

Addressing Discrimination

Gather Important Information

A good first step is to gather information about anti-discrimination laws as they apply to you. Contact the American Diabetes Association and the other resources, enlist assistance from your union, or consult an attorney. Keep all documents that relate to your claim, such as letters from your employer. Obtain copies of applicable general documents, such as personnel policies. Keep a log and write down everything that happens to you including names and dates.

Educate and Negotiate

Discrimination based on diabetes is often the result of ignorance. Because diabetes is usually not a "visible" disability, many employers do not understand its nature and treatment. Problems can sometimes be resolved through education about the disease and about your medical needs and your abilities. Your employer may not be familiar with the provisions of anti-discrimination laws and should be provided with this information as well.

Litigate

Sometimes it takes legal action to end discrimination. You are required to begin by filing a charge of discrimination with the appropriate government agency. If the employer is a private company or state or local government, file a charge with either the Equal Employment Opportunity Commission (EEOC) or with your state anti-discrimination agency. (You can file with either the federal or state agency and your complaint is considered to be filed with both.) If the employer is the federal government, contact the internal Equal Employment Opportunity office of the agency where the discrimination occurred. You must act promptly because the time limits for taking action are often very short. If the agency does not resolve the problem to your satisfaction, you can file a lawsuit in federal or state court claiming discrimination on the basis of disability.

Legislate

The American Diabetes Association works to change laws and policies that are unfair to people with diabetes. A recent example is the Americans with Disabilities Act Amendments Act of 2008 that made it easier for a worker with diabetes to prove that he or she has a disability and is covered by the law.

ADA Resources

The ADA has additional materials for those facing discrimination in employment. Call 1-800 DIABETES (342-2383) for the ADA's packet on Employment Discrimination or for additional assistance on a discrimination problem.

Call **1-800 DIABETES (342-2383)**
for general information on diabetes;
or visit our website at www.diabetes.org.

Call **1-800-ADA-ORDER (232-6733)**
to order books or a catalog.

Call **1-800-806-7801**
for subscription and membership questions.

Other Useful Telephone Numbers and Websites

Disability Rights Education and Defense Fund, Inc.:
510-644-2555; www.dredf.org

National Employment Lawyers Association:
415-296-7629; www.nela.org

U.S. Equal Employment Opportunity Commission:
1-800-669-4000; www.eeoc.gov

U.S. Department of Justice:
1-800-514-0301; www.ada.gov

U.S. Department of Labor:
1-866-487-9243; www.dol.gov/elaws/fmla.htm



Your Job & Your Rights

**Fighting Discrimination Based
on Diabetes in the Workplace**

People with diabetes sometimes face discrimination in the workplace. The following information will help you understand your rights as a worker with diabetes and what you can do to make sure that you receive fair treatment.

The Laws

Federal Anti-Discrimination Laws



Several federal laws prohibit discrimination in the workplace based upon disability. The **Americans with Disabilities Act** applies to private employers, labor unions, and employment agencies with 15 or more employees and to state and local government.

The **Rehabilitation Act of 1973**

generally covers employees who work for the executive branch of the federal government, or for an employer that receives federal money, and the **Congressional Accountability Act** covers employees of Congress and most legislative branch agencies.

In order to be protected by the federal anti-discrimination laws, a worker must show that he or she is a “**qualified individual with a disability**.” The first step is establishing that the worker has a disability, “a record of” a disability, or is “regarded as having” a disability. A disability is defined in



these laws as **a mental or physical impairment that substantially limits one or more major life activities**

– such as eating, walking, seeing, or caring for oneself, or a major bodily function such as endocrine function. In making this determination, a person with diabetes is viewed as he

or she would be without the help of mitigating measures such as insulin. Also, someone who does not need any accommodations on the job need only show that he or she has an impairment (and need not deal at all with substantial limitation of a major life activity).



The worker also has to establish that he or she is qualified for the job in question. A **qualified worker** is one who satisfies the skill, experience, education, and other job-related requirements of the position held or desired, and who – if given **reasonable accommodation** – can perform the essential functions of that

position. An accommodation is any change or adjustment to a job or work environment that enables a person with a disability to do the job.

A common problem in diabetes discrimination cases is that the employer claims that the person with diabetes creates a safety risk to other employees. A worker with diabetes often needs to dispel myths and stereotypes about diabetes and educate the employer or the court about his or her ability to be a safe and responsible worker.

State Anti-Discrimination Laws

All states have their own anti-discrimination laws and agencies responsible for enforcing those laws. Some state anti-discrimination laws provide more comprehensive protection than do the federal laws.

Other Laws

Although the focus of this information is on anti-discrimination laws, there are a number of other federal and state laws that can be very helpful to workers with diabetes. The Family and Medical Leave Act (FMLA) requires most private employers with over 50 employees and most government employers to provide up to 12 weeks of leave per year because of the worker’s, or an immediate family member’s, serious health condition. This leave can be taken in small blocks of time to deal with such things as short term problems caused by managing blood glucose levels or for doctor’s appointments.

Your Rights and Responsibilities

The anti-discrimination laws prohibit an employer from taking any adverse employment action because of a person’s disability. This means that an employer cannot discriminate in hiring, firing, discipline, pay, promotion, job training, fringe benefits, or in any other term or condition of employment. Employers are also prohibited from retaliating against an employee for asserting his or her rights.

Individuals are usually not required to tell employers that they have diabetes, but the anti-discrimination laws only provide protection from discrimination if the employer knows about the disability.

Accommodations

Employers are required to make “reasonable accommodations” if requested by an employee with a disability, unless the accommodation would cause an “undue hardship” on the employer because of significant difficulty or expense. The accommodations that people with diabetes need are usually easy and inexpensive. For example, a person with diabetes might require accommodations such as:

- Breaks to check blood sugar levels, eat a snack, or go to the bathroom.
- The ability to keep diabetes supplies and food nearby.
- The opportunity to work a modified schedule or to work a standard shift as opposed to a swing shift.

