

Scale Over Skills: Weight Bias in Hiring at Legal Organizations

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A patient called me complaining of shortness of breath. I was concerned and recommended immediate attention. Since she was out of town, we found an urgent care center to evaluate. She was seen quickly, but after a brief discussion she was diagnosed with “too much fat pressing on her lungs” and told to lose weight. There was no extensive workup, no EKG or X-ray. I then urged her to go to an emergency room, where she was ultimately diagnosed with a pulmonary embolism, a blood clot in the lungs, which is often fatal if untreated. Thankfully, she received aggressive medical treatment and recovered. – Scott Kahan, M.D., M.P.H.

Had this episode proven fatal, one could argue that the cause of death was weight bias.

Weight bias is negative attitudes, beliefs, stereotypes, or assumptions based on an individual’s weight and appearance. It can be overt (conscious) or implicit (unconscious). Weight bias is common in a number of settings (including healthcare, as demonstrated above); it is especially prevalent in the workplace, specifically in the hiring process.

We all make immediate, unconscious assumptions about new acquaintances — whether patients, clients, coworkers, or interviewees. For those who are heavier, these often include perceptions about work ethic, “willpower,” ambitions, or intelligence — all solely based on physical appearance.

These stereotypes can translate into judgments about the person and their potential performance in the workplace, resulting in poor hiring decisions.

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Weight Bias Is Pervasive and Needs to Be Addressed

This isn’t breaking news. In most workplaces — and society at large — remarks about weight are met with laughter, not condemnation; even when specifically directed at a person, we are more likely to turn away, thereby implicitly condoning it, rather than speak out compassionately. Indeed, weight is among the last widely acceptable forms of discrimination.

Fortunately, explicit, intentional weight stigma has been declining. Yet implicit weight bias is far more common — and ultimately may be even more harmful, both to those targeted and to the organizations and workplaces where it occurs.

Overweight individuals are 12 times more likely to have experienced employment discrimination (see Resources: Rudd Center and Study). This discrimination is also disproportionate by gender: women are more likely than men to experience weight discrimination in the workplace (see Resources: Discrimination).

To be sure, there is no correlation between one’s weight and their intelligence, work ethic, or potential. With more than 70% of American adults carrying excess weight, employers who fail to address weight bias — especially during the hiring process — risk losing out on much of the talent pool. Moreover, obesity disproportionately affects many diverse populations. For example, Black adults have the highest rate of obesity at almost 50% (see Resources: CDC). Employers further risk decreased racial, gender, and ethnic diversity (a particular challenge for legal organizations) by overlooking this issue.

Why Isn't More Being Done?

Issues around weight bias are complicated. Unlike cultural, ethnic, religious, or other forms of diversity, there are unlikely to be affinity groups for these individuals lobbying for inclusion. In addition, rarely do employees self-identify as suffering from obesity (unlike volunteering that you are Black, Asian, Latinx, LGBTQ+, or a member of any other diverse group of individuals).

Like many other issues of bias, there is also a discomfort addressing the topic given the emotional charge around body weight and physical appearance and the desire to avoid be labeled as overweight or “obese.” But it is worth wading through the discomfort to raise awareness and combat these issues.

What Can Employers Do?

There are a number of concrete actions that legal employers can take to mitigate weight bias in hiring, including the following three steps.

Step 1: Training and Education

Training and education are critical to bring awareness to and minimize weight bias in hiring. As part of your organization's interviewing/hiring process, conscious and unconscious bias should be covered in-depth, and the training should include focus on weight bias specifically. All members of the recruiting and hiring team (ideally, all members of the organization) should evaluate their own implicit attitudes about weight via the implicit association test (see Resources: Harvard). This short, online Project Implicit exercise helps identify unintended attitudes and beliefs about weight and other subtle biases that may otherwise go unnoticed.

In addition, your organization should include this topic in other types of training, such as harassment training. As part of this process, consider formally changing your organization's harassment policy to prohibit harassment based on body weight.

Step 2: Standardize the Hiring Process

Utilizing firm-wide, objective protocols and evaluation tools to standardize the process decreases bias in interviewing and hiring. Organizations can use both behavioral interviewing and panel interviewing techniques; the former uses objective criteria to evaluate applicants (the less subjective the better to combat bias) and the latter involves group discussion and consensus-building, which helps to counter implicit assumptions about interviewees.

The use of phone and video interviews — recently embraced by organizations during the COVID-19 pandemic — can also facilitate decreased bias in hiring. Virtual interviews minimize visual cues that may otherwise contribute to snap judgments based on body weight or appearance. Even after the pandemic is long over, organizations will benefit from continuing to use virtual interview modalities, such as phone screening or brief video meetings, as the initial steps of the interview process.

Another valuable strategy involves reviewing job descriptions to avoid biased language. Just as certain words trigger gender connotations (“dominant” for men or “aggressive” for women), other phrases conjure an image of a certain physical type of candidate. For example, a phrase such as “fast-moving” may unintentionally imply a preference for a younger candidate, but also for a thinner or more “fit” applicant as well. Biased language may alienate a qualified candidate or improperly frame the mindset of hiring personnel.

Similarly, analyze the organization's interview evaluation process and consider if the wording inadvertently prioritizes certain attributes. Are reviewers prompted to determine if a candidate is “energetic”? Like the example above, this may create an unintentional bias in favor of a younger or more seemingly fit candidate.

Step 3. Create an Inclusive Culture

The culture of your workplace is directly related to hiring. While the following suggestions are not specific to the hiring process, they do create a culture of in-

clusivity that is necessary to ensure all candidates are welcome. Some specific steps organizations can take include:

- Adding body size, shape, and weight to the organization's non-discrimination policy.
- Using respectful and compassionate language. Terms like "obese" and "morbidly obese" are often felt to be pejorative and demeaning. "People-first" language should be standard in all organizations. Healthcare organizations do not refer to persons with cancer or depression as "cancerous" or "depressive." Similarly, neutral language is more supportive for persons who struggle with weight.
- Reviewing how your organization frames "wellness" and how obesity is discussed in your organization's well-being program (if there is one).

Measures such as these encourage a culture of inclusion and tolerance and help to root out unintentional (and intentional) biases.

Ultimately, an organization's success is dependent on its talent pool. Overlooking qualified applicants because an employer is unable or unwilling to acknowledge and counter their own implicit biases does a disservice to both the people and the bottom line of the organization.

Resources:

Rudd Center: ["Weight Bias: A Social Justice Issue,"](#) Yale Rudd Center, 2012.

Study: ["Study finds you're less likely to get hired if you're overweight. Here's how to avoid this bias,"](#) CNBC, Nov. 3, 2017.

Discrimination: ["Weight discrimination is rampant. Yet in most places it's still legal,"](#) *Washington Post*, June 21, 2019.

CDC: [Adult Obesity Facts](#)

Harvard: [Project Implicit](#)

About the Authors

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