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Need for Legal Protection Against Weight Discrimination in the United States

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Abstract

The steady rise in the prevalence of obesity has had a negative impact for people living with obesity. These include healthcare and social disparities that lead to diminished quality of life and social prosperity. Even though discrimination based on weight has a negative impact on people's health and wellness, there is only one state in the U.S – Michigan – that has an anti-weight discrimination law. Massachusetts, in addition to some of the cities in the U.S. have been working to ensure that weight is added as a civil protection over the years. This perspective describes the importance of a weight discrimination law in the U.S. as well as summarizes the currently existing protections in the country.

Keywords

weight; discrimination; law; protective class; obesity

In the United States (U.S.), there has been a steady rise in the prevalence of obesity with current data suggesting that 42.4% of adults and 18.5% of children have obesity (1). In addition, data suggests that weight stigma and discrimination in the U.S. has been increasing; the prevalence of weight/height discrimination increased from 7% in 1995–1996 to 12% in 2004–2006 (2). Overweight and obesity discrimination has many deleterious effects on the mental wellbeing and prosperity of those who have it. Weight discrimination

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creates health disparities: it heightens the risk of developing eating disorders and unhealthy weight control behaviors, as well as increases the risk of higher body mass index (BMI) and metabolic disease development (3). Furthermore, a ‘wage penalty’ has been reported on people who have overweight or obesity, especially for women (4). This data undermines individual and social prosperity of people living with overweight and obesity and perpetuates health inequalities for adolescents and adults in this population.

Even though weight discrimination has a negative impact on people’s health and wellness, and results in unequal academic and job opportunities, there is only one state in the U.S – Michigan – that has an anti-weight discrimination law. Specifically, Michigan state used the Health and Human Services definition of civil rights – “personal rights guaranteed and protected by the U.S. Constitution” (5) and added weight and height to The Public Act 453 of the Elliott Larsen Civil Rights Act of 1976. This Act prohibits “discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, height, weight, familial status, or marital status...” (6). This Act has provided additional protection against discrimination based on weight and height unlike in any other U.S. state.

In 2007, Massachusetts (MA) Representative Byron Rushing proposed legislation to add weight and height to the MA anti-discrimination laws (Bill H.952), but that bill has not yet advanced through the legislature to become a law. Despite the overall lack of state level legislation, there are some cities in the United States that have made weight and height a protected category for anti-discrimination. These include San Francisco and Santa Cruz, California; Binghamton, New York; Madison, Wisconsin; and Urbana, Illinois. In addition, the District of Columbia’s law does not include weight but does provide protection against discrimination based on “personal appearance”. Table 1 lists the states/cities with legal prohibitions against weight discrimination listing the covered protection categories. Employment, housing and real estate transactions, business establishment or public accommodations categories are covered by most state/city protections. On the other hand, general opportunities, educational institutions and home delivery services categories are only covered by a few.

Moreover, there are a great deal of cases brought to courts all around the U.S. addressing various cases of weight discrimination. One such case was recently brought to court in Washington state in summer 2019. The Washington state supreme court, as a result, ruled to consider obesity as part of Washington Law Against Discrimination, which protects employees with disabilities (7). In addition, in the state of Florida, Senator Oscar Braynon II recently proposed to revise the general purpose of the Florida Civil Rights Act of 1992 to include weight and height as two additional discrimination categories (8). While there has been activity on the city and state level to address weight and height discrimination, there has been no effort on the federal level to add weight or height as a civil protection category. While federal legislation regarding weight discrimination would be a finite goal to pursue, it is critical that Massachusetts works to pass the anti-weight discrimination bill to add weight and height as a protected category in the meanwhile.

Currently, the Massachusetts legislature has a renewed focus to add weight as a protected category with two bills sponsored by Senator Becca Rausch (S.1012) and Representative Tram Nguyen (H.3413). In February 2020, the legislation was favorably voted out of the Judiciary Committee to the Ways and Means Committee for the next vote (9,10). However, the current COVID-19 pandemic altered this momentum. Moving forward, the Massachusetts legislature should vote to push forward the anti-weight discrimination bill so that it can become a law in Massachusetts, which would make it the second state to do so. The standardized process may then be utilized by other states as they work to ensure that weight is added as a protected category with regards to employment and other issues. This legislation will ensure that many people who suffer from weight discrimination in employment will lead to social prosperity for the Massachusetts while creating a path forward for other states to achieve a similar goal.

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Table 1:

States/cities with legal prohibitions against weight discrimination

City, State	Year	Protection Terminology	Protection Categories							
			Employment/ Commercial Space	Housing and Real Estate Transactions	General Opportunities	Business Establishment/ Public Accommodation	Educational Institutions	Home Delivery Services		
<i>Michigan state</i>	1976	Weight and Height	X							
<i>Madison, WI</i>	1979	Physical Appearance	X	X			X			
<i>Santa Cruz, CA</i>	1992	Weight and Height	X	X			X	X		
<i>San Francisco, CA</i>	2000	Weight and Height	X	X			X			X
<i>Washington, DC</i>	2000	Personal Appearance	X	X			X	X		
<i>Urbana, IL</i>	2003	Personal Appearance	X	X		X	X			
<i>Binghamton, NY</i>	2009	Weight and Height	X	X			X	X		