

## Changes in Law Concerning Obesity Discrimination



On July 11, 2019, the Washington State Supreme Court issued a landmark decision in *Taylor v. Burlington N.N.R. Holdings Inc.* that obesity always constitutes an impairment under the Washington Law Against Discrimination.

The plaintiff had applied for a position with Burlington Northern as an Electronic Technician. After being given a conditional offer of employment, the employer conducted a pre-employment medical examination. At 5 foot 6 inches tall and 256 pounds, Mr. Taylor had a BMI of over 40. Although the pre-employment examiner found that Mr. Taylor met the minimum physical demands for the job, the employer required a supplemental medical examination, including for individuals with a BMI over 40. Because Mr. Taylor could not afford the testing, the employer withdrew the offer. Mr. Taylor sued on the grounds of disparate treatment under the Washington Law Against Discrimination under the theory that his to-be employer perceived him as suffering from obesity which qualifies as an impairment under the Washington law. The Washington State Supreme Court agreed.

The Court ruled that “... obesity always qualifies as an impairment under the plain language of RCW 49.60.040(7)(c)(i) because it is recognized by the medical community as a "physiological disorder, or condition" that affects multiple body systems listed in the statute. Therefore, if an employer refuses to hire someone because the employer perceives the applicant to have obesity, and the applicant is able to properly perform the job in question, the employer violates this section of the WLAD.”

This decision may have far reaching implications for employers in Washington ranging from employment determinations and offers to reasonable accommodation decisions. We encourage you to work closely with your Labor and Employment counsel to ensure that you remain compliant with current Washington State Law.

*This does not constitute legal advice. For guidance on how this may apply to you, please consult with your Labor and Employment counsel.*