

# Electronic Alert

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## Washington Recognizes Obesity as a Protected Class

By Sarah Hale

The Washington Supreme Court, for the first time, held that obese workers are protected under the state’s anti-discrimination laws. In *Taylor v. Burlington Northern Railroad Holdings, Inc.*, the Court held that obesity can be a disabling condition that employers may need to accommodate and obese workers are protected against discrimination. The decision goes further than recent federal court decisions addressing the Americans with Disabilities Act (ADA)—the federal law prohibiting discrimination in employment decisions. In the ADA cases, courts have held that obesity not caused by an underlying physiological disorder or condition does not qualify as an impairment under federal law.

The Washington case was brought by Casey Taylor, who had received a conditional job offer to work for Burlington Northern Railroad Holdings, Inc. (BNSF). The job offer was contingent on Taylor passing BNSF’s physical examination and completing its medical history. From the medical exam, BNSF learned that Taylor had a Body Mass Index (BMI) of 41.3, which is considered “severely” or “morbidly” obese by medical professionals. BNSF advised Taylor that they could not determine his medical qualification due to significant health and safety risks associated with extreme obesity. In short, it found that his obesity disqualified him for the position. It did offer to reconsider his medical qualifications if he completed additional medical tests at his own expense. Alternatively, BNSF indicated the conditional offer would remain open if he lost sufficient weight to put his BMI under 35. Unemployed and without health insurance, Taylor declined to pay for additional medical tests.

Taylor sued BNSF alleging discrimination under the Washington Law Against Discrimination (WLAD) for refusing to hire him due to a perceived disability – obesity. The U.S. District Court for the Western District of Washington dismissed Taylor’s claim on the basis that obesity alone is not a disability unless caused by a separate, underlying physiological disorder. Taylor did not have such an underlying physiological disorder and therefore, according to the court’s reasoning, could not maintain a claim for disability discrimination. That decision was consistent with other federal cases addressing the ADA. On appeal, the 9th Circuit Court of Appeals sent the matter to the Washington Supreme Court and asked: “Under what circumstances, if any, does obesity qualify as a ‘impairment’ under the [WLAD, RCW] 49.60.040?”

The Washington Supreme Court answered that question as broadly as possible, holding “obesity is *always* an impairment under the plain language of [the WLAD] because the medical evidence shows that it is a ‘physiological disorder, or condition’ that affects many of the listed body systems.” (emphasis added). In its groundbreaking decision, the court said that “obesity does not have to be caused by a separate physiological disorder or condition because obesity itself is a physiological disorder or condition under the statute.” The court noted that WLAD is broader than the ADA and as such could find protections greater than what is found in federal law. Further, the employee or applicant need not be medically defined as obese to be covered by the WLAD: “[I]t is illegal for

employers in Washington to refuse to hire qualified potential employees because the employer perceives them to be obese.”

#### Employer Takeaways:

With estimates of more than 25% of the population in Washington as obese, the decision could have far-reaching effects for Washington employers. Employers are wise to consider the following:

1. Employers using medical screens, exams, or questionnaires, as well as those who have policies of not hiring employees above a particular BMI, should review these with the assistance of labor and employment counsel in order to ensure legal compliance.
2. Revise anti-harassment and anti-discrimination policies to reflect that obesity is considered a protected class in hiring decisions. Critically, train managers and others who make hiring decisions that obesity is a protected class against discrimination. Applicants/employees making discrimination claims will only need to show that their obesity is medically cognizable, perceived, or recorded. The applicant/employee does not have to show that being obese limits them in any way.
3. Review and adjust your reasonable accommodation practices to reflect this new legal development and fine tune any deficiencies in the process. If an existing employee indicates they need to be accommodated because of their obesity, or an obese applicant articulates their need for reasonable accommodation in order to perform the essential functions of the job, you should be prepared to go through your typical interactive process as you would for any other disability. As with other employees seeking a reasonable accommodation for a disability, employers should maintain an interactive dialogue with employees about accommodations and ways they could perform the job. Be aware that an applicant/employee must medically show they actually suffer from obesity.

*For questions about anti-harassment and anti-discrimination policies, reasonable accommodations, or obesity as a protected class, contact Sarah Hale at 503-276-2111 or [shale@barran.com](mailto:shale@barran.com).*