

In *Kaltoft v Billund Kommune* the ECJ has today confirmed that obesity does not in itself constitute a disability for the purposes of the EU Equal Treatment Directive, but it may fall within the definition where it results in a long-term physical or mental impairment which hinders a person's ability to participate fully and effectively at work in comparison to his peers.

This case was brought by Danish childminder Karsten Kaltoft who claimed that his employment with the Municipality of Billund was terminated due to his obesity (he weighed over 25 stone) and that this amounted to unlawful discrimination on disability grounds. The Danish courts referred the matter to the Court of Justice.

The ECJ has today confirmed that there is no general stand-alone prohibition on discrimination on grounds of obesity under European law. In other words it is not unlawful in itself to dismiss somebody just because he is materially overweight.

The ECJ went on to say that obesity is not in itself a disability for the purpose of the EU Equal Treatment Directive. It accepted, however, that obesity may amount to a disability within the meaning of the Directive where its physical and medical side-effects materially hinder a person's ability to carry out his job. It gave the example of an employee who has restricted mobility because of his weight or somebody who suffers from other medical conditions as a result of his weight which in turn prevent him from carrying out his job or hinder his ability to do so.

The Advocate General argued back in July that only extreme, severe or morbid obesity could create limitations that amount to a disability for discrimination purposes, i.e. where a person's Body Mass Index is 40 or over. Interestingly the ECJ did not make any reference to a person's BMI score – preferring to focus on the medical or physical side-effects of obesity and the extent to which these affect an employee's ability to carry out his job.

It will now be for the national courts in Denmark to determine whether Mr Kaltoft has such a disability, and then whether it had anything to do with his dismissal.

From a practical perspective this decision should make little material difference for UK employers. The ECJ's decision is in line with the approach adopted by the EAT in *Walker v Sita Information Networking Computer Ltd* [2013], namely that obesity is not in itself a disability, but it may mean that someone is more likely to be disabled. Any employee whose weight leads to long-term physical or mental side-effects which materially hinder his ability to carry out his work duties in comparison with his peers should already have protection under the existing definition of disability in the Equality Act 2010.

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