



## Is Weight Loss Surgery a Compensable Injury under WC?

Below is an excerpt from a court case in Indiana that ruled in favor of the injured worker allowing his gastric bypass surgery to be covered as a worker's compensation injury. This could be setting a costly precedent.

**As employers struggle with whether or not to implement and/or encourage wellness programs, consider this new wrinkle in obesity. Imagine the increased cost of a WC claim if weight loss surgery is compensable under WC to get to the underlying injury for treatment. This is an Indiana ruling....one of the more employer friendly, conservative states for WC.**

**August 18, 2009 from Lynch Ryan Workers' Comp Insider; an excerpt:**

*"Health-related matters and their associated costs are challenging for employers and we expect they will continue to be played out in the courts. In fact, yesterday, Roberto Cenicerros blogged about a surprise ruling by the Indiana Court of Appeals about weight loss surgery related to a workers comp claim ... or at least the ruling was a surprise to us. In Boston's Gourmet Pizza v. Adam Childers, the court determined that the employer must pay for weight-reduction surgery for Childers as a precursor to treating the work-related back injury. The employer must provide temporary total disability benefits while the employee prepares for, and recovers from, the weight-loss surgery. The subsequent treatment path for the back injury is unclear, various treatments have been under consideration but the employer's weight was deemed a barrier to any success.*

*In 2007, the then 25-year-old Adam Childers sustained a back injury after being struck in the back by a freezer door while serving as a cook for his employer. At the time, he weighed 340 pounds and smoked about a pack and a half of cigarettes a day. Because of his weight, his physician advised against any neurosurgery, but Childers' back pain persisted and other treatments did not provide relief. Over the course of this treatment, his weight increased to 380 pounds. His physician suggested lap band or gastric bypass surgery to get his weight down, both to relieve his symptoms and to improve his suitability for potential surgical treatments, such as spinal fusion.*

*Understandably, the employer balked at footing the bill for weight loss surgery. While the employer assumed responsibility in providing treatment for Childer's work-related injury, they contested the idea that they should have any responsibility for providing secondary medical treatment for a preexisting condition. However, in Indiana, a preexisting condition is not a bar to benefits, a matter that the courts have taken up in several prior cases. Cenicerros sums up it ups this way: But the court agreed with a Worker's Compensation Board finding that the worker's pre-existing medical and health condition combined with the accident to create a single injury for which he is entitled to work comp benefits.*

*Various groups have posted many times about the high-cost of obesity and diabetes in the workplace, and how comorbidities can add to the cost of workers comp injuries. Bloggers have blogged about employers' increasingly aggressive efforts to target so-called lifestyle issues that impact health. Decisions like this might heighten employers' resolve to control obesity."*

The IPCS physical capability evaluation program has clearly demonstrated over the years that it places the more fit worker into physically demanding jobs. Part of the IPCS interpretative process is to insure the worker's strength relative to body size matches the physical demands of the job. This puts the worker at considerably less risk for injury and health related matters.