

Washington Supreme: Court Obesity is covered by antidiscrimination law

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FILE - This May 8, 2014 file photo shows an overweight man. In a 7-2 ruling, the Washington Supreme Court ruled Thursday that obesity is covered by the Washington Law Against Discrimination, which protects employees with disabilities. (AP Photo/Mark Lennihan, File) Mark Lennihan AP

OLYMPIA, Wash.

It's illegal for employers to refuse to hire someone who is obese if they are otherwise qualified for the job, the Washington Supreme Court ruled Thursday.

In a 7-2 ruling, the high court said obesity is covered by the Washington Law Against Discrimination, which protects employees with disabilities.

"Because obesity qualifies as an impairment under the plain language of our statute, it is illegal for employers in Washington to refuse to hire qualified potential employees because the employer perceives them to be obese," Justice Mary Fairhurst wrote for the majority.

Attorney Mike Subit, who filed a friend-of-the-court brief for Washington Employment Lawyers Association in the case, said the ruling “confirms that Washington has an extremely broad definition of disability” — one that covers more than the federal Americans with Disabilities Act.

“I hope this ruling will lead to a sea change in the way that courts think about obesity and disability law,” he said.

The ruling answered an inquiry from the 9th U.S. Circuit Court of Appeals, which asked the court to determine under what circumstances, if any, obesity qualified as an impairment. The justices said obesity “is recognized by the medical community as a ‘physiological disorder, or condition.’”

The federal appeals court is considering the case of Casey Taylor, who sued after the BNSF Railway Company told him in 2007 it was company policy to not hire anyone who had a body-mass index over 35. He said the company told him he needed to undergo several tests that he could not afford — including a sleep study, blood work and an exercise tolerance test — or his only hope for getting the job was to lose 10% his weight and keep it off for six months.

Taylor, a former Marine who was 5-foot-6 (167.6 cm) and 256 pounds (116 kg) at the time, had received a conditional offer of employment for an electronic technician position, but a medical exam found his body mass index to be in the severely obese range of 41.3.

Taylor appealed to the 9th Circuit after a federal judge in Seattle dismissed the case, ruling that obesity is not a disability under state law unless it is caused by a separate, underlying physiological disorder. Other federal courts have ruled that under the Americans with Disabilities Act, obesity is not an impairment unless there is evidence of an underlying physiological cause.

But the seven justices noted that state law is broader than the federal ADA “and we decline to use federal interpretations of the ADA to constrain the protections offered by the WLAD.”

The two dissenting justices said the ruling was too broad.

Justice Mary Yu disagreed that obesity always qualifies as an impairment, noting that the diagnostic line between “overweight” and “obese” is a function of an individual’s weight in relationship to their height. The majority’s opinion could extend disability protections to people who are not disabled, she suggested.

The case now heads back to the 9th Circuit. BNSF spokeswoman Courtney Wallace said Thursday the company was reviewing the ruling.

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