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NEWS REPORT

Country:	Denmark
Title:	Is obesity a disability?
Date:	27 May 2016
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<u>Context</u>	
Issue at stake:	Can obesity be deemed to be a disability covered by the Act on Prohibition of Discrimination in the Labour Market etc.
Ground of discrimination:	Disability
Source:	The City Court of Kolding, judgment delivered on 31 March 2016 referring to CJEU C-354/13.
Field:	Employment
Applicable law:	Section 2a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case:

The complainant A worked as a child minder for 15 years in the Municipality of Billund. During that entire period, A was obese within the meaning of the definition of the World Health Organization (WHO). He made attempts to lose weight and the Municipality of Billund, as part of its health policy, provided him financial assistance between January 2008 and January 2009 in order for him to attend fitness and physical training sessions. A lost weight, which he subsequently regained, as in his previous attempts.

Owing to the decrease in the number of children in the Municipality of Billund, in 2010 A had only three children to take care of instead of four. He was informed by telephone that the Municipality intended to dismiss him, which resulted in the carrying out of a hearing procedure for the dismissal of public sector employees. A was eventually dismissed and the trade union FOA, acting on behalf of A, brought an action before the City Court of Kolding claiming that, during his dismissal, A had been discriminated against on the basis of obesity and that he ought to receive compensation for that discrimination.

The City Court requested a preliminary ruling from the Court of Justice of the European Union. A judgment was issued in case C-354/13 on 18 December 2014.

Decision of the Court:

The City Court referred to the ruling of the CJEU in C-354/13 and stated that EU law cannot be interpreted to lay down a general principle of non-discrimination on grounds of obesity in employment and occupation. The Court also referred to a statement by the CJEU that obesity in itself does not constitute a disability within the meaning of Directive 2000/78. However, in concrete cases obesity may constitute a disability.

The City Court argued that according to medical information, A's obesity did not constitute a disability because of the fact that the obesity did not entail a limitation which in interaction with various barriers hindered the full and effective participation of A in his professional life on an equal basis with other child minders. In that regard the court underlined that an employee can be protected by the Act on Prohibition of Discrimination in the Labour Market etc. if the employer perceives the employee as having a disability – whether or not the individual in question is encompassed by the group of people or not.

On that basis the Municipality of Billund was acquitted.

Key points of analysis:

The case illustrates that the complainant was not able to prove that his obesity entailed a limitation and thus did not constitute a disability. The ruling also illustrates that discrimination because of perceived disability is illegal according to Danish non-discrimination law.

Internet link source:

<http://www.domstol.dk/kolding/nyheder/Pressemeddelelser/Pages/DomafsagtDen31mars2016.aspx>.