

Your Job and Your Rights: Ensuring People with Diabetes are Treated Fairly at Work

How the Law Protects Employees with Diabetes

Federal Anti-Discrimination Laws

The Americans with Disabilities Act applies to private employers and labor unions with 15 or more employees, as well as state and local governments. The Rehabilitation Act of 1973 applies to most federal government and employers receiving federal money. The Congressional Accountability Act applies to employees of Congress and most legislative branch agencies.

What the Laws Do

These laws protect people with disabilities from unfair treatment at work. Employers cannot treat you differently in hiring, firing, discipline, pay, promotion, job training, and fringe benefits just because you have diabetes. They cannot hold it against you if you ask for your rights.

Who Is Covered

To get help from these laws, you must be a qualified individual with a disability. A disability is a physical or mental impairment that substantially limits one or more major life activities. Individuals with diabetes are considered to have a disability because their endocrine system, a major life activity that helps regulate bodily functions, is substantially limited.

In other words, your endocrine system does not work correctly because it does not make and/or use insulin properly and is considered an impairment under federal laws.

Applying for a Job

Employers are not allowed to ask questions likely to reveal disabilities before they make a job offer. However, employers can ask these questions after they make a job offer. For example, during your interview, you should not be asked if you have diabetes. It is legal to be asked to take a physical exam before you begin working, as long as all people hired for your position have to take a physical exam as well.

Doing the Job

You need to have the skills, experience, education, and other qualifications for the job. You must be able to do the essential job functions safely, with or without reasonable accommodations. Employers who refuse to employ any people with diabetes, or any people who use insulin to treat their diabetes, are most likely breaking the law.

The Family and Medical Leave Act (FMLA)

What the Law Does

The FMLA protects employees who miss work because of a serious health condition. You can take time off to care for your own condition or to care for a close family member. For example, parents can take leave if their child is newly diagnosed with diabetes, is hospitalized, or if there is a diabetes emergency at school. You may take up to 12 weeks of unpaid leave. You can take it all at once, in 12 back-to-back weeks, or in smaller chunks, for example, an hour at a time when needed. This is called intermittent leave.

Who Is Covered

Diabetes qualifies as a serious health condition if it requires at least two visits a year to a health care professional. You must work for the same employer for 12 months and for at least 1,250 hours in those 12 months. The employer must have at least 50 employees within 75 miles of your worksite.

State Anti-Discrimination Laws

Most states have their own laws against disability discrimination. These laws and the state agencies that enforce them may provide you with extra protection and may cover smaller employers. Some local laws prohibit discrimination against people with obesity. So even if federal law is not enough, state law may protect your rights.

Reasonable Accommodations

Employers may need to make changes at the workplace to allow people with disabilities to do their jobs and be treated fairly. These are called “reasonable accommodations.” Most people with diabetes only need small changes that cost the employer little or nothing. However, employers do not need to provide accommodations that cause them undue hardship.

Examples of common reasonable accommodations include:

- Breaks to check blood glucose (blood sugar) levels, eat a snack, take medicine, or go to the bathroom
- Permission to keep diabetes supplies and food nearby in a temperature-controlled environment, including back-up supplies if a continuous glucose monitor (CGM) or insulin pump fails
- Excused absences, late arrivals, early departures, or use of leave time for medical appointments, treatment, recovery, or training on managing your diabetes
- Permission to use cell phone to check CGM and/or insulin pump
- A different work schedule or a standard shift instead of a rotating shift
- Permission to use a chair or stool
- Large-screen computer monitors or other assistive devices

It is your responsibility to ask for accommodations. Although not required, it is best to make a written request for accommodations that:

1. Describes how your diabetes is a disability
2. Asks for the specific accommodations you need
3. Explains how these accommodations will help you continue to be a valuable employee

You should give this to your human resources department along with a letter from your doctor supporting your request. The American Diabetes Association® (ADA) can help. Find resources at diabetes.org/JobAccommodations. You should also try to follow any policy your employer has for requesting accommodations.

Your request for accommodations triggers an “interactive process,” which means you and your employer will work together to come up with ways to enable you to do your job. Your employer may ask about what you need and discuss what they believe they can provide, in a back and forth with you, to best meet your individual needs. Your employer must give primary consideration to your preference. An employer’s refusal to engage in this process is similar to denying the accommodation and is unlawful.

What You Can Do

As soon as you think you are not being treated fairly, start writing everything down. Keep copies of all important documents, such as emails and letters from your employer, performance reviews, accommodations requests, and medical records. Get copies of general documents, such as your employee handbook or leave policy. Keep a log and write down everything that happens to you, including names and dates.

Discrimination Checklist

- Are you prevented from taking breaks at work to check your blood glucose levels, eat, and take insulin?
- Was your job offer rescinded when you said you had diabetes?
- Have you been told you can never have a certain job, like bus driver or police officer, because you use insulin?
- Do you have to have specific blood glucose levels to keep your job?

If you answered “yes” to any of these questions, or you are having similar problems, you may be experiencing unlawful discrimination because of your diabetes.

The Steps to Getting Fair Treatment

- 1. Educate** your employer about diabetes and employer responsibility to provide accommodations under applicable federal laws
- 2. Negotiate** an agreement with your employer and work toward a solution you can both accept.
- 3. Litigate** by filing an administrative complaint.
- 4. Legislate** to change laws if the laws are not protecting you and other employees with diabetes.

We are Here to Help

The ADA advocates for the rights of people with diabetes. Whether you need more information or want to take legal action, we are here to help you.

Additional resources are available online at diabetes.org/EmploymentDiscrimination.

You can find more information on specific diabetes issues, including:

- Reasonable accommodations
- Safety issues
- Termination or adverse action issues
- Commercial driving and diabetes
- Pilot licensure
- Resources for employers

For help, call **1-800-DIABETES (800-342-2383)** or email AskAda@diabetes.org. If your issue is within our areas of service, you will receive tailored information and guidance. Although the ADA cannot represent you or advocate on your behalf, we can help you understand your rights and give you practical tools to solve your problem. We may also be able to refer you to an attorney.