

LEGALITY OF EMPLOYER CONTROL OF OBESITY

MARSHA KATZ

Governors State University, University Park, Illinois

HELEN LAVAN

DePaul University, Chicago, Illinois

ABSTRACT

Currently, obese employees have limited legal protections as a class. However, under certain managerial and legal situations, obese employees and former employees have begun to prevail in lawsuits against employers seeking to take adverse employment actions based on their obesity. An analysis of a random sample of 80 cases was carried out to identify factors that increase an obese plaintiff's likelihood of success. An employee in the private sector, especially a nonprofessional employee, has a statistically significantly greater likelihood of winning than do others. Similarly, an unemployed individual or an individual filing suit under legislation other than state discrimination laws or the Americans with Disabilities Act (ADA) has a statistically greater chance of prevailing.

INTRODUCTION

Obese individuals face discrimination in employment and in other aspects of social life. A survey of attitudes among human resources (HR) professionals reveals the following: half of them believe that obesity negatively affects employee output, a quarter believe that obesity is becoming a problem in their industry, one-third believe that obesity is a valid medical reason for not hiring a

person, and 11% think that firms can fairly dismiss people just because they are obese (Thomas, 2005).

The way in which managers and coworkers perceive obesity can have profound effects on recruitment and hiring, discrimination, and employee morale (Grossman, 2004). Some of this is subtle. For example, applicants for employment may be judged on their appearance, not just on their qualifications. Rejected candidates may not be aware of weight-related factors (Laabs, 1995). Belizzi and Hasty (1998) have reported that obese salespeople are considered less fit for more challenging sales territories and may be discriminated against in job assignments.

Carr and Friedman (2005) investigated the psychological correlates of institutional and interpersonal discrimination reported by underweight, normal weight, overweight, and obese Americans. Not only did they investigate overt discrimination against overweight people but they also reported day-to-day discrimination, such as rude treatment. They found that very obese persons as compared to normal weight persons reported significantly lower self-acceptance, more frequent discrimination, and more major discrimination. In addition, they also reported more frequent discrimination and more major discrimination in the workplace; however, they did not report lower self-acceptance. A surprising finding was that for members of higher socioeconomic strata, the interpersonal consequences of severe obesity are even more acute than for others.

Other research has also shown stigmatization and discrimination due to obesity. Participants in Rogge's (2004) study were reminded in everyday encounters with family members, peers, health care providers, and strangers that they deviate from social norms and are inferior to those who are not obese. Puhl and Brownell (2001) found that stigmatization can be documented in employment, education, and health care. Puhl and Brownell (2006) also found that overweight research participants were subject to stigmatization, depression, and low self-esteem.

Friedman, Reichmann, Costanzo, Zelli, Ashmore, and Musante (2005), in a summary of the literature, state that obesity affects employment, employment potential, and socioeconomic status, as well as having negative psychological consequences. Their data, which were obtained through a self-report questionnaire, showed that participants had higher than average means for depression and general psychiatric symptoms. Tunceli, Kemeng, and Williams (2006) used data from the Panel Study of Income Dynamics; after adjusting for socio-demographic characteristics, smoking status, exercise, and self-reported health, they found that obesity was associated with reduced employment. However, while work limitation was statistically significant for women, the relationship was not statistically significant for men. Carpenter, Hasin, Allison, and Faith. (2000) also found that the relationship varies by sex. Furthermore, in two experiments, average-weight male job applicants were rated more negatively when seen with an overweight compared to a normal weight female. This shows that the stigmatization can spread simply due to proximity (Hebl & Mannix, 2003).

In an extensive review, Roehling (1999) notes that employee weight may bias employment decisions through its effect on assessments of physical attractiveness. Attractive people are perceived to have more socially desirable traits than unattractive people. They are perceived to be more intelligent, sociable, dominant, mentally healthy, and socially skilled than unattractive people. The obese are often blamed for their condition, leading to inferences about laziness and lack of self-control, being less tidy or having poor personal hygiene. Decision makers may react differently to overweight individuals, causing them to treat overweight employees differently on the job.

Currently, the legal protections available to remedy this discrimination are vague or not systematically enforced. Employers, while trying to cut costs, have instituted various measures impacting on obese employees. These can take both positive and negative forms, including health programs as well as disciplinary measures up to and including firing. Some of these measures may result in litigation, as employees try to protect their workplace rights.

CURRENT LEGALITIES

Benforado, Hanson, and Yosifon (2004) present a call for the attainment of justice with regard to discrimination based on weight. They note that numerous laws protect individuals based on race, creed, color, sex, national origin, and age, but that discrimination based on weight seems to be legally different. Overweight individuals do not seem to have legal protection under Title VII or the Age Discrimination in Employment Act. Furthermore, people looking for protection under the Americans with Disabilities Act have not been very successful either, except when they were morbidly obese. When an individual claimed that he or she was discriminated against, not because of a disability but rather because of the employer's perception that the individual had disabilities when, in fact, he or she could really perform the job, the individual was more likely to prevail. Benforado and colleagues claim that the causes of obesity are still unclear, even after the genetic, behavioral, and environmental factors have been taken into consideration. The "real problem is that we have an extremely difficult time understanding the role of unseen features in our environment and within us and too readily attribute responsibility and causation to the more obvious 'personal choices' of the obese." (Benforado et al., 2004: 1653) The emerging consensus among public health experts is that obesity is largely a product of a "toxic environment." It is this notion of the toxic environment that moves the argument in the direction of governmental protection. This toxic environment includes high-calorie, low-nutrition foods and mega servings, a more sedentary life style, including greater reliance on a car, less time for exercise, and more time spent in front of TVs and computers (Battle & Brownell, 1996; Brownell & Horgen, 2004).

Two legal issues are coming to the forefront with respect to employer control of obesity. The first is the issue of protection for morbidly obese persons under the

Americans with Disabilities Act. Morbid obesity is defined as being 100 lbs. or more over the ideal body weight or having a body mass index (BMI) of 40 or higher, which is defined as 100% over the ideal body weight. The Sixth Circuit (covering Michigan, Ohio, Kentucky, and Tennessee), in *EEOC v. Watkins Motor Lines* (2006), recently ruled that “morbid” obesity is not automatically a disability under the ADA. The court rejected the argument of the Equal Employment Opportunity Commission (EEOC) that morbid obesity should always be a covered disability. In this case, the employee’s job consisted mainly of dock work including loading, unloading, and arranging freight. The employee was injured on the job and was eventually terminated, as he was deemed unable to return to work in 180 days. The court held that to be successful when pursuing a “regarded as disabled” claim, the employee had to allege that he was perceived to have an ADA-protected impairment. Under the ADA, the court held that employers are prohibited from discriminating against any qualified “individual with a disability” that substantially limits one or more of the major life activities of the individual. However, individuals who do not actually have a substantially limiting impairment are also covered under the statute if their employer regards them as being disabled. However, to constitute an ADA impairment, a person’s obesity has to result from a physiological condition, such as thyroid disease or a digestive disease. The employee in *Watkins* did not show that he suffered from any of these ADA impairments.

The second issue is the issue of whether an employer has to provide accommodation for obese employees who are perceived as disabled. The majority of circuits confronted with the question of the duty to accommodate individuals who are merely “regarded as” disabled have concluded that such a duty does not exist. Among the cases holding that employers do not have a duty to accommodate individuals who are regarded as disabled, the most comprehensive analysis to date is provided by the Eighth Circuit in *Weber v. Strippit, Inc.* (1999). In this case, the plaintiff, who had heart problems, was told to relocate. He refused and was terminated. He brought a claim under the ADA, alleging perceived disability discrimination. The court stated that there is considerable force to the argument that plaintiffs who are “regarded as” disabled are not entitled to accommodations. “Among the court’s concerns were that adopting plaintiff’s interpretation of the ADA would permit healthy employees to, through litigation (or the threat of litigation), demand changes in their work environments under the guise of ‘reasonable accommodations’ for disabilities based upon misperceptions.” (Perritt & Perritt, 2003: 70).

All states have statutes prohibiting discrimination against the disabled. However, limited but increasing numbers of municipalities and states, including San Francisco, Washington, DC, and Michigan, have enacted statutes prohibiting weight discrimination.

Courts have generally viewed obesity as a voluntary condition and therefore disqualified it as a disability under ADA. This is despite the fact that an individual

is more likely to be cured of cancer than to be cured of obesity if a cure is defined as a reduction to the desired weight and the maintenance of that weight for five years. In general, federal courts have begun to interpret state disability laws as requiring that a plaintiff have an actual disability, even if perceived disability theory is being used.

A few cases have held that obesity on its own constitutes a disability. Court rulings have demonstrated circumstances in which obese plaintiffs have been successful. *New York Division of Human Rights v. Xerox Corporation* (1985), *King v. Frank* (2005), *Cook v. Rhode Island, Department of Mental Health Retardation and Hospitals* (1992), and *Gimello v. Agency Rent-a-Car Systems* (1991) are examples of these cases.

Cases of Interest

Several cases illustrate a tendency for employees to prevail. Employees have prevailed when employers have made hiring decisions based on negative stereotypes. In *Cook v. Rhode Island* (1992), Cook applied for a job as an institutional attendant at a residential facility for the mentally disabled. She was accepted contingent upon satisfactorily completing a physical examination. The examining physician refused to approve her application unless she reduced her weight to less than 300 pounds, and she was refused employment. There was no evidence that the plaintiff lacked the agility, the strength, or any other physical ability to do the job. Thus the employer seemed to base its judgment on stereotypical assumptions. The court ruled that the employer viewed the applicant's overweight condition as a handicap. Thus the court agreed with the jury that not only should she be hired for the next available opening in the position for which she had originally applied, but she should also be paid compensatory damages with interest and be awarded retroactive seniority.

A similar, more recent case was *Connor v. McDonald's Restaurant* (2003). Connor had applied for a cook's position and was denied employment. He alleged that the employer discriminated against him because the employer believed that he was substantially limited in the major life activity of working due to his morbid obesity (420 lbs.); that this was due to a negative stereotype. This case clarifies that an obese applicant does not have to plead that his obesity is a physiological disorder, but only that he is able to perform the essential functions of the job for which he wants to be hired.

An employer is not at liberty to selectively choose which medical conditions apply in litigation. In *McLaughlin v. Unum Life Insurance of America and Group Long Term Disability Plan for Employees of Independence Blue Cross* (2004), an accounting supervisor applied for long-term disability status because of diabetic neuropathy, fibromyalgia, complicated migraines, and an eye condition. The employer's physician indicated that some of her conditions were related to obesity. The court ruled against the employer, stating that the company used highly selective parts of her medical report, which showed arbitrary and capricious

action by the plan administrator. The court also stated that a heightened standard of review applies when a plan is “unfunded” and when a plan is administered by an outside administrator “that does not have strong incentives to keep employees satisfied by granting meritorious claims.”

Sometimes when an employee decides to take medically based actions to control his obesity, the employer declines to support that action. This can result in litigation outcomes in favor of the employee. For example, *Lowell v. Drummond, Woodsum and MacMahon* (2005) was another interesting case in which the employee prevailed. It involved a decision to deny gastric bypass surgery under the health care plan, which was administered by a third party. Lowell suffered from morbid obesity, a significant medical condition that increases the likelihood of developing diseases such as heart disease, diabetes, hypertension, pulmonary complications, and certain obesity-related cancers. The defendants claimed that the plan did not expressly provide coverage for surgical weight reduction procedures or for gastric bypass surgery. The plan denied coverage for any expense for weight reduction, nutritional or dietary counseling, smoking clinics, and sensitivity training whose primary purposes were recreational and/or social. While the defendants claimed that the exclusion was based on the lack of medical necessity, Lowell’s doctor’s rationale for prescribing gastric bypass surgery was not weight reduction but rather the reduction or elimination of the associated morbidities, which he believed would occur in Lowell’s case. The court ruled in favor of Lowell.

METHODOLOGY

The purpose of the research on which we are reporting here was to identify case characteristics that are associated with successful lawsuits by obese plaintiffs against their current or former employers. The case characteristics identified fell into several categories: the demographic characteristics of the individual, employer or context characteristics, and laws and physical/psychological factors that confound the legal protections. The current study is based on an analysis of a random sample of cases that have been litigated on the basis of adverse employment decisions with regard to obese individuals. LexisNexis’s database of federally litigated cases was queried using the search strategy “obesity AND employment OR work OR employee” for the years 1994 to 2003. This yielded 276 cases, from which the cases in this study were randomly drawn. The rationale was to draw a sufficiently large sample size for a chi-square analysis that would ensure an adequate number of observations in each cell to assure an acceptable rate of Type II errors. While there is no clear determinant sample size, we as the researchers wanted to be conservative in pulling the random sample (Garson, 2008). Ten cases had split decisions and were removed from the analysis. Seventy cases are included in the empirical analysis. This analysis considered demographic characteristics, organizational and case characteristics, legal bases, and confounding physical factors (see Table 1).

Table 1. Predictors of Success in
Obesity Discrimination Lawsuits

Category of variable
Demographic characteristics
1. Sex—female
2. Professional position
3. Unemployed status
4. Obesity within own control
5. Disabled
Organizational and case characteristics
6. Manufacturer as employer
7. Need to make accommodation
8. Third party involvement
9. Union involvement
10. Arbitration involvement
11. Public sector
12. Service sector
13. Proposed action other than firing
14. Proposed firing
15. Job action
16. Physical action
Laws
17. District court
18. Discrimination laws
19. Health laws
20. Disability laws
21. Constitutional laws
22. Americans with Disabilities Act
23. State law
Confounding physical issues
24. Muscular
25. Digestive
26. Cardiovascular
27. Psychological

FINDINGS

Table 2 shows the frequencies for the relevant variables. Overall, the employer prevailed in 58.8% of cases and split an additional 12.5%. This means that employees had protection almost 54% of the time (findings for employees 41%, split findings 12.5%). The table contains frequencies for the cases in which the employer prevailed, and the frequencies for the cases in which the individual prevailed.

The plaintiffs had a greater than 50% chance of prevailing in the case of seven characteristics. These included being female or being employed in the service sector. When the employer proposed a job-context action, such as a job reassignment, denial of promotion, denial of benefits, or schedule modification (in contrast to a personal action, such as requiring dieting), the individual prevailed. When the employer proposed an action other than firing, such as a suspension or demotion, the individual prevailed in more than 50% of the cases. The individual also prevailed at the district court level and when the lawsuit was filed under health laws such as those relating to the Employee Retirement Income Security Act (ERISA), the Occupational Safety and Health Administration (OSHA), Workers' Compensation, or Social Security Disability. A full 95% of the cases in which the individual prevailed involved unemployed plaintiffs. Apparently, the rulings were more likely to be in favor of the individual plaintiff if she or he were unemployed. The unemployment might be due to the individual's being fired or due to a disability.

Some of the case characteristics that were identified were surprising to us, in that they were other than what the literature would have predicted. We expected that when obesity was judged to be within the control of the individual employee, the individual would prevail even less frequently than in the actual finding of 18%. We also expected that individuals who were found to be disabled would win more than 17% of their cases. There was no union involvement at all in the cases in which the individual won; nor were any cases in the public sector won by individuals.

The success rate relating to a proposed action other than firing was considerably higher than expected, at 74%. Apparently, when employers do not want to terminate an obese individual, the individual wins. However, when the employer proposes to fire the individual, the individual is most likely going to lose.

Table 3 provides the best guidance to plaintiffs because it shows the factors that distinguished winning cases from losing ones. These factors included being in the private sector and being a nonprofessional employee. An unemployed individual was more likely to prevail, but this was a statistically weaker finding. Lawsuits filed on grounds other than those related to alleged violations of state discrimination laws or the Americans with Disabilities Act were more likely to result in the individual plaintiff prevailing. However, in no case in which the employee prevailed was a union involved.

Table 2. Frequencies of Case Characteristics and Case Outcomes

Category of variable	Percentage of all cases <i>N</i> = 80	Percentage of cases with finding for employer <i>N</i> = 47	Percentage of cases with finding for individual <i>N</i> = 23
Demographic characteristics			
1. Sex—female	50.0	46.8	60.9
2. Professional position	30.6	40.9	15.8
3. Unemployed status	82.9	80.0	95.5
4. Obesity within own control	18.1	12.8	18.2
5. Disabled	31.3	36.2	17.4
Organizational and case characteristics			
6. Manufacturer as employer	31.0	27.5	40.9
7. Need to make accommodation	25.3	28.9	14.3
8. Third party involvement	51.3	47.7	47.8
9. Union involvement	13.9	19.6	0
10. Arbitration involvement	2.5	2.2	0
11. Public sector	19.7	29.5	0
12. Service sector	56.3	52.2	59.1
13. Proposed action other than firing	68.8	63.8	73.9
14. Proposed firing	23.8	29.8	13.0
15. Job action	63.8	63.8	60.9
16. Physical action	26.3	23.4	30.4
Laws			
17. District court	78.0	72.3	87.0
18. Discrimination laws	40.0	52.3	17.4
19. Health laws	48.0	57.4	65.2
20. Disability laws	25.0	36.2	4.3
21. Constitutional laws	5.0	2.1	8.3
22. Americans with Disabilities Act	27.5	34.0	13.0
23. State law	18.8	23.4	8.7
Confounding physical issues			
24. Muscular	56.3	70.2	56.5
25. Digestive	31.3	38.3	21.7
26. Cardiovascular	35.0	42.2	22.7
27. Psychological	42.5	44.7	43.5
Finding for employer	58.8	100	0
Split finding	12.5	100	100

Table 3. Chi-Square Analysis—Finding for Employee—Split Cases Excluded
(*N* = 70)

Findings for employee by variable	Chi-square value	Degrees of freedom	Probability
Finding for employee: private sector	8.431	1	.004
Finding for employee: nonprofessional employee	3.768	1	.052
Finding for employee: union not involved	5.175	1	.023
Finding for employee: unemployed	2.779	1	.095
Finding for employee: not filed under state discrimination law	8.157	1	.004
Finding for employee: not filed under ADA	3.444	1	.064

DISCUSSION

It is simplistic to think that morbid obesity is not a disability and that overweight individuals are not protected (*EEOC v. Watkins Motor Lines*, 2006). In fact, the statistics show that a high proportion of overweight individuals are more likely to have additional disabilities that would be protected under the Americans with Disabilities Act. Alternatively, they have other confounding factors, such as muscular, digestive, cardiovascular, or psychological factors (Obesity Society, 2008). In our sample, 62 of the 80 cases involved muscular, digestive, cardiovascular, or mental/psychological disabilities in addition to obesity.

A high proportion of the cases studied involved individuals who were unemployed. This suggests that there may be costs to society in terms of Unemployment Compensation or Social Security Disability Insurance. However, this is not the focus of the study. Additionally, many employers were involved in lawsuits relating not to their current but to their former employees. This is especially relevant when one considers that nearly all of the individuals who prevailed were unemployed former employees.

The findings of this study suggest that individuals who are suing for adverse employment actions based on obesity are more likely to prevail under certain circumstances. If these conditions are not met, the case outcomes of this study indicate a limited likelihood of winning in court. For instance, professionals are

unlikely to win in court. It seems likely that appearance, especially weight, counts more if one is a professional than if one is a nonprofessional employee. It may be that in nonprofessional jobs, employers do not find weight as significant an issue. There are many stereotypes about what professionals are supposed to look like, and one of those is the idea that they should be lean and trim. Thus the courts may feel that a professional should look the part.

Another surprising finding was that there were very few cases with union involvement (14%). In addition, none of the employees who prevailed were represented by a union. There are several possible reasons for this finding. First, the low number of cases with union involvement probably indicates that most union-involved cases are settled under union procedures as detailed in contracts. For instance, the issue may be resolved within a company by a grievance hearing, which is outside the purview of this study. Furthermore, in many contractual cases, when the plaintiff is not satisfied, the union will refer the case to arbitration, not litigation. In addition, if such a case does reach the court system, it is likely that the court will rule that the judgment under the contract should stand. Thus the court is not likely to rule against the employer.

Cases within the public sector were never won by the individual employee. Like union jobs, many public sector jobs have a strong grievance process. Most of these cases are probably settled internally without going to litigation. Furthermore, as in the union example, public sector lawsuits that do appear before a court are unlikely to be won by the employee, because the belief is that the employee has already had her or his day in court within the organizational structure.

Finally, cases brought under the ADA or discrimination laws are very unlikely to be won by an individual. The definitions are very specific in each of these sets of laws. Therefore it is difficult for the employee to win a judgment. In other laws, such as health and disability laws, a more general statement is included, which allows more flexibility in determining the outcome of the cases. While there still is no strongly significant difference under these other laws, employees have a greater chance of winning than under the ADA or discrimination laws.

Promising Legal Approaches

There are ever-increasing numbers of bills in state legislatures prohibiting obesity discrimination, and there are many who think that this is the most promising approach. Other suggestions include the following (Adamitis, 2000; Klaff, 2005; Kristen, 2002; Reisman, 2005):

1. Changing the definition of disability under the ADA;
2. Allowing exceptions in court rulings;
3. Removing consideration of voluntarism and mutability as irrelevant under the EEOC guidelines; and
4. Recognizing metabolic syndrome as a disability.

Bradbury (2007) notes that although employers have fared well in obesity-related discrimination claims, a review of federal case law suggests that public human resources managers will be well advised to adopt a strategy that reduces the likelihood of obesity-related discrimination, as it is more desirable to avoid potentially litigious behavior than to emerge victorious in court. If employers adopt this approach, individuals will be protected against discrimination, rather than having to litigate to obtain this protection.

Overall, our findings and discussion demonstrate that obesity by itself may not be protected under the major public policy protections. However, when it is taken in conjunction with other medical or psychological conditions, employees have some protection under the legal system and they can prevail.

REFERENCES

- Adamitis, E. M. 2000. Appearance matters: A proposal to prohibit appearance discrimination in employment. *Washington Law Review*, 75: 195-223.
- Battle, E. K., & Brownell, K. 1996. Confronting a rising tide of eating disorders and obesity: Treatment vs. prevention and policy. *Addictive Behaviors*, 21(6): 755-765.
- Bellizzi, J. A., & Hasty, R. W. 1998. The effects of obesity and gender as moderated by job-related factors: Territory assignment decisions and supervising unethical selling behavior. *Journal of Personal Selling and Sales Management*, 18(2): 35-49.
- Benforado, A., Hanson, J., & Yosifon, D. 2004. Broken scales: Obesity and justice in America. *Emory Law Journal*, 53: 1645-1806.
- Bradbury, M. D. 2007. The legal and managerial challenge of obesity as a disability. *Review of Public Personnel Administration*, 27(1): 79-90.
- Brownell, K. D., & Horgen, K. B. (2004). *Food fight: The inside story of the food industry, America's obesity crisis, and what we can do*. Chicago: Contemporary Books.
- Carpenter, K. M., Hasin, D. S., Allison, D. B., & Faith, M. S. 2000. Relationships between obesity and DSM-IV major depressive disorder, suicide ideation, and suicide attempts: Results from a general population study. *American Journal of Public Health*, 90(2): 251-257.
- Carr, D., & Friedman, M. 2005. Is obesity stigmatizing? Body weight, perceived discrimination, and psychological well-being in the United States. *Journal of Health and Social Behavior*, 46(3): 244-260.
- Connor v. McDonald's Restaurant*. 2003. U.S. Dist. LEXIS 4108.
- Cook v. Rhode Island, Department of Mental Health, Retardation and Hospitals*. 1992. U.S. Dist. 2572.
- EEOC v. Watkins Motor Lines*. 2006. U.S. App. LEXIS 23177.
- Friedman, K. E., Reichmann, S. K., Costanzo, P. R., Zelli, A., Ashmore, J. A., & Musante, G. J. 2005. Weight stigmatization and ideological beliefs: Relation to psychological functioning in obese adults. *Obesity Research*, 13: 907-916.
- Garson, D. 2008. *A sufficiently large sample size*. Retrieved January 28, 2008, from <http://www2.chass.ncsu.edu/garson/pA765/chisq.htm>
- Gimello v. Agency Rent-a-Car Systems*. 1991. 594 A.2d 264. N.J. Super. Ct. App. Div.
- Grossman, R. J. 2004. Countering a weight crisis. *HRMagazine*, 49(3): 42-51.

- Hebl, M. R., & Mannix, L. M. 2003. The weight of obesity in evaluating others: A mere proximity effect. *Personality and Social Psychology Bulletin*, 29(1): 28–38.
- King v. Frank*. 2005. U.S. Dist. LEXIS 10603.
- Klaff, L. G. 2005. Employers slow to address ‘metabolic syndrome’ despite sharp impact on health costs. *Workforce Management*, 84(10): 68.
- Kristen, E. 2002. Addressing the problem of weight discrimination in employment. *California Law Review*, 901: 57–109.
- Laabs, J. 1995. Does image matter? *Personnel Journal*, 74(12): 48–53.
- Lowell v. Drummond, Woodsum and MacMahon*. 2005. U.S. Dist. LEXIS 62.
- McLaughlin, v. Unum Life Insurance Company of America and Group Long Term Disability Plan for Employees of Independence Blue Cross*. 2004. U.S. Dist. LEXIS 9420.
- New York Division of Human Rights v. Xerox Corporation*. 1985. N.Y. LEXIS 14676.
- Obesity Society. 2008. *Obesity, bias, and stigmatization*. Retrieved January 28, 2008, from http://www.naaso.org/information/weight_bias.asp
- Perritt, H. H., & Perritt, H. H. Jr. 2003. *Americans with Disabilities Act Handbook* (4th Ed.). New York: Aspen Publishers.
- Puhl, K. M., & Brownell, K. D. 2006. Confronting and coping with weight stigma: An investigation of overweight and obese adults. *Obesity*, 14(10): 1802–1815.
- Puhl, R., & Brownell, K. D. 2001. Bias, discrimination, and obesity. *Obesity Research*, 9: 788–805.
- Reisman, M. D. 2005. Traveling to the farthest reaches of the ADA or taking aim at employment discrimination on the basis of perceived disability. *Cardozo Law Review*, 26: 2121-2182.
- Rochling, M. V. 1999. Weight-based discrimination in employment. *Personnel Psychology*, 52(4): 969–1016.
- Rogge, M. M. 2004. Obesity, stigma, and civilized oppression. *Advances in Nursing Science*, 27(4): 301–315.
- Thomas, D. 2005. *Fattism is the last bastion of employee discrimination*. Retrieved February 14, 2008, from www.personneltoday.com/articles/article.aspx?liarticleid=32213&printerfriendly=true.
- Tunceli, K., Kemeng, L., & Williams, L. K. 2006. Long-term effects of obesity on employment and work limitations among U.S. adults, 1986 to 1999. *Obesity*, 14: 1637–1646.
- Weber v. Strippit, Inc.* 1999. U.S. App. LEXIS 17919.

Direct reprint requests to:

Marsha Katz
 College of Business and Public Administration
 Governors State University
 University Park, IL 60466
 e-mail: m-katz@govst.edu