

The right way to accommodate employees with diabetes

The numbers are daunting: Diabetes affects about one in 14 Americans and it's the fifth leading cause of death in the country. The percentage of New Yorkers with diabetes nearly doubled between 1994 and 2005, rising from 4% to 7.8%, which is higher than the national average. Nearly 80% more diabetics are in the U.S. work force today than just a decade ago, and experts predict those numbers will rise.

For employers, diabetes and obesity are eating into profits and creating legal land mines. One estimate puts the cost of a diabetic employee at five times that of a non-diabetic.

The ADA is the federal law that governs most interactions between employers and diabetic employees. But some states' disability civil rights laws offer more liberal definitions of a "disability," meaning employers in those states may have to accommodate diabetics who would not merit the same treatment in other states.

Navigating the ADA

Both the ADA and the federal Rehabilitation Act (which covers federally funded jobs) require employers to make reasonable job accommodations for "qualified employees with a disability." A person is qualified if he or she can perform the job's essential functions with or without an accommodation. Employers can't discriminate against people because of their need for accommodations.

As simple as that sounds, various courts have offered conflicting rulings: some saying diabetes is a qualified "disability," and others saying it is not.

The ADA says a disability is an impairment that "substantially limits at least one major life function." But how severe does a condition have to be to

Diabetes: What can you ask applicants and employees?

Applicants: The ADA says you can't ask any questions about a person's medical history (or require the person to take a medical exam) until after you make a conditional job offer. If applicants voluntarily tell you they have diabetes, you can ask only two questions: (1) whether they need an accommodation and (2) what type of accommodation (such as periodic breaks to eat or take medication).

You can't withdraw a job offer simply because you learn a person has diabetes. You can only withdraw the job offer if the person isn't able to perform the job's essential functions, with or without a reasonable accommodation, without posing a direct safety threat.

Employees: The EEOC says employers can ask about an employee's diabetes—or ask the person to undergo a medical exam—only if the company "has a legitimate reason to believe that diabetes, or some other medical condition, may be affecting an employee's ability to do her job." Before asking, you must have a good reason to believe the employee's performance problem is directly linked to his or her condition.

You also can ask employees about their diabetes if they've asked for accommodations due to their diabetes, or if they are participating in wellness programs that focus on early detection of such diseases.

"substantially limit"? And what is a "major life function"? Those questions call for an individual assessment, so each case is unique.

If the employee doesn't meet the definition of a "disabled person" under the ADA, the employer isn't obligated to provide accommodations. Of course, refusing to provide an accommodation is daring a person to sue. So what's an employer to do?

How to approach accommodations

If an employee meets the criteria of being disabled, you must offer accommodations unless doing so would be an "undue hardship" on your organization. But use that defense sparingly; a jury probably won't see it the same way.

Many accommodations for diabetics are relatively minor and inexpensive, such as giving employees:

- A private area to test blood-sugar levels or take insulin and
- Breaks to eat or drink, take medication or test blood-sugar levels.

Other accommodations are more involved but still may be required, such as allowing leave for treatment or recuperation and modifying the employee's work schedule.

Dealing with safety concerns. Many diabetic-related ADA lawsuits start because employers refuse to accommodate employees for safety reasons. *The*

fear: Diabetics could faint or blackout, creating a hazard for themselves and others at work. For example, jobs involving driving are often off-limits for diabetics.

The EEOC has warned employers to "be careful not to act on myths, fears or stereotypes" about diabetes. It says employers must look at each case individually and that most safety issues can be mitigated through accommodations.

If you're concerned that an employee's diabetes could jeopardize the safety of others, you can send that employee for a medical exam. Limit your exam to obtaining information needed to decide whether the employee can safely perform his or her job.

Bottom line: When faced with a diabetic employee requesting accommodation, look at the accommodation, not the condition. If the accommodation is reasonable, allow it. If not, document the likely costs, because the analysis will be necessary if the case goes to court.

Remember that you don't have to provide the exact accommodation requested. If you find another accommodation that allows the person to perform the job's essential functions, it will meet the law's requirements. Because disputes can often arise from the choice of accommodation, document all accommodation options thoroughly.

Online resources

- www.eeoc.gov/facts/diabetes.html
- www.diabetesatwork.org
- www.diabetes.org
- www.dfwbgh.org/setforsuccess.htm