



Is Obesity a Disability?

If the European Court of Justice labels obesity a disability, it would be binding throughout the European Union.

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Can employers legally [discriminate against the obese](#)? That's the question currently before the top court in the European Union. At the heart of the issue is whether obesity is to be considered a disability under the E.U.'s [Employment Equality Directive](#), which protects people against employment discrimination based on religion, sexual orientation, age, or disability status.

The case comes to the [European Court of Justice](#) (ECJ) from Denmark, where 350-pound child caretaker Karsten Kaltoft says he was fired from his position for being too fat. Kaltoft's employer, Billund Kommune, said his dismissal had nothing to do with his weight and was the result of an overall decrease in childcare enrollments.

But the case could reverberate far beyond the particular fates of Kaltoft and Billund. If the ECJ decides to label obesity a disability, it would be binding throughout the European Union.

"If obesity is classified as a disability, the effect for employers could be profound," [said Audrey Williams](#), a partner at the London law firm Eversheds. "Obesity, however it will come to be defined, would need to be approached just like any other physical or mental impairment." In addition to affecting discrimination cases, the designation could change how employers are obligated to accommodate obese employees.

In the E.U., a disability is currently defined as a "physical or mental impairment which has a substantial and long term adverse effect on (the) ability to carry out normal day to day activities." Last year, the E.U.'s Employment Appeals Tribunal ruled that a man's numerous medical problems qualified him as disabled, despite the fact that there was no identifiable cause for them other than obesity.

However, in that instance, the [court stressed](#) that *obesity itself* wasn't a disability. Rather, "obesity makes it more likely that someone would suffer from an impairment that could be a

disability." UK Independence Party leader [Nigel Farage expressed](#) a similar sentiment in a recent op-ed in *The Independent*:

In the case of obesity some people may justifiably be able to claim they cannot help it: for example, those with eating disorders. But their disability doesn't come about from their size but the fact that they have a mental health condition which takes over from rational behaviour towards food. In a similar vein, many people who are limited in their mobility may put on excessive amounts of weight as a result of being limited in what exercise they can undertake.

In other words: While obesity *can* be caused by disability, it's not *necessarily* caused by disability. Farage opined that it would be "frightful nonsense" for the E.U. to define all obese individuals as disabled.

But the opposing view may be gaining steam, both in Europe and on this side of the Atlantic. Back in 2010, Cato Institute legal scholar [Walter Olson was noticing](#) a "newly activist stance at the Equal Employment Opportunity Commission" that included support for obesity as disability. In 2013 [the American Medical Association \(AMA\) officially classified obesity as a disease](#), a change it said was designed to increase focus on obesity prevention and treatment.

The AMA's shift could pave the way for health care coverage of weight loss surgeries and diet drugs, as Cato Senior Fellow [Michael Tanner pointed out](#) at the time. It can also be used to bolster calls for all sorts of "government mischief" when it comes to food.

"After all, if being fat is not our fault, the blame must lie with food companies, advertising, or other things that need to be regulated," wrote Tanner of this mindset.

And lo and behold, Harold Goldstein, executive director of the California Center for Public Health Advocacy, has been citing the AMA's decision in his efforts to ban junk food and tax soft drinks. This month, *Guardian* writer Tanya Gold is using the EJC court case to call for efforts [to ban advertising of sugary foods](#) and beverages.

According to [World Health Organization estimates](#), between 10 and 30 percent of adults in E.U. countries were obese in 2008, based on body mass index. In the U.S., [nearly 35 percent of adults](#) are obese.