

# Is obesity the new disability?

## Employment Law Updates



**Does obesity qualify, without more, as a disability? If yes, then the duty to make reasonable adjustments might include employers having to provide bigger chairs and desks, car parking spaces near the front door, and duties involving less mobility.**

The Advocate General has, today, issued an opinion on this point in *Kaltoft v The Municipality of Billund*. The first part of the opinion held that obesity was not a protected characteristic per se under the Equal Treatment Framework Directive. Pretty obvious stuff.

The main part of the opinion considered whether obesity, without more, fell within the definition of a disability. The Advocate General pointed out the EU definition of disability covers the situation when a physical or mental condition makes "carrying out of that job or participation in professional life objectively more difficult and demanding. Typical examples of this are handicaps severely affecting mobility or significantly impairing the senses such as eye-sight or hearing."

He went on to say that in "cases where the condition of obesity has reached a degree that it, in interaction with attitudinal and environmental barriers, as mentioned in

### **YORK**

**Address**

Sentinel House  
Peasholme Green  
York  
YO1 7PP

**Tel** 01904 716 000

**Fax** 01904 716 100



### **WETHERBY**

**Address**

The Aire Suite  
Brunswick Court  
Victoria Street  
Wetherby  
LS22 6RE

**Tel** 01937 583 210

**Fax** 01937 587 556



Services for individuals:

- Residential Property
- Wills & Probate
- Contentious Probate
- Tax & Estate Planning
- Family, Matrimonial
- Mediation
- Employment
- Accident & Personal Injury Claims
- Litigation & Dispute Resolution
- Agricultural Law
- Town & Country Planning Law
- Elderly Client Services

Services for businesses:

- Company & Commercial Services
- Commercial Property
- Civil Litigation
- Employment Law
- Debt Collection

Financial Services

Is obesity the new disability? - p2

the UN Convention, plainly hinders full participation in professional life on an equal footing with other employees due to the physical and/or psychological limitations that it entails, then it can be considered to be a disability." Note: 'can', not 'must' be a disability.

Bottom line: if the individual has a Body Mass Index of 40 or more, so is classified as 'morbidly obese', they might be disabled if the obesity has a real impact on their ability to participate in work. If not, they won't.

Frankly, Langstaff P said the same thing, but better, last year in Walker v Sita Information.

The Court of Justice of the European Union normally (but not always) follows the opinion of the Advocate-General. Expect the judgment in 4-6 months.

**Ware & Kay**

good on paper, even better in person

**Contact us**

For further advice on your employment issues contact **Gill Wilkinson** on 01904 716050 ([gillian.wilkinson@warekay.co.uk](mailto:gillian.wilkinson@warekay.co.uk))