

Advocate General thinks severe obesity may be a disability

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The Advocate General has given an opinion that ‘severe’ obesity could amount to a disability under the Equal Treatment

Framework Directive. He thought that only people with a body mass index of 40 or over would suffer sufficient hindrance to participation in professional life to be considered disabled.

Mr Kaltoft worked in the Municipality of Billund in Denmark as a child-minder. He had a body mass index of 54 and was classed as having “severe, extreme or morbid obesity”. He alleged that his employment was terminated by the Municipality of Billund because of his obesity and he brought a discrimination claim.

The Advocate General said that there was no “stand alone” principle of EU law prohibiting discrimination on the grounds of obesity. In other words, “fatism” itself is not unlawful.

However, the Advocate General opined that people suffering from extreme forms of obesity may meet the definition of disability. He thought that it was likely that most forms of obesity would not qualify as a disability under the legislation but that severe, extreme or morbid obesity would as it could create mobility and endurance problems. He also opined that it is irrelevant how the obesity was caused i.e. whether it was due to excessive calorie intake or a metabolic or psychological problem.

The European Court’s decision on this case has not been made but the Court usually follows the Advocate General’s opinion.

Kaltoft v Municipality of Billund (C-354/13)

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