



Weight Discrimination: The Effects of Obesity on Employment and Promotion

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Introduction

The concerns over obesity continue to grow in the United States, particularly in discrimination. Weight-based discrimination continues to receive increasing attention, especially in the legal area. The controversy revolves around whether weight-based employment discrimination exists. This paper explores this discrimination through its purpose: describing the extent, the reasons, the job placement factors, gender related discrimination, and the legal aspects of weight based discrimination

First, this paper examines the definition of obesity, the various ways of illustrating it, and other basic information on obesity. Next is how general public opinion provides the basis of discrimination. Finally, the paper discusses the actual employment discrimination and gender related problems, ending with the legal views of weight-based employment discrimination.

Background of Obesity

Formally defined, obesity is the condition characterized by excessive bodily fat. Obesity is also defined as weighing higher than a Body Mass Index¹ weight of 25 kg/m² in the United States (Campbell, 1999). BMI values stand on several different levels, with specific meaning towards a person's degree of obesity. Table 1 presents the different BMI levels and their indications. BMI numbers are useful in assessing a person's weight because height is taken into account, though build is not considered (Chernov, 2003).

Table 1 BMI Levels and corresponding levels of obesity.
Source: American Obesity Society, 2003; Chernov, 2003.

BMI Level	Weight Measurement
20-25	Normal Weight
26-29	Overweight
30-39	Obese
40+	Morbidly Obese

Yet what causes or even compounds obesity? According to Dr. Allan Chernov, obesity within the United States occurs through an increased caloric intake and decreased physical activity. Also, certain metabolic conditions² compound obesity, making it easier to gain and harder to lose weight. However, these conditions do not directly cause obesity, only compound it (2003). James G. Frierson concurs, saying that factors such as low metabolism can also influence obesity (2003).

Obesity is a major health concern and a large factor in the contraction of diseases such as hypertension³, diabetes, and heart disease (Neumark-Sztainer, 1999). For example, coronary artery disease, medically referred to as atherosclerosis, is compounded by obesity through the association of elevated cholesterol levels in the bloodstream and Type II Diabetes Mellitus (Chernov, 2003). Also, greater weight levels increase stress on the skeleton, increase the chances of getting or worsening arthritis, and increase the chances of skin irritation and infections (Chernov, 2003).

Evidence of Social Discrimination

Social stigmatization of obesity stems from societal values on body type. This stigmatization can cause weight-based discrimination in employment and is not universally illegal. Society has the biggest influence on discrimination.

"Children as young as 6 describe silhouettes of the obese child as 'lazy', 'dirty', 'stupid', 'ugly', 'cheats', and 'lies'....children and adults rate the obese child as the least likable..."(Stunkard, 1985, pg. 1062). Even the obese find themselves disgusting, thinking that the rest of society views them in contempt; this feeling has a high occurrence in women and especially adolescent girls (Stunkard, 1985). These views come from an idea that obesity is something people chose by eating too much and not exercising enough (Food, 1995).

The terms above are not the only names people think of when it comes to the obese. "incompetent' and 'indulgent'" (Crossrow, 2001, pg. 208) are two more. Joseph Bellizzi and Ronald Hasty found that obese people have been described as having a weak will, possessing great amounts of guilt, not worth trust, and blamable (1998). Society often has a low opinion of those who are obese yet a high opinion of the thin. People who are thin are come across as good-looking, vigorous, and doers (Frierson, 1993).

Nicole Crossrow *et.al* found that people with obesity have a lower likelihood of getting service than thin people. Within the focus group used in the study, there were feelings that salespeople were less likely to help and waitpersons spoke and assumed before thinking. The waitperson would ask if the customer received the light menu or assumed the customer wanted Diet Coke (2001). These characterizations of and actions towards the obese provide a basis for employment discrimination.

Discussion: Employment Discrimination

Employment provides an outlet for social discrimination. There is evidence that obesity causes discrimination in work settings. With different reasons relating to obesity, employers have specific ways to avoid hiring obese people. Job placement and promotion are affected by obesity and gender compounds weight discrimination.

Why do Employers not hire those who are Obese?

Stereotypes can lead employers not to hire an obese person. People who are obese are seen as "less desirable employees who, compared with others, are less competent, less productive, not industrious, disorganized, indecisive, inactive, and less successful.." (Larkin, 1979, pg. 315-316). Employers have three main reasons to not hire an obese person. Employers use store image, insurance costs and future health conditions, and physical limitations as reasons not to hire obese people.

Image

Employers may be able to get away with using appearance as an excuse because it only becomes a problem if combined with an already protected class⁴ (Roehling, 1999). The salesperson's appearance may have an effect on a store's image. A study done by Dennis Clayson *et. al* shows three student perceptions of stores with an obese sales associate. First is that the store was not as successful as other stores. Second, students perceived store management as having a lower effectiveness compared to other stores. Third, one obese sale associate causes the other sales

associates to be viewed as less than the best of the main company (1996).

Employers concern themselves more with the fact that customers may not buy products from an ugly salesperson than with abilities of the obese applicant (Bellizzi, 1998). Many hiring decisions may be based on whether the applicant fits a representational image or specific mental projection of the job (Larkin, 1979). How the selling environment is perceived may be one of the bigger factors for not hiring obese people (Bellizzi, 1998). Image is a reason that obese people are not wanted as employees.

Insurance Costs and Future Health Conditions

Most often, the public sees the health of obese people as decreased. Many employers foresee costs associated with the obese: insurance premium increase, increase in absences, and having to pay for special accommodations (Roehling, 1999). In fact, many employers do not want to hire obese people because of increasing costs of health care (McEvoy, 1992).

According to Dr. Chernov, healthcare costs have risen an estimated 12-15% per year, which is higher than the inflation rate in the United States. The higher costs of health insurance could cause employers to drop health insurance plans or try to lower health care costs by only hiring people with fewer health risks. This latter reason stands on the logic that the healthier a workforce is, the less health care costs will be. In many cases, employers will stop covering certain things like morbid obesity surgery (2003).

However, employers assume that obese people are or will become less healthy, thus affecting the health care costs. An example from Sharlene A. McEvoy is the case of *State Division of Human Rights on Complaint of Catherine McDermott v. Xerox Corporation*. The Xerox Corporation refused to employ McDermott because of the higher likelihood she would have future health impairments. Even though there was nothing wrong with McDermott at that moment, she should not be hired because of future health problems (1992).

Yet, one cannot tell who will develop a disease because of obesity and many obese will live a life without contracting obesity-related diseases (Allison, 2001). Dr. Chernov agrees, saying that a person who has a higher risk of getting certain diseases just means that he/she has a greater chance of getting these diseases. It does not mean an obese person will get the diseases or that a thin person will not (2003).

Physical Limitations

According to Sharlene A. McEvoy, physical limitations of an obese person may be the most legitimate reason not to hire an obese person. Physical fitness can be pertinent to jobs connected with strenuous physical activity (1992). There are several examples of these jobs. First, policemen, firemen, and military jobs require physical fitness in order to get through the training regimen required (Chernov, 2003).

Dr. Chernov illustrates the second example. Lance Armstrong's trainer, Chris Carmichael, has calculated the effect of the Tour de France winner gaining the 20 pounds that Lance Armstrong lost during cancer therapy. If Armstrong gained that weight back, it would take him 3 minutes longer to do one of the Hors Category climbs of the Tour. These climbs are steep, winding, and quite difficult (2003). If Armstrong did gain those 20 pounds back, it would cause his job performance to go down.

A third example is that of the case *Green v. Union Pacific Railroad* as described by Sharlene McEvoy. Union Pacific had set certain standards of physical fitness for the entire Union Pacific system. Each job category had its own set of medical standards that all applicants must meet. Green applied to transfer into the fireman's job but was denied because he had a weight problem, blood pressure on the verge of hypertension, and a spine with advance stages of osteoarthritis⁵. The courts agreed with Union Pacific because Green may not be efficient or safe in his present physical condition (2001). Green's health might prevent him from doing his job well, so it makes sense for Union Pacific not to hire him.

However, employers have to be careful about using physical limitations as an excuse. Mark V. Roehling wrote about two court cases to illustrate this point. In both cases, the obese applicants were examined by employer selected doctors. These doctors based their recommendations of not hiring on obesity typecasts instead of on the applicants' actual job abilities. Also, many employers have denied overweight applicants jobs because of the *perception* that the applicants could not do the job, not on the fact that they could not actually do the job (1999). Also, employers may view a person's mental power and abilities negatively, thus not hire (Bellizzi, 1998). Employers may be able to use physical limitations as a reason, but this reason should be backed up.

Weight, Job Placement, and Promotion

If an overweight person is hired, there is discrimination when it comes to job placement and promotion. The question is, would employers hire

an obese person, but place them in a job that required less contact with the general public? The answer: yes. A study found that people who were seen as obese were fit for challenging jobs when it involved sales via the telephone (Bellizzi, 1998). Employers would not place obese employees in a place to interact with the general public because of the belief that customers may not want to do business with ugly obese people (Bellizzi, 1998).

Another study has found that the perception of store success and the store's image are affected negatively by obese employees (Clayson, 1996). Also, overweight people were rated lower for placement in a job specifically described as sales job but were rated equally for a general position (Roehling, 1999). Face to face contact causes discrimination in the job placement of obese people. An obese person is less likely to receive a promotion recommendation and even had less subordinate acceptance and self-confidence than other candidates for promotion (Bordieri, 1997).

James G. Frierson describes the case of *Gimello vs. Agency Rent-A-Car systems*, which illustrates employer-based promotion discrimination. The employee, Gimello, was fired on the excuse that he was not performing his job. To the contrary, Gimello received commendations, raises in pay, a promotion and was evaluated well. The problem came when a new regional director felt that Gimello should not be promoted because he was oversized and overweight. The director also claimed that Gimello's weight was problematic and that the employee was sloppy (1993). Obese employees receive lower evaluations as subordinates and are seen as undesirable coworkers (Roehling, 1999).

Gender and Weight Discrimination

Obesity has become a major force in the hiring process. Yet there is a compounding factor in weight-based discrimination: gender. Gender may cause more discrimination than weight alone, as women have the most difficulty with their weight. Women with an ideal body type have a weight lower than the standard weight for females (Roehling, 1999).

In a focus group studying weight stigmatization, women reported having more negative experiences than did men (Crossrow, 2001). Women tend to fluctuate in weight and have a greater chance for weight change; women also had worse physical functioning according to this weight change (Hemingway, 1998).

Women with a high employment factor, such as being a full-time manager, had a lower possibility for being obese and lower BMI than women who had a

lower employment factor (Ball, 2002). A survey found that “16% of employers surveyed said they would not hire obese women under any conditions, and an additional 44% would not hire them under certain circumstances” (Stunkard, 1985, pg. 1063). Gender itself has an effect because employers were less likely to hire women than men (Dugoni, 1994).

Since the 1970’s, there have been claims of weight-based sex discrimination in the airlines (Frierson, 1993). Sharlene McEvoy provides the perfect example of this. In the case *Laffey v. Northwest Airlines, Inc.*, Laffey was a stewardess who claimed that weight restrictions for flight attendants were different for men than women. If a female flight attendant exceeded female weight restrictions, then the attendant would either be suspended or fired. It was decided that the only reason for the airline to discriminate on the basis of weight would be if the women could not perform the job; thus in no other way could the airline discriminate against females on the basis of weight (1992).

A second example also comes from McEvoy. American Airlines also placed weight restrictions against female flight attendants, but their pilots had no weight restrictions. The airlines claimed that the sex-based weight limitations were attributable to airline image and that an overweight flight attendant may not be able to perform the flight safety procedures. Also, the only ones who could be

suspended or fired for weighing too much were flight attendants (1992).

Other factors can show that women have a harder time with jobs as overweight people. It has been shown that women who were even slightly obese earned much less than non-obese women but there was no difference between obese and non-obese men (Roehling, 1999). Another study showed that women who were obese or overweight experienced more discrimination than men who were obese (Dugoni, 1994).

Legal Decisions on Obesity Discrimination

Many cases about obesity discrimination have gone to trial. Most have stated that people cannot be discriminated against because their obesity constitutes a disability. Yet, what is the definition of a disability? The American Disability Act and Rehabilitation act define a disability as:

“(A) a physical or mental impairment that substantially limits one or more of the major life activities⁶ of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment” (Frierson, 1993, pg. 290)

Many state laws agree with this statement, while others do not. Table 2 illustrates which states and U.S. territories have laws that agree or disagree with the ADA and Rehabilitation Act disability definition.

Table 2 Definitions of a disability and states that hold to those definitions. Adapted from: Frierson, 1993

Disability Definition	States
Handicapped employment laws that define disability as the ADA and the Rehabilitation Act	Delaware, Hawaii, Indiana, Iowa, Kansas, Massachusetts, Montana, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, West Virginia
States that define disability similarly to the ADA and Rehabilitation Act	Alaska, Arizona, Colorado, Georgia, Idaho, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Mexico, North Carolina, Pennsylvania, South Dakota, Utah, Vermont, Virginia, Wisconsin
States that broadly define a disability	Connecticut, Illinois, Iowa, Kentucky, Nebraska, New Hampshire, New Jersey, New York, Ohio, Puerto Rico, Texas, Washington
Outlaw handicapped employment discrimination with no definition of disability	Tennessee, Florida
Restrictive definition of disability	South Carolina
Law prohibiting employment discrimination based on physical handicap or medical condition	California
No laws	Arkansas, Mississippi

In several cases, the plaintiff claimed protection under the ADA, saying that obesity is a disability. According to James Frierson, the courts decided that obesity is not a disability because it is a voluntary act and not caused by a physical problem, deformity, or loss of a body part. For obesity to be considered a disability, it must be a disease or compounded by health risks associated with it. The courts claimed that obesity is caused by voluntarily overeating (1993).

Dr. Allan Chernov is not sure that obesity is voluntary, but will agree that obesity is caused by increased calorie intake and a decreased amount of exercise. He also believes that being morbidly obese is a disability (2003). Being morbidly obese would severely limit a life activity, thus being protected under the ADA and Rehabilitation Act.

Frierson illustrates this with several examples. In New York and California, the courts decided that obesity was a disability. However, New York courts would not consider obesity as a disability in deciding a case. A New Jersey case defined who is disabled under the ADA and the Rehabilitation Act. Oregon Law states that obesity can be a disability if it causes a decline in life activities or if employers perceive it as such. Only two legal jurisdictions outlaw weight-based discrimination directly: Washington, D.C. and Michigan (1993).

Conclusion

Weight-based discrimination has become a prominent part of employers' hiring decisions. Store image, rising health insurance costs, and physical limitations are a few of the excuses used by employers. Only the excuse of physical limitations may have any validity, if the job requires extraneous physical activity that the person cannot perform.

The excuse about the negative store image is reinforced by the need to place obese people in jobs that require less face-to-face contact with the public. Employers are willing to put them in jobs such that do not require public contact with the employee. Employing obese women also seems to be an image problem for most employers.

Unfortunately, there are few states that outlaw weight-based employment discrimination and just as few consider obesity disabling. Most courts and laws hold that obesity is a voluntary act, something the person chooses. Weight-based employment discrimination is a real problem that needs addressing.

Recommendations

Further study needs to be done on the psychological effects of weight-based discrimination on obese people and on the psychology of social and employment discrimination. Research also needs to be done in order to investigate the full extent of weight-based discrimination. Studies should be done to see if other compounding factors, such as race and ethnicity, compound weight-based discrimination like gender does.

Society must actively change the views on body laid down in the past. Programs to increase awareness of this discrimination and create positive body images must be implemented. The citizens of the country must change their views and behave with acceptance.

Several states need to actively change their laws. Legal change must occur in order to minimize the effects of weight-based discrimination in employment situations. Also, laws need to be enacted if a legal district does not have any. Social and legal action must be taken in order to eliminate weight-based discrimination.

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FOOTNOTES

¹ BMI is calculated through the following equation: weight (in kg)/height(in meters)². To get the BMI in lb/in, the equation (weight (in lbs)/height(in inches)²) *704.5 is used.

² For example, an underactive thyroid

³ Elevated blood pressure

⁴For example, gender

⁵ Degenerative disease of the joints, most especially the joints that bear weight

⁶ Something that a person without the extra weight could do with ease, such as "walking, standing, seeing, hearing, breathing..." (Frierson, 1993, 295).