

If you've faced anti-fat bias in employment in Washington, D.C., you may have recourse

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Anti-fat bias — the societal denigration of people with larger bodies — remains one of the most widely accepted and uninterrogated systems of oppression in America. Whether cloaked as a concern for health or straightforwardly expressed as a belief that our bodies reflect our merit, anti-fat bias, like any civil rights issue, permeates the workplace.

For workers in Washington, D.C., however, there is legal recourse: the D.C. Human Rights Act protects against discrimination based on personal appearance, which has been construed to include body size.

Body size and fatness gravely impact workers' hiring rates and pay — especially for women. One British survey in 2015¹ determined that nearly half of employers were less inclined to recruit an "obese" applicant at the interview stage.

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That bias does not dissipate after the recruitment stage; a 2010 study² of pay discrepancies found an eye-opening \$41,000 pay differential for women based on their weight: when compared to women of average weight, "very thin" women earned \$22,000 more per year, while women categorized as "very heavy" earned almost \$19,000 less.

Indeed, a weight gain of 25 pounds predicted an annual salary loss of roughly \$14,000 among women. This suggests that much of the gender pay gap — in addition to being largely racialized — is also based on size. Luckily, Washington, D.C. is at the forefront.

The D.C. Human Rights Act ("DCHRA") makes it illegal for employers to "fail or refuse to hire ... to discharge ... or to otherwise discriminate against any individual, with respect to his or her[] compensation, terms, conditions, or privileges of employment" because of, in addition to the usual gender, age, and racial criteria, personal appearance.³ Personal appearance is defined to include "the outward appearance of any person," including their "bodily condition or characteristics."⁴

At least two courts in D.C. have applied the DCHRA to discrimination based on body size. In *Ivey v. District of Columbia*, a D.C. employee brought an action against the District alleging, among other things, a hostile work environment based on her personal appearance. She claimed that her supervisor "belittled [her] with remarks about her weight" in 1997 and 1998.⁵ She complained to management and was suspended.

When she returned to work after the suspension, her supervisor had relocated her from a private office to a "dirty 'storage room' that was ill-equipped for her duties."⁶ After requesting a meeting with her supervisor and an Equal Employment Opportunity counselor, the employee was terminated for allegedly negligent performance of her work responsibilities.⁷ After trial in D.C. Superior Court, the jury returned a verdict for the employee.⁸

Four years later, a D.C. federal district court ruled on a former Fannie Mae employee's personal appearance discrimination claim related to her body size. In *Lapera v. Fannie Mae*, a former employee alleged, among other violations, that her employer improperly classified her position's salary grade and declined to promote her based in part on her "body size[,] which may be perceived by some as being overweight."⁹

The evidence included remarks that a manager considered subordinates who were not white, young, and thin as "lacking 'executive presence.'"¹⁰ The manager commented derisively that two larger employees' "tummies sometimes showed," criticized them for "waddling," and recommended that others eat a minimal breakfast (as did she) in order to "keep [their] weight down."¹¹

Though it disposed of the salary claim on summary judgment, the court concluded that this manager, "who drove the hiring process," may have "harbored biases toward ... overweight employees," and left to a jury the question of whether personal appearance discrimination played a role in the employee's being passed over for a promotion.¹²

These cases demonstrate that the DCHRA's prohibition of personal appearance discrimination likely protects employees and applicants against anti-fat bias. However, it's important to note that the statute of limitations under the DCHRA is only one year, meaning an aggrieved person has only 365 days to raise and pursue such a claim.

Notes

¹ <https://bit.ly/3WKsqjL>

² <https://bit.ly/3oj2IGg>

³ D.C. Code Ann. § 2-1402.11(a)(1)(A).

⁴ *Id.* at § 2-1402.02(22).

⁵ 46 A.3d 1101, 1103-04 (D.C. 2012).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1107.

⁹ 210 F. Supp. 3d 164, 168 (D.D.C. 2016) (internal citations omitted).

¹⁰ *Id.* at 170.

¹¹ *Id.*

¹² *Id.* at 187.

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