

Fighting Weight Discrimination in Massachusetts

Sizeism: A weighty problem, a toxic culture

In March of 2017, a news story from *Cosmopolitan* magazine went viral: “Nail salon blasted for fat-shaming by charging more for ‘overweight’ customers.”¹ Commenters on social media were aghast at this blatant display of sizeism—but in most places across the United States, this kind of discrimination is perfectly legal. And although it seems trivial, it has serious health consequences for people of all sizes. Discrimination based on height and weight is common² and contributes to gender and pay inequity.³ This type of discrimination negatively impacts on health irrespective of size [4]. It increases risky behaviors such as smoking and intoxicated driving⁵, as well as physical inactivity⁶, depression⁷, and suicidality⁸.

Those in the eating disorders community have long known that sizeism is a significant risk factor for eating disorders. The more a person takes negative messages about fat bodies to heart, the likelier s/he is to develop an eating disorder, regardless of how much that person weighs.^{9,10} These negative messages come from mass media^{11,12}, bullies at school¹³, health care providers¹⁴, and even from prospective employers, landlords, and businesses—like the nail salon in *Cosmopolitan*^{1,15-17}.

In Massachusetts, it is currently legal to refuse to hire or promote someone, to pay them less or to fire them based on their weight. People may also be refused service or housing or charged more as tenants or customers based on their size. Using body size to justify discrimination creates a toxic culture in which eating disorders can thrive.

Furthermore, weight discrimination can be used as a smokescreen for racial and gender discrimination. As an article in the *Suffolk University Law Review* notes, “employers may be able to conceal legally impermissible discrimination as discrimination on the basis of weight”.¹⁸ Obesity rates already follow patterns of social injustice: poverty, female sex, and African-American, Native American and Hispanic/Latino race/ethnicity are all considered risk factors for obesity.¹⁹ **As long as weight discrimination is legal, multiple forms of inequity may persist.** Reducing weight discrimination is not only an important public health intervention for the prevention of eating disorders, but also an issue of social justice.

Policy solutions for weight discrimination

Activists and legal scholars have suggested two main strategies to reduce weight discrimination through policy: by defining obesity as a disability under existing disability law or by incorporating weight into existing civil rights laws. Some plaintiffs have been successful in suing for employment discrimination under the Americans with Disabilities Act (ADA); however, this is an

incomplete solution in terms of both cultural change and reducing weight discrimination. Even individuals of “normal weight” report experiencing weight discrimination or weight-related harassment²⁰, and if only medically defined “overweight” and “obesity” per se were covered in the legislation, these individuals might not be protected. **But more than that, being fat is not in itself a disability. Being fat does not mean a person is necessarily less able to perform tasks than a person of so-called “normal” weight would be.** Using disability law to prohibit weight discrimination would imply that being fat is disabling--which, in the long run, could reinforce sizeism rather than fighting it.

By contrast, incorporating weight into existing civil rights legislation has several advantages from both ideological and practical perspectives. Civil rights laws affirm the inherent worth of fat bodies and can be drafted with broader weight-related language, covering all people regardless of their size. Civil rights laws to prohibit weight discrimination in the workplace have strong public support, with 78% indicating approval in a recent study.²⁰ **Support for laws that would keep employers from making hiring, promotion, or firing decisions is especially strong and has been high and continuing to increase over the last five years.**²¹⁻²³

This approach has seen success in Michigan, the only U.S. state thus far to explicitly prohibit discrimination on the basis of height and weight in employment. The state’s Elliott-Larsen Civil Rights Act prohibits discrimination by employers based on a number of factors, with height and weight added in a 1976 amendment.²⁴

Using state-level civil rights law also has practical advantages: While disability rights enforcement exists largely at the federal level through the ADA, states often have their own civil rights enforcement mechanisms that can be adapted to include weight discrimination relatively easily.

H. 952: Fighting weight discrimination in Massachusetts

For more than a decade, Rep. Byron Rushing (D-Boston) has introduced a bill that would amend Massachusetts’ existing civil rights law to incorporate discrimination on the basis of height and weight. **This bill, introduced in the 2017-2018 legislative session as H. 952, would protect Massachusetts residents from weight discrimination in employment, housing, and public accommodations.** Implementation would be fairly simple, as the Massachusetts Attorney General’s Office has a robust Civil Rights Division with policies and procedures in place for evaluating and pursuing complaints, including an online reporting mechanism. STRIPED endorses H. 952 as an evidence-based policy for preventing eating disorders and improving public health.

Full legislative text and information about the bill’s current status can be found at <https://malegislature.gov/Bills/190/H952>.

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