

CAREERS

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# Do We Really Need A Law To Protect Fat Workers?

They earn less, get less respect, and score fewer promotions. That's why Massachusetts's proposed discrimination ban might make sense.

By Mary Carmichael | August 5, 2007

Michael Karolchyk is phoning me from Denver, so agitated I can practically feel his spittle hitting my face. This is more or less his normal state, at least when reporters are around. His willingness to shock people has won extensive press for his business, which is called the Anti-Gym. It is, in fact, a gym. What makes it special is its founder's zeal for weight loss, a zeal that borders on sadism. If Karolchyk thinks his clients are too fat, he throws Twinkies at them. His favorite T-shirt says "NO CHUBBIES." He says he wants to give his overweight clients "tough love." It's a kind of love that sounds a lot like hate.

Today, though, he is worked up over something far away from the Anti-Gym, in both a geographical and an ideological sense. He's heard that Massachusetts is considering a bill to ban discrimination against overweight and unusually short people. Karolchyk has ties to New England (he went to Brown University), and he is worried that Massachusetts is embarrassing itself. If the state passes this "gobbledygook" of a bill, he says, it will become the epicenter of a national debate on obesity - one in which he fully intends to participate. Get ready, Boston: Karolchyk and his Twinkies are coming for you. He expects to open his next Anti-Gym franchise next March, somewhere near Newbury Street, and he thinks he'll be able to fill it entirely with clients who find the bill as infuriating as he does. In any case, he's not going to have any fat employees. "Go ahead, arrest me," he says. "Arrest me for telling the truth."

It is rare these days to find someone as frank as Karolchyk, someone willing to admit in print that he disapproves of overweight people and will not hire them. But judging by study after study, Karolchyk may represent the rest of us - he simply doesn't keep his mouth shut. In gyms, but also in offices, hospitals, schools, and elsewhere, employers just don't seem to want too many fat people on their payrolls. Surveys of thousands have turned up rampant evidence of weight discrimination at work. In one study, 26 percent of the overweight reported being stigmatized and say they were passed over for promotions solely because of their size. So did 84 percent of those considered "very obese." Their perceptions are borne out in their paychecks. Across the board, overweight people make 1 percent to 6 percent less than their thinner counterparts, and those in service professions earn fewer commissions and tips.

Why is a fat body associated with a thin income? The cause and effect work both ways. Poverty can make you obese because you have less access to fresh, healthy food. But obesity, in turn, increases your risk of poverty, because it can keep you from getting a job you may deserve. In psychological experiments set up to resemble job interviews, the "bosses" consistently pick thin would be employees over fat ones with identical resumes. The psych lab mirrors the real world. Numerous studies show that overweight and obese people, particularly women, are less likely to score jobs for which they're well qualified. And even if you're thin, you can undercut your chances of getting a job merely by showing up at the interview with an overweight companion. "Hiring, firing, discipline, training, wages, we've got more than 40 studies now in both the lab and the workplace," says Mark Roehling, a management professor at Michigan State University in East Lansing. "People in all of them tell you they discriminate on the basis of weight. I had one guy tell me there was one kind of person he absolutely wasn't going to hire - a fat girl. And the punch line is, this guy was overweight himself."

It used to be that crying "discrimination" about weight was as credible as crying wolf. A decade ago, state Representative Byron Rushing, who has constituents in Boston and Cambridge, introduced an anti-discrimination bill similar to the one he's pushing today. It garnered so little interest that it didn't reach an official vote, and neither did a subsequent attempt. But with many months left in the current legislative cycle, Rushing's new bill (which actually targets all kinds of weight and height discrimination) has already gotten much more attention than its predecessors. It has 10 cosponsors, and it's been reported on everywhere from the Associated Press to the conservative blogosphere. Rushing - who is thin at 5-foot-11 and about 170 pounds - says he's a little surprised by the frenzy. But he wonders if it's a sign that people are ready to take the pros and cons of his legislation seriously, instead of brushing them off as not even worth considering.

Still, Rushing's not willing to venture a guess at the bill's chance of actually passing. And before anyone takes vote on it, he and his supporters are going to have to answer tough questions. If obesity holds back a person's career, whose fault is that? Would a bill mean widespread workplace lawsuits, and, if so, would it be, in the words of one observer, "the most expensive bill ever written"? Just more than two-thirds of adults in this country are overweight or obese, and even in Massachusetts - considered one of the slimmest states - the number is 56 percent. How can we help them avoid unfair treatment without bankrupting ourselves and turning society on its head? And how do we do it all while allowing free speech, however offensive, for a guy like Karolchyk?

BEFORE WE START PONDERING THE questions, let's get the inevitable cheap puns out of the way. Let's say Rushing's bill tackles a "weighty" issue. Let's say its supporters are as thickheaded as they are thick-thighed. Let's note, as the Globe did in April, that because they make more disability claims and take more sick days, overweight workers "eat into profits." In a time when it's mostly unacceptable in polite society to make jokes about "nappy-headed hos" - or, for that matter, people with dwarfism, the other group the bill seeks to protect - it's still OK to laugh at fat people. Unlike dwarves, most people's thinking goes, fat people choose to be the way they are. If they don't want us to mock them, well, they can lighten up - either emotionally or physically.

The "fat is a choice" argument is often invoked as a reason that Rushing's bill should fail. But, in fact, it's also the reason the bill is so shrewd. By putting dwarves and the overweight in the same category, it forces people to examine how much the two groups have, or don't have, in common - to defend the point that fat is always a choice. And mounting scientific evidence is making that point harder to defend. The

same doctors who advise their obese patients to eat less and exercise more are also aware of recent studies showing that no diets work in the long term for people who need to shed more than a few pounds. Their lost weight is almost certainly going to come back. If they do keep significant weight off for good, they're an anomaly, and for every success story like theirs, there may be someone else who gains weight when dieting. Those dramatic, inspiring "Half My Size!" cover stories that grace pop-culture magazines each summer? Check in with the same folks 10 or 20 years down the road. "Really heavy people are never going to be able to weigh 160 pounds [permanently]," says Dr. Lee Kaplan, director of the Massachusetts General Hospital Weight Center.

The reason it's so hard for some people to lose weight is partly rooted in genetics, the aspect of our identities over which we have the least control. There are probably 1,000 or more genes that regulate energy, fat storage, and metabolism. Many of them affect three key areas of the brain - the hypothalamus, the hindbrain, and the limbic system, areas that help with such tasks as determining hunger and fullness, regulating calorie burning, and responding to stress. "Together, they're like an orchestra, integrating information about your current energy needs," says Kaplan. "Now think of all the different ways you could make that orchestra go bad, like a trumpet playing a sour note. There are that many things and more that can cause obesity."

Combine these inborn vulnerabilities with a society high on stress and empty calories and low on physical exertion, and you may well get a disaster that no diet and exercise regimen can fix. Once the brain's regulatory system starts malfunctioning, it will nudge the body to a heavier weight, seek food when it doesn't need any, and push back aggressively if the body is deprived, says Kaplan. It's not that obese people really like scarfing down doughnuts; it's that when they lose weight or restrict their diets, their brains and bodies act as if they are starving. This is why gastric bypass surgery, unlike diets, actually does work - it prevents this "starvation response" and makes the brain push the body toward, and be satisfied by, a lower body weight.

Kaplan is no bleeding heart. He's the guy who's worried that Rushing's proposal could be "the most expensive bill ever written." And he even has a few things in common with Karolchyk; he, too, believes in healthy living and personal responsibility. "It sounds like I'm saying people who have a weight problem have no responsibility whatsoever for it, and that's simply not true," says Kaplan. "It's like poker. They can optimize the genetic hand they're dealt; they can be good players or bad players." But, he adds, you can't turn a high-card hand into a royal flush. Some of us just can't help but be overweight. "To turn around and discriminate against people simply because of the hand they were dealt - that's not just abhorrent," he says. "It's cruel."

AS LONG AS SOCIETY IN GENERAL believes that being overweight is always a choice, a willful lack of self-control, people can get away with discrimination. Rushing says he's heard from a variety of constituents, from factory workers to mail carriers, who were refused jobs because of their weight. Often, he adds, potential employers tell them they won't be able to perform the job adequately, so they never get a chance to prove they can. Most of the people who have reached out to him are too "gun-shy" to talk openly to the press about their troubles, he says; they're loath to be mocked. But Jeanne Toombs, a Concord piano teacher who weighs 300 pounds, is not. One of the bill's most vocal supporters, she says she knows many people who have been denied jobs because of their weight. And while Toombs says she has never suffered that same indignity, she believes that's only because she carries herself with pride, "which can insulate you somewhat" from bad treatment. "Of course, I've still been harassed," she says. "The stigmatization is real."

Being harassed is one thing; being fired outright is another. But this, too, happens. Some bosses pressure their workers to lose weight, then dismiss them when they fail. Take Jesse Mercado, a security guard who sued the Los Angeles Times after the newspaper canned him; the Times argued in court that Mercado's obesity was "voluntary" and was hurting his job performance, despite glowing recommendations from his direct superiors. The paper changed its mind just before the trial. Perhaps in hopes of limiting damages (which it had to pay anyway, to the tune of \$430,000), it quietly rehired him.

That was 1991. There are hints that times have changed since then - that employers can no longer get away so easily with firing people for being fat, even though there's no law against it. Consider the case of Paul Goward, the police chief in Winter Haven, Florida, who sent out a memo last October reprimanding "jelly bellies" on his force. He warned them that "we didn't hire you unfit, and we don't want you working unfit." The memo didn't point fingers at any particular people, but it caused an uproar. Ultimately, the only cop who lost his job over it was Goward. He resigned within weeks.

When Goward left office, a storm of defenders pointed out that he'd given "tremendously good advice." And that, of course, is true. A newly adopted healthy lifestyle may not have the power to trim off hundreds of pounds permanently, but it has countless other benefits: better heart health, less risk of diabetes, perks across the board. Most of Goward's "jelly belly" cops were just a bit tubby. It would have been better for them to try to trim down than to gain more weight and risk the health problems that often accompany obesity. Lugging a lot of extra weight can cause wear and tear on the rest of the body - worn-out joints, breathing difficulties, high blood pressure. The list goes on and on.

In some jobs, those ailments translate into bad news for the bottom line. When obese people are hired for tasks that require heavy lifting, they generally report more back, knee, ankle, and shoulder pain. That sends disability claims and sick days spiraling up. (Truls Ostbye, a Duke University researcher who has studied the issue, notes that it doesn't apply to standard office jobs: "If you are obese and you are not exposed to heavy lifting, you will not have these injuries.") Should employers deny obese people work that requires heavy lifting, in hopes of keeping their disability claims down? They can point to the injury rate as a sign that some overweight people are literally less fit for the job - that no matter their other qualifications, their weight should rule them out. But it's hard to imagine the same employer refusing to hire someone with a chronic illness, such as multiple sclerosis, for the same blunt bottom-line reason. If weight isn't a choice for some people, is it more like a chronic illness? And should employers act accordingly?

ULTIMATELY, THE MOST IMPORTANT cost that figures in Rushing's bill has nothing to do with disability claims or sick days. It's the lawsuits that really scare people. Every time a new group is added to antidiscrimination regulations, opponents predict a flurry of meritless trials. Discrimination is a sticky, tricky business, and "people have trouble proving it [regarding weight] in court cases," says Charles Baum, an economist at Middle Tennessee State University in Murfreesboro who studies obesity in the workplace. "Ultimately they have to prove the problem is all due to the employer . . . and I wouldn't think it's usually the only potential cause."

For the most part, though, the doomsday predictions for other anti-discrimination laws haven't come true. The Americans with Disabilities Act, passed in 1990, hasn't been a massive drain in terms of damages, despite being a prototype for Rushing's bill. Earlier this decade, the American Bar Association put the number of disability discrimination lawsuits decided for the defendants at 98 percent. This startling

number could mean any number of things - that the courts are biased, that when in doubt, judges stick with the status quo, that disability lawsuits are like all other lawsuits, in that a lot of frivolous ones go to trial. What it does clearly suggest is that payouts from this type of lawsuit are rare and relatively small - not enough by themselves, certainly, to bankrupt a state.

The ADA may be a problematic model for predicting the effects of Rushing's bill. Many people, including the overweight, don't file suit under ADA auspices because they don't consider themselves "disabled," says Toombs, who's on the board of the National Association to Advance Fat Acceptance. And most overweight people aren't heavy enough to convincingly argue that they're physically "disabled" by their weight, anyway - which is why, Rushing says, his bill would have to apply to everyone who is overweight, not just the morbidly obese. Given that more people are overweight than not, Rushing's bill would target many more people than the ADA does.

A better model for predicting the effects of Rushing's bill is Michigan - the only state that includes height and weight in its antidiscrimination laws. (Washington, D.C., San Francisco, and Santa Cruz, California, have similar local ordinances.) The law hasn't prompted many lawsuits or complaints in the 28 years since it passed, says Roehling, the Michigan management professor. "The number has started increasing in the last four years," he says, "but that's an increase from practically nothing. Part of it is that people don't know about the law. But others just say they're too embarrassed about what's happened, and they don't want to deal with it in court." Michigan's law wasn't even about weight, per se, when it passed. In the 1970s, the state's police and fire departments had such stringent size guidelines that most women and many Asian men had no hope of meeting them. Weight - or the lack of it - was being used as a proxy for gender and race, Roehling says. It had become a civil rights issue.

This is welcome ammunition for Rushing, who is African-American. He has always seen his bill in the context of civil rights; he likes to cite the Rev. Martin Luther King Jr.'s most famous speech, as if the great activist had said he wanted his children to be judged not by the size of their waistline but by the content of their character. "You can't fix being black, and you can't fix being a woman," says Kaplan, the MGH doc. If you can't always fix being obese, either, he says, why should discrimination on that basis be OK? Imagine if the Anti-Gym were anti-black - if Karolchuk's "NO CHUBBIES" T-shirt were instead a version using the N-word. Or consider Roehling's survey participant, the one who told him "there was one kind of person he absolutely wasn't going to hire - a fat girl." Now replace "fat" with "black." It's the textbook definition of discrimination. And because it would be so unfair, so wrong, so illegal to follow through with it, it's hard to imagine that anyone in today's society would dare.

Like the race laws, then, the weight-discrimination bill has a goal that extends beyond the legal system: to change the way we think. The idea is not to clog up the courts. Instead, it's to create a society where hundreds of lawsuits aren't needed, because there's not as much to sue over - a society of people who have the legal right to say hurtful things and the compassion to know better than to act on them. "A lot of racial discrimination went on before race laws were passed," says Roehling. "And now people get it. You just don't do that." After the news of Rushing's bill broke, a visitor to a conservative blog noted that it was "a sad commentary when we have to have a law to tell people to be nice to each other." It is. And maybe we don't need that law, or any other legal reminder to treat one another fairly, as decent, compassionate human beings would. But if that's true, it's time for all of us to step up and prove it. ■

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