is that the statute continues to evolve. Stay tuned to *Virginia Employment Law Letter* for further developments.

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