

This Summer, the American Medical Association classified obesity as a disease instead of a medical condition and this new classification has implications for all employers. With the label of disease, obesity now becomes a major risk liability for employers on many different fronts from the ADA to federal disability law to Equal Opportunity Employment Commission suits. And bear in mind that since the definition of obese can include someone who is possibly only 30 pounds over recommended body weight for their age, height and sex, this greatly increases the number of people that can now be recognized as disabled with rights under the 2008 amendments to the Americans with Disabilities Act. And this could be an expensive deal for many employers since almost one third of Americans are classified as obese while another third is considered overweight.

To be fair, the AMA says that recognizing obesity as a disease will likely help change the way the medical community tackles this issue. And this should offer hope to those that suffer from this disease. And while the AMA's new definition does not carry the force of law, it does make it much easier for an obese employee to argue that he or she is disabled. And keep in mind that disability law says an impairment is something that affects a major life function, which could include walking or sitting. We must now watch the EEOC for any change in its definition of disability. Currently that definition is limited to the category of morbidly obese.

One more area of concern for employers resides in federal disability law. An employee who isn't morbidly obese and who isn't limited in any major life functions might still qualify as disabled if the employer's actions show that the employer regards them as impaired. For example, if a worker is passed over for promotions or hiring because of obesity, then that employee may be able to show that they were denied work because the employer acted in a way that indicated that the employer considers them impaired.

So what should a business owner do to protect the company from the risk of lawsuits and disability claims due to obesity? Well, first of all you should understand if your company falls under the rules of the ADA amendment. If so, then you need to be aware that you may have a disabled person working for you and you may need to modify the work environment to accommodate them. Next, understand that if you don't treat the person as disabled in terms of the work that you give them or the promotions that they receive, then you will have made a step in the right direction in terms of making it harder for them to claim that they are disabled as proven by the way they are treated in your company. Also, if you don't carry workers compensation insurance, then get that taken care of immediately. Last of all, make sure that you have purchased and have in force, an Employment Practices Liability Insurance policy and be sure that your coverage in this policy will extend to discrimination against obesity.

The laws in our country are changing fast and if employers don't stay on top of these changes, then they could be bitten by one. Treat all of your employees fairly in all hiring, firing and promotions, without regard to physical attributes and you will have gone a long way toward protecting your business. But bear in mind that you must stay on top of changes to rules and definitions like this or you may suffer damages for ignoring them.

If you would like to discuss and Employment Practices Liability Insurance (EPLI) policy, please give us a call. We will take as much time as you need to help you understand your risks and your options for insurance protection. You can reach us, toll free, at 877-687-7557.