Obesity Discrimination Protection in the Law: Implications for Sport and Physical Activity Facilities as Places of Employment and Public Accommodation

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Body weight stigma, when individuals in larger bodies are discriminated against based on their size, remains common. Further, sport and physical activity settings are often perceived as particularly hostile to those in larger bodies (Pickett & Cunningham, 2018). While these sites offer opportunities for improved overall health, through the well-documented physical and psychological benefits of physical activity, they are often exclusive to this segment of the population. The Americans with Disabilities Act (ADA, 1990) affords accessibility guidelines for organizations providing employment and public accommodation for individuals with disabilities (a protected class). However, the question of whether obesity qualifies as a disability has been difficult (Douglas, 2016, Gilbert, 2018). Therefore, the current study seeks to trace the history of obesity-related rulings under the ADA and explore resulting effects for sport and physical activity spaces.

The primary question related to obesity protection under the ADA has centered on whether “overweight”, on its own, qualifies as a disability. Recent court decisions have begun to clarify this question somewhat, particularly with respect to employment (Elser, 2012; Martin, 2017). These judgments have offered some protection for an individual whose weight is “regarded as” a disability by her or his employer. That is, employers cannot discriminate against an employee for a perceived disability, including body weight, absent direct evidence that the disability meaningfully precludes the employee’s ability to do her or his job. However, less guidance has been provided regarding places of public accommodation, which would have more far-reaching effects for service industries, including sport and physical activity. The Equal Employment Opportunity Commission (EEOC) has settled, out of court, multiple cases which may have laid the groundwork for extension of ADA protection to obese individuals (Bloomberg, 2013). EEOC guidelines suggest extreme obesity (i.e., body weight falling outside the “normal range”) and overweight related to an underlying condition both constitute the basis for discrimination suits.

Method

The current study employs a multiple case study approach to explore the changing landscape of obesity protection under the ADA. Specifically, the authors explore major cases, both settled and currently being argued, which have affected or may affect the definition of overweight as a protected class. The authors will then further explore implications for sport and physical activity managers, with a particular emphasis on costs and strategies for complying with these evolving standards.

Expected Findings, Results, Implications

The authors expect to find ADA rulings with respect to obesity are inconsistent, but that recent developments indicate several legal avenues for suit that may pose risks for sport and physical activity organizations are available. Therefore, it is important for places of employment and public accommodation to understand these developments. In particular, sport organizations may be subject to litigation using an ADA violation as the cause of action. Further, drawing on EEOC settlements, some cases of obesity may constitute protection under the ADA for places of public accommodation. Finally, implications of ADA protection for obesity for sport and physical activity providers will be discussed.