

Diabetes in the Workplace: **Employer FAQs**

What laws protect people with diabetes in the workplace?

The Americans with Disabilities Act and the Rehabilitation Act of 1973 protect people with disabilities from discrimination in the workplace. Employers cannot treat people with diabetes differently in hiring, firing, discipline, pay, promotion, job training, and fringe benefits just because they have diabetes. Employers must also provide reasonable accommodations for people with diabetes so that they can enjoy equal employment opportunities and better manage their disability.

Do these protections apply to private and federal employers?

Yes. Title I of the Americans with Disabilities Act covers employment by private employers with 15 or more employees as well as state and local government employers. In addition, most states have laws prohibiting disability discrimination that apply to smaller employers and may provide protections in addition to those available under the Americans with Disabilities Act. Section 501 of the Rehabilitation Act provides similar protections related to federal employment.

Is diabetes a disability?

Yes. Eligibility for legal protections under these laws is based upon an individual assessment, but generally individuals with diabetes have a disability because their endocrine system, a major life activity that helps regulate bodily functions, is substantially limited. In other words, their endocrine system does not work correctly because it does not make and/or use insulin properly. Walking, eating, and caring for oneself are examples of other major life activities that may be substantially limited by diabetes. Diabetes is considered a disability regardless of severity or how well the employee manages their condition.

Can employers ask an applicant questions about diabetes before making a job offer?

Under the Americans with Disabilities Act, an employer cannot ask an applicant if they have diabetes or another disability before making a conditional job offer. For example, an employer may not ask an employee:

- Whether the applicant has diabetes or has been diagnosed with diabetes;
- Whether the applicant uses insulin or other prescription drugs or has ever done so in the past; or
- Whether the applicant has taken leave for medical treatment or how much leave the applicant has taken.

Similarly, applicants are not required to disclose that they have or had diabetes or another disability unless they will need a reasonable accommodation for the application process.

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What if an applicant voluntarily discloses that they have diabetes during the application process?

If an applicant voluntarily discloses they have diabetes and the applicant requests a reasonable accommodation, or the employer reasonably believes that the applicant will require a reasonable accommodation, to perform the essential functions of the job because of diabetes or treatment, the employer may ask whether the applicant will need an accommodation and what type. However, the employer may not ask questions about the condition itself (e.g., diabetes) and must keep any information an applicant discloses confidential.

Can employers ask questions about an applicant's health, request medical documentation, or require a medical exam after a conditional job offer is made?

Employers may ask questions about the applicant's health or require a medical exam after a conditional job offer is made if all applicants for that position are asked the same questions and are required to take the same exam—not just employees with disabilities, like diabetes. At this stage, questions and exams should be specially designed to assess the applicant's ability to perform the essential functions of the job safely.

Can an employer rescind a job offer because the applicant has diabetes?

No. An employer cannot rescind a job offer because the individual has diabetes if they are able to perform the essential job functions of the job with or without reasonable accommodations and without posing a direct threat to the health and safety of themselves or others.

What is a direct threat?

A direct threat is a significant risk of substantial harm to the health and safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation. Employers must conduct an individualized assessment based on objective evidence, not assumptions or stereotypes about disabilities. As a result of modern diabetes management practices and technology, an individual with diabetes will rarely pose a direct threat that cannot be eliminated or reduced by reasonable accommodations.

What is a reasonable accommodation?

A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability, including diabetes, to enjoy equal employment opportunities.

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How are reasonable accommodations requested?

Employees/contractors may request an accommodation verbally or in writing. There are no "magic words." Employees are not required to use specific language or reference the Americans with Disabilities Act. The request for accommodations triggers an "interactive process," which means the employee and employer will work together to explore ways to enable the employee to perform the essential functions of their job. Some examples of reasonable accommodations employees with diabetes may need include:

- Breaks to check blood glucose (blood sugar) levels, eat a snack, take medication, 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 diabetes management
- A different work schedule or a standard shift instead of a rotating shift
- Modifications to workplace policies, such as those that may typically ban cell phone use or eating at work
- Permission to use a chair or stool while working
- Permission to use large-screen computer monitors or other assistive devices.

This is not an exhaustive list and is intended to provide the employer with some common examples of accommodations that may be requested by an employee with diabetes. As part of the interactive process, employers are encouraged to ask the employee what they need and discuss what the employer believes they can provide, in a back and forth conversation with the employee. If more than one accommodation will be effective, the employee's preference should be given primary consideration unless it poses an undue hardship on the employer. Employers are not required to alter or remove job functions or lower performance standards as a reasonable accommodation.

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Does an employer need to provide an accommodation that is an undue hardship?

No. Employers do not need to provide accommodations that cause them undue hardship. Undue hardship means significant non-trivial difficulty or expense and must be assessed on a case-by-case basis based on both the nature of the accommodation and the employer. An accommodation is not considered an undue hardship just because it is inconvenient or entails a nominal cost to the employer. Most people with diabetes only need small changes that cost the employer little or nothing, and therefore are not undue hardships.

My employees work remotely. Can they request reasonable accommodations?

Yes. Remote employees may still require reasonable accommodations and can request them in the same manner as described above.

What rules must employers follow around employee medical disclosure?

Even after an employee/contractor discloses that they have diabetes or another disability, the employer still must follow privacy and confidentiality requirements under the Americans with Disabilities Act. For example:

- An employer cannot tell coworkers that an employee has diabetes
- The employer must ensure all medical information is kept confidential
- Information obtained regarding an employee's medical condition, like diabetes, should be kept in separate files
- Medical information should only be shared on a need-to-know basis

What is the guidance around using CGMs and insulin pumps at work?

CGMs and insulin pumps are new developments in diabetes management. Under federal law, using these devices and keeping back-up supplies nearby may be a reasonable accommodation.

These devices often require cell phone or Wi-Fi access. Although certain workplaces limit cell phone use, U.S. Equal Employment Opportunity Commission (EEOC) guidance states that modifications to these policies for a person's disability can be a reasonable accommodation. Such accommodation would be discussed in the interactive process and would only require the employer to modify the policy for the person who needs it, not the whole organization.

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What should happen if an employee wants to use these devices in a secure setting?

Certain jobs occur in secured settings where employers may argue that access to cell phones, the internet, or other technology on the job implicates security or other concerns. Employers must still engage in the interactive process to see if there is a reasonable accommodation that could meet the individual's needs while addressing those concerns. For example, in a secure setting, individuals may want to consider:

1. Disabling internet access on the device and relying only on Bluetooth
2. Using a receiver/controller without internet access for the CGM or pump instead of a cell phone
3. Installing the glucose monitoring app on a secured device, such as a computer or phone, provided by the employer
4. Using an older version of the CGM or pump that lacks connectivity features but allows monitoring on something other than a cell phone
5. Using the individual's work number as a point of contact for family members who have diabetes in case of an emergency or questions regarding their care

What should employers keep in mind about retaliation?

The Americans with Disabilities Act and Rehabilitation Act prohibit employers from retaliating against employees for asserting their rights under these laws. Retaliation occurs when an employer takes adverse action against an employee for engaging in a protected activity, such as requesting a reasonable accommodation or filing a discrimination complaint.