

**Developments in Discrimination Law  
2016-2017**



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**Administrative Developments**

## **Equal Employment Opportunity Commission**

- **FY 2016 Disability Discrimination Charges: highest number ever filed with EEOC**
- **Impairments in disability charges**
- **May 2016: EEOC issues guidance on employer – provided leaves of absence for disabling conditions**
- **December 2016: EEOC issues legal rights factsheet for applicants and employees with mental health conditions**

## **Court Decisions on Disability Issues**

## Gender Dysphoria an ADA Disability

- **ADA: no coverage for homosexuality, bisexuality and “gender identity disorder” 42 USC § 12211(b)**
- **Court addressed motion to dismiss claiming that “gender dysphoria” was excluded from ADA coverage**
- **Court held “Gender dysphoria” was disabling**
  - Went “beyond merely identifying with a different gender”
  - Characterized by “clinically significant stress and other impairments”
  - Substantially limited “interacting with others, reproducing, and social and occupational interaction”

*Blatt v. Cabela’s Retail, Inc.* (E.D. Pa. May 18, 2017)

## Obesity – Without More – Not A Disability

- ***Morriss*: Employer did not violate ADA when it rescinded job offer based on safety-sensitive position rule prohibiting hire of applicants with 40% or higher body mass index**
  - “for obesity, even morbid obesity, to be considered a physical impairment, it must result from an underlying physiological disorder or condition.”
- ***Parker*: Requiring sleep apnea exam on drivers with a body mass index of 35% or higher did not violate ADA**
  - Connection of weight and sleep apnea with safety-sensitive driving position demonstrated exam was job-related and consistent with business necessity

*Morriss v. BNSF Railway Co.* (8th Cir. Apr. 5, 2016)

*Parker v. Crete Carrier Corp.* (8th Cir. Apr. 3, 2017)

Also available as part of the eCourse

[2017 Labor and Employment Law eConference](#)

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