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Questions and Answers About Diabetes in the Workplace and the Americans with Disabilities Act (ADA)

Abstract
The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination on the basis of disability. Title I of the ADA makes it unlawful for any employer to discriminate against a qualified applicant or employee because of a disability in any aspect of employment. The ADA covers employers with 15 or more employees, including state and local governments. Section 501 of the Rehabilitation Act provides the same protections for federal government employees and applicants. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and provide protections in addition to those available under the ADA.

Keywords
ADA, person, disabilities, law, discrimination, employer, employment, work, diabetes, job

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The U.S. Equal Employment Opportunity Commission

Questions and Answers About Diabetes in the Workplace and the Americans with Disabilities Act (ADA)

Introduction

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against individuals with disabilities. Title I of the ADA covers employment by private employers with 15 or more employees as well as state and local government employers. The Rehabilitation Act provides similar protections related to federal employment. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and provide protections in addition to those available under the ADA.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA. This guide explains how the ADA might apply to job applicants and employees with diabetes. In particular, this guide explains:

- when diabetes is a disability under the ADA;
- when an employer may ask an applicant or employee questions about her diabetes;
- what types of reasonable accommodations employees with diabetes may need; and,
- how an employer should handle safety concerns about applicants and employees with diabetes.

General Information About Diabetes

Diabetes is becoming more common in the United States, with approximately one million new cases diagnosed each year.[(1)] Today, nearly 17 million Americans age 20 years or older have diabetes, including individuals of nearly every race and ethnicity.[(2)] Diabetes occurs when the pancreas does not produce any insulin or produces very little insulin, or when the body does not respond appropriately to insulin. Insulin is a hormone that is needed to convert sugar, starches, and other food into energy. The process of turning food into energy is crucial because the body depends on this energy for every action, from pumping blood and thinking to running and jumping. Although diabetes cannot be cured, it can be managed. Some people control their diabetes by eating a balanced diet, maintaining a healthy body weight, and exercising regularly. Many individuals, however, must take oral medication and/or insulin to manage their diabetes.[(3)]

Individuals with diabetes successfully perform all types of jobs from heading major corporations to protecting public safety. Yet, many employers still automatically exclude them from certain positions based on myths, fears, or stereotypes. For example, some employers wrongly assume that anyone with diabetes will be unable to perform a particular job (e.g., one that requires driving) or will need to use a lot of sick leave. The reality is that, because many individuals with diabetes work with few or no restrictions, their employers do not know that they have diabetes. Some employees, however, tell their employers that they have diabetes because they need a "reasonable accommodation" a change or adjustment in the workplace to better manage and control their condition. Most of the accommodations requested by employees with diabetes such as regular work schedules, meal breaks, a place to test their blood sugar levels, or a rest area do not cost employers anything to provide.

1. When is diabetes a disability under the ADA?

Diabetes is a disability when it substantially limits one or more of a person's major life activities. Major life activities are basic activities that an average person can perform with little or no difficulty, such as eating or caring for oneself. Diabetes also is a disability when it causes side effects or complications that substantially limit a major life activity. Even if diabetes is not currently substantially limiting because it is controlled by diet, exercise, oral medication, and/or insulin, and there are no serious side effects, the condition may be a disability because it was substantially limiting in the past (i.e., before it was diagnosed and adequately treated). Finally, diabetes is a disability when it does not significantly affect a person's everyday activities, but the employer treats the individual as if it does. For example, an employer may assume that a person is

totally unable to work because he has diabetes. Under the ADA, the determination of whether an individual has a disability is made on a case-by-case basis.

Obtaining and Using Medical Information

Applicants

The ADA limits the medical information that an employer can seek from a job applicant. During the application stage, an employer may not ask questions about an applicant's medical condition or require an applicant to take a medical examination before it makes a conditional job offer. This means that an employer cannot ask:

- questions about whether an applicant has diabetes, or
- questions about an applicant's use of insulin or other prescription drugs.

After making a job offer, an employer may ask questions about an applicant's health (including asking whether the applicant has diabetes) and may require a medical examination as long as it treats all applicants the same.

2. May an employer ask any follow-up questions if an applicant reveals that she has diabetes?

If an applicant voluntarily tells an employer that she has diabetes, an employer only may ask two questions: whether she needs a reasonable accommodation and what type of accommodation.

> **Example:** An individual applying at a grocery store for a cashier's position voluntarily discloses that she has diabetes and will need periodic breaks to take medication. The employer may ask the applicant questions about the reasonable accommodation, such as how often she will need breaks and how long the breaks need to be. Of course, the employer may not ask any questions about the condition itself, such as how long the applicant has had diabetes, whether she takes any medication, or whether anyone else in her family has diabetes.

3. What should an employer do when it learns that an applicant has diabetes after he has been offered a job?

The fact that an applicant has diabetes may not be used to withdraw a job offer if the applicant is able to perform the fundamental duties ("essential functions") of a job, with or without reasonable accommodation, without posing a direct threat to safety. ("Reasonable accommodation" is discussed at Questions 8 through 11. "Direct threat" is discussed at Questions 12 through 14.) The employer, therefore, should evaluate the applicant's present ability to perform the job effectively and safely. After an offer has been made, an employer also may ask the applicant additional questions about his condition. For example, following an offer, an employer could ask the applicant how long he has had diabetes, whether he takes any medication, and whether the condition is under control. The employer also could send the applicant for a follow-up medical examination. An employer may withdraw an offer from an applicant with diabetes only if it becomes clear that he cannot do the essential functions of the job or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of himself or others.

> **Example:** A qualified candidate for a police officer's position is required to have a medical exam after he has been extended a job offer. During the exam, he reveals that he has had diabetes for five years. He also tells the doctor that since he started using an insulin pump two years ago, his blood sugar levels have been under control. The candidate also mentions that in his six years as a police officer for another department, he never had an incident related to his diabetes. Because there appears to be no reason why the candidate could not safely perform the duties of a police officer, it would be unlawful for the employer to withdraw the job offer.

Employees

The ADA strictly limits the circumstances under which an employer may ask questions about an employee's medical condition or require the employee to have a medical examination. Generally, to obtain medical information from an employee, an employer must have a reason to believe that there is a medical explanation for changes in the employee's job performance or must believe that the employee may pose a direct threat to safety because of a medical condition. (See Question 6 for other instances when an employer may obtain medical information.)

4. When may an employer ask an employee if diabetes, or some other medical condition, may be causing her performance problems?

If an employer has a legitimate reason to believe that diabetes, or some other medical condition, may be affecting an employee's ability to do her job, the employer may ask questions or require the employee to have a medical examination.

> **Example:** Several times a day for the past month, a receptionist has missed numerous phone calls and has not been at her desk to greet clients. The supervisor overhears the receptionist tell a co-worker that she feels tired much of the time, is always thirsty, and constantly has to go to the bathroom. The supervisor may ask the receptionist whether she has diabetes or send her for a medical examination because he has a reason to believe that diabetes may be affecting the receptionist's ability to perform one of her essential duties sitting at the front desk for long periods of time.

5. May an employer obtain medical information from an employee known to have diabetes whenever he has performance problems?

No. Poor job performance often is unrelated to a medical condition and should be handled in accordance with an employer's existing policies concerning performance. Medical information can be sought only where an employer has a reasonable belief, based on objective evidence, that a medical condition may be the cause of the employee's performance problems.

> **Example:** A normally reliable secretary with diabetes has been coming to work late and missing deadlines. The supervisor observed these changes soon after the secretary started going to law school in the evenings. The supervisor can ask the secretary why his performance has declined but may not ask him about his diabetes unless there is objective evidence that his poor performance is related to his medical condition.

6. Are there any other instances when an employer may ask an employee about diabetes?

An employer also may ask an employee about diabetes when an employee:

- has asked for a **reasonable accommodation** because of his diabetes;
- is participating in a **voluntary** wellness program that focuses on early detection, screening, and management of diseases such as diabetes.[(4)]

In addition, an employer may require an employee with diabetes to provide a doctor's note or other explanation to justify his use of sick leave, as long as it has a policy or practice of requiring all employees who use sick leave to do so.

Disclosure

With limited exceptions, an employer must keep confidential any medical information it learns about an applicant or employee. An employer, however, may disclose that an employee has diabetes under the following circumstances:

- to supervisors and managers in order to provide a reasonable accommodation or to meet an employee's work restrictions;
- to first aid and safety personnel if an employee would need emergency treatment or require some other assistance because, for example, her blood sugar levels are too low;[(5)]
- to individuals investigating compliance with the ADA and similar state and local laws; and,
- where needed for workers' compensation or insurance purposes (for example, to process a claim).

7. May an employer explain to other employees that their co-worker is allowed to do something that generally is not permitted (such as eat at his desk or take more breaks) because he has diabetes?

No. An employer may not disclose that an employee has diabetes. However, an employer certainly may respond to a question about why a co-worker is receiving what is perceived as "different" or "special" treatment by emphasizing that it tries to assist any employee who experiences difficulties in the workplace.

The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal and, that in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that her privacy similarly would be respected if she ever had to ask the employer for some kind of workplace change for personal reasons.

An employer will benefit from providing information about reasonable accommodations to all of its employees. This can be done in a number of ways, such as through written reasonable accommodation procedures, employee handbooks, staff meetings, and periodic training. This kind of proactive approach may lead to fewer questions from employees who misperceive co-worker accommodations as "special treatment."

Accommodating Employees with Diabetes

The ADA requires employers to provide adjustments or modifications to enable people with disabilities to enjoy equal employment opportunities unless doing so would be an undue hardship (i.e., a significant difficulty or expense). Accommodations vary depending on the needs of the individual with a disability. Not all employees with diabetes will need an accommodation or require the same accommodation.

8. What types of reasonable accommodations may employees with diabetes need?

Some employees may need one or more of the following accommodations:

- a private area to test blood sugar levels or to take insulin
- a place to rest until blood sugar levels become normal[(6)]
- breaks to eat or drink, take medication, or test blood sugar levels

  Example: A manufacturing plant requires employees to work an eight-hour shift with just a one-hour break for lunch. An employee with diabetes needs to eat something several times a day to keep his blood sugar levels from dropping too low. Absent undue hardship, the employer could accommodate the employee by allowing him to take two 15-minute breaks each day and letting him make up the time by coming to work 15 minutes earlier and staying 15 minutes later.

- leave for treatment, recuperation, or training on managing diabetes[(7)]
- modified work schedule or shift change

  Example: A nurse with insulin-treated diabetes rotated from working the 6 a.m. to 2 p.m. shift to the midnight to 8 a.m. shift. Her doctor wrote a note indicating that interferences in the nurse's sleep, eating routine, and schedule of insulin shots were making it difficult for her to manage her diabetes. Her employer eliminated her midnight rotation.

- allowing a person with diabetic neuropathy (a nerve disorder caused by diabetes) to use a stool.

Although these are some examples of the types of accommodations commonly requested by employees with diabetes, other employees may need different changes or adjustments. Employers should ask the particular employee requesting an accommodation because of his diabetes what he needs that will help him do his job. There also are extensive public and private resources to help employers identify reasonable accommodations. For example, the website for the Job Accommodation Network (http://janweb.icdi.wvu.edu/media/diabetes.html) provides information about many types of accommodations for employees with diabetes.

9. How does an employee with diabetes request a reasonable accommodation?

There are no "magic words" that a person has to use when requesting a reasonable accommodation. A person simply has to tell the employer that she needs an adjustment or change at work because of her diabetes.

> **Example:** A custodian tells his supervisor that he recently has been diagnosed with diabetes and needs three days off to attend a class on how to manage the condition. This is a request for reasonable accommodation.

A request for a reasonable accommodation also can come from a family member, friend, health professional,

or other representative on behalf of a person with diabetes. If the employer does not already know that an employee has diabetes, the employer can ask the employee for verification from a health care professional.

10. Does an employer have to grant every request for a reasonable accommodation?

No. An employer does not have to provide a reasonable accommodation if doing so will be an undue hardship. Undue hardship means that providing the reasonable accommodation would result in significant difficulty or expense. If a requested accommodation is too difficult or expensive, an employer still would be required to determine whether there is another easier or less costly accommodation that would meet the employee's needs.

11. Is it a reasonable accommodation for an employer to make sure that an employee regularly checks her blood sugar levels and eats or takes insulin as prescribed?

No. Employers have no obligation to monitor an employee to make sure that she is keeping her diabetes under control. It may be a form of reasonable accommodation, however, to allow an employee sufficient breaks to check her blood sugar levels, eat a snack, or take medication.

Dealing with Safety Concerns on the Job

When it comes to safety concerns, an employer should be careful not to act on the basis of myths, fears, or stereotypes about diabetes. Instead, the employer should evaluate each individual on her skills, knowledge, experience and how having diabetes affects her. In other words, an employer should determine whether a specific applicant or employee would pose a "direct threat" or significant risk of substantial harm to himself or others that cannot be reduced or eliminated through reasonable accommodation. This assessment must be based on objective, factual evidence, including the best recent medical evidence and advances to treat and control diabetes.

12. May an employer ask an employee questions about his diabetes or send him for a medical exam if it has safety concerns?

An employer may ask an employee about his diabetes when it has a reason to believe that the employee may pose a "direct threat" to himself or others. An employer should make sure that its safety concerns are based on objective evidence and not general assumptions.

> **Example:** An ironworker works at construction sites hoisting iron beams weighing several tons. A rigger on the ground helps him load the beams, and several other workers help him to position them. During a break, the supervisor becomes concerned because the ironworker is sweating and shaking. The employee explains that he has diabetes and that his blood sugar has dropped too low. The supervisor may require the ironworker to have a medical exam or submit documentation from his doctor indicating that he can safely perform his job.

> **Example:** The owner of a daycare center knows that one of her teachers has diabetes. She becomes concerned that the teacher might lapse into a coma when she sees the teacher eat a piece of cake at a child's birthday party. Although many people believe that individuals with diabetes should never eat sugar or sweets, this is a myth. The owner, therefore, cannot ask the teacher any questions about her diabetes because she does not have a reasonable belief, based on objective evidence, that the teacher is posing a direct threat to the safety of herself or others.

13. May an employer require an employee who has been on leave because of diabetes to submit to a medical exam or provide medical documentation before allowing him to return to work?

Yes, but only if the employer has a reasonable belief that the employee may be unable to perform his job or may pose a direct threat to himself or others. Any inquiries or examination must be limited to obtaining only the information needed to make an assessment of the employee's present ability to safely perform his job.

> **Example:** A telephone repairman had a hypoglycemic episode right before climbing a pole and was unable to do his job. When the repairman explained that he recently had begun a different insulin regime and that his blood sugar levels occasionally dropped too low, his supervisor sent him home. Given the safety risks associated with the repairman's job, his change in medication, and his hypoglycemic reaction, the employer may ask him to submit to a medical exam or provide medical documentation indicating that he can safely perform his job without posing a direct threat before allowing him to return to work.

Example: A filing clerk, who was recently diagnosed with type 2 diabetes, took a week of approved leave to attend a class on diabetes management. Under these circumstances, the employer may not require the clerk to have a medical exam or provide medical documentation before allowing her to return to work because there is no indication that the employee's diabetes will prevent her from doing her job or will pose a direct threat.

14. What should an employer do when another federal law prohibits it from hiring anyone who takes insulin?

If a federal law prohibits an employer from hiring a person who takes insulin, the employer would not be liable under the ADA. The employer should be certain, however, that compliance with the law actually is **required**, not voluntary. The employer also should be sure that the law does not contain any exceptions or waivers. For example, the Department of Transportation has issued exemptions to certain insulin- treated diabetic drivers of commercial motor vehicles.

Conclusion

Although not everyone who has diabetes has a disability as defined by the ADA, it is in the employer's best interest to try to work with employees who have diabetes, or are at risk for the disease, to help improve productivity, decrease absenteeism, and generally promote healthier lifestyles. Employers also should avoid policies or practices that categorically exclude people with diabetes from certain jobs and, instead, should assess each applicant's and employee's ability to perform a particular job with or without reasonable accommodation.

Footnotes

1. National Diabetes Fact Sheet from the Centers for Disease Control, http://www.cdc.gov/diabetes/pubs/estimates.html.

2. Id.

3. There are two basic types of diabetes: type 1 and type 2. Individuals with type 1 diabetes must take insulin. Some persons with type 2 diabetes control the disease with weight control, appropriate diet, and exercise. Many, but not all, individuals with type 2 diabetes take insulin and/or oral medication.

4. Employers must keep any medical records acquired as part of a wellness program confidential and separate from personnel records. Employers also may not use any information obtained from a voluntary wellness program to limit health insurance eligibility.

5. See footnote 6.

6. Insulin and some oral medications can sometimes cause blood sugar levels to go too low. A person experiencing hypoglycemia (low blood sugar) may feel weak, shaky, confused, or faint. Most people with diabetes, however, recognize these symptoms and will immediately drink or eat something sweet. Many individuals with diabetes also carry a blood glucose monitoring kit with them at all times and test their blood sugar levels as soon as they feel minor symptoms such as shaking or sweating. It usually takes only a few minutes for a person's blood sugar to return to normal.

7. An employee with diabetes also may be entitled to leave under the Family and Medical Leave Act (FMLA), which provides for up to 12 weeks of unpaid leave for a serious health condition. The U.S. Department of Labor enforces the FMLA. For more information, go to www.dol.gov/esa/whd/fmla/.

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