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EEOC, Diabetes in the Workplace and the ADA

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ACCOMMODATING EMPLOYEES WITH DIABETES

The ADA requires employers to provide adjustments or modifications – called reasonable accommodations – to enable applicants and employees with disabilities to enjoy equal employment opportunities unless doing so would be an undue hardship (that is, 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 accommodations, and most of the accommodations a person with diabetes might need will involve little or no cost. An employer must provide a reasonable accommodation that is needed because of the diabetes itself, the effects of medication, or both. For example, an employer may have to accommodate an employee who is unable to work while learning to manage her diabetes or adjusting to medication. An employer, however, has no obligation to monitor an employee to make sure that she is regularly checking her blood sugar levels, eating, or taking medication as prescribed.

10. What other 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 their blood sugar levels or to administer insulin injections

- a place to rest until their blood sugar levels become normal
- breaks to eat or drink, take medication, or test blood sugar levels

Example 6: 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 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^[1]
- modified work schedule or shift change

Example 7: A nurse with diabetes rotated from working the 6:00 a.m. to 2:00 p.m. shift to the midnight to 8:00 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^[1] that makes it difficult to stand for long periods of time to use a stool
- reallocation or redistribution of marginal tasks to another employee

Example 8: A janitor, who had a leg amputated because of complications from diabetes, can perform all of his essential job functions without accommodation but has difficulty climbing into the attic to occasionally change the building's air filter. The employer likely can reallocate this marginal function to one of the other janitors.

- reassignment to a vacant position when the employee is no longer able to perform his current job

Example 9: Following complications from neuropathy that resulted in a toe amputation, a hotel housekeeper requests to be reassigned to a laundress position because the job would require less walking. Although the employer does not have to “bump” another employee to create a vacancy, it should determine whether the housekeeper is qualified for the new position and whether it would be an undue hardship to reassign her. The vacant position must be equivalent in terms of pay and status to the original job, or as close as possible if no equivalent position exists. The position need not be a promotion, although the employee should be able to compete for any promotion for which she is eligible.

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 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 (JAN)(<http://askjan.org/media/Diabetes.html>) provides information about many types of accommodations for employees with diabetes.

11. 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. 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.

Example 10: A custodian tells his supervisor that he was recently diagnosed with diabetes and needs a week off to attend a class on how to manage the condition. If leave for this length of time and/or for this reason would not be allowed under an existing leave policy, the employee’s request for leave is a request for reasonable accommodation (for example, an exception to or modification of the leave policy).

12. May an employer request documentation when an employee who has diabetes requests a reasonable accommodation?

Yes. An employer may request reasonable documentation where a disability or the need for reasonable accommodation is not known or obvious. An employer,

however, is entitled only to documentation sufficient to establish that the employee has diabetes and to explain why an accommodation is needed. A request for an employee's entire medical record, for example, would be inappropriate as it likely would include information about conditions other than the employee's diabetes.^[1]

Example 11: When an employee asks for one week of unpaid leave to attend a class on how to manage his recently diagnosed diabetes, his employer asks for a letter from the employee's doctor. The employee submits a letter from his endocrinologist stating that the employee has been diagnosed with Type 2 diabetes and that the one-week class will teach him how to monitor his blood glucose levels, administer insulin injections, and plan his meals. The doctor's letter is sufficient to demonstrate that the employee has a disability and needs the requested reasonable accommodation. If the employee makes a subsequent accommodation request related to his diabetes (for example, asks for a shift change) and the need for accommodation is not obvious, the employer may ask for documentation explaining why the new accommodation is needed but may not ask for documentation concerning his diabetes diagnosis.

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

No. An employer does not have to provide an accommodation if doing so will be an undue hardship. Undue hardship means that providing the reasonable

accommodation will result in significant difficulty or expense. An employer also does not have to eliminate an essential function of a job as a reasonable accommodation, tolerate performance that does not meet its standards, or excuse violations of conduct rules that are job-related and consistent with business necessity and that the employer applies consistently to all employees (such as rules prohibiting violence, threatening behavior, theft, or destruction of property).

If more than one accommodation will be effective, the employee's preference should be given primary consideration, although the employer is not required to provide the employee's first choice of reasonable accommodation. If a requested accommodation is too difficult or expensive, an employer may choose to provide an easier or less costly accommodation as long as it is effective in meeting the employee's needs.

14. May an employer be required to provide more than one accommodation for the same employee with diabetes?

Yes. The duty to provide a reasonable accommodation is an ongoing one. Although some employees with diabetes may require only one reasonable accommodation, others may need more than one. For example, an employee with diabetes may require leave to attend a class on how to administer insulin injections and later may request a part-time or modified schedule to better control his glucose levels. An employer must consider each request for a reasonable accommodation and

determine whether it would be effective and whether providing it would pose an undue hardship.

15. May an employer automatically deny a request for leave from someone with diabetes because the employee cannot specify an exact date of return?

No. Granting leave to an employee who is unable to provide a fixed date of return may be a reasonable accommodation. Although diabetes can be successfully treated, some individuals experience serious complications that may be unpredictable and do not permit exact timetables. An employee requesting leave because of diabetes or resulting complications (for example, a foot or toe amputation), therefore, may be able to provide only an approximate date of return (e.g., “in six to eight weeks,” “in about three months”). In such situations, or in situations in which a return date must be postponed because of unforeseen medical developments, employees should stay in regular communication with their employers to inform them of their progress and discuss the need for continued leave beyond what originally was granted. The employer also has the right to require that the employee provide periodic updates on his condition and possible date of return. After receiving these updates, the employer may reevaluate whether continued leave constitutes an undue hardship.

**EEOC, Technical Assistance Manual on the
Employment Provisions (Title I) of the Americans
with Disabilities Act (1992)**

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III. The Reasonable Accommodation Obligation

3.1 Overview of Legal Obligations

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- The obligation to provide a reasonable accommodation applies to all aspects of employment. This duty is ongoing and may arise any time that a person's disability or job changes.

* * *

3.3 What Is A Reasonable Accommodation

Reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.

* * *

**Accommodations to Ensure Equal Benefits of
Employment**

Reasonable accommodations must be provided to enable an employee with a disability to enjoy benefits and

privileges of employment equal to those enjoyed by similarly situated non-disabled employees.

For example: Employees with disabilities must have equal access to lunchrooms, employee lounges, rest rooms, meeting rooms, and other employer-provided or sponsored services such as health programs, transportation, and social events.

(See Chapter VII for further discussion of this requirement).

* * *

3.5 Some Examples of Reasonable Accommodation

The statute and EEOC's regulations provide examples of common types of reasonable accommodation that an employer may be required to provide, but many other accommodations may be appropriate for particular situations. Accommodations may include:

- making facilities readily accessible to and usable by an individual with a disability;
- restructuring a job by reallocating or redistributing marginal job functions;
- altering when or how an essential job function is performed;
- part-time or modified work schedules;
- obtaining or modifying equipment or devices;
- modifying examinations, training materials or policies;
- providing qualified readers and interpreters;

- reassignment to a vacant position;
- permitting use of accrued paid leave or unpaid leave for necessary treatment;
- providing reserved parking for a person with a mobility impairment; and
- allowing an employee to provide equipment or devices that an employer is not required to provide.

3.10 Examples of Reasonable Accommodations

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3. Modified Work Schedules

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Some examples of modified work schedules as a reasonable accommodation:

- An accountant with a mental disability required two hours off, twice weekly, for sessions with a psychiatrist. He was permitted to take longer lunch breaks and to make up the time by working later on those days.
- A machinist has diabetes and must follow a strict schedule to keep blood sugar levels stable. She must eat on a regular schedule and take insulin at set times each day. This means that she cannot work the normal shift rotations for machinists. As an accommodation, she is assigned to one shift on a permanent basis.
- An employee who needs kidney dialysis treatment is unable to work on two days because

his treatment is only available during work hours on weekdays. Depending on the nature of his work and the nature of the employer's operation, it may be possible, without causing an undue hardship, for him to work Saturday and Sunday in place of the two weekdays, to perform work assignments at home on the weekend, or to work three days a week as part-time employee.

People whose disabilities may need modified work schedules include those who require special medical treatment for their disability (such as cancer patients, people who have AIDS, or people with mental illness); people who need rest periods (including some people who have multiple sclerosis, cancer, diabetes, respiratory conditions, or mental illness); people whose disabilities (such as diabetes) are affected by eating or sleeping schedules; and people with mobility and other impairments who find it difficult to use public transportation during peak hours, or who must depend upon special para-transit schedules.

4. Flexible Leave Policies

Flexible leave policies should be considered as a reasonable accommodation when people with disabilities require time off from work because of their disability. An employer is not required to provide additional paid leave as an accommodation, but should consider allowing use of accrued leave, advanced leave, or leave without pay, where this will not cause an undue hardship.

People with disabilities may require special leave for a number of reasons related to their disability, such as:

- medical treatment related to the disability;
- repair of a prosthesis or equipment;
- temporary adverse conditions in the work environment (for example, an air-conditioning breakdown causing temperature above 85 degrees could seriously harm the condition of a person with multiple sclerosis);
- training in the use of an assistive device or a dog guide. (However, if an assistive device is used at work and provided as a reasonable accommodation, and if other employees receive training during work hours, the disabled employee should receive training on this device during work hours, without need to take leave.)

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6. Acquisition or Modification of Equipment and Devices

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- In some cases, it may be a reasonable accommodation to allow an applicant or employee to provide and use equipment that an employer would not be obligated to provide.
- For example: It would be a reasonable accommodation to allow an individual with a visual disability to provide his own guide dog.

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7. Adjusting and Modifying Examination, Training Materials, and Policies

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c. Other Policies

Adjustments to various existing policies may be necessary to provide reasonable accommodation. As discussed above (see 3.10.3 and 3.10.4), modifications to existing leave policies and regular work hours may be required as accommodations. Or, for example, a company may need to modify a policy prohibiting animals in the work place, so that a visually impaired person can use a guide dog.

VII. NONDISCRIMINATION IN OTHER EMPLOYMENT PRACTICES

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7.10 Leave

- An employer may establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave.
- An employer may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave. (See Chapter III.)
- A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her

disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

For example: If an employer has a policy providing 2 weeks paid leave for all employees, with no other provision for sick leave and a “no leave” policy for the first 6 months of employment, an employee with a disability who cannot get leave for needed medical treatment could not successfully charge that the employer’s policy is discriminatory on its face. However, this individual could request leave without pay or advance leave as a reasonable accommodation. Such leave should be provided, unless the employer can show undue hardship: For example, an employer might be able to show that it is necessary for the operation of the business that this employee be available for the time period when leave is requested.

Brief of the EEOC as Amiens Curiae in Support of Plaintiff/Appellant, *Gleed v. AT&T Mobility Services, Inc.*, pp. 16-18

Although working without pain or the risk of exacerbating a medical condition is not precisely a “privilege” or “benefit” of employment (as those terms normally connote something additional that an employer provides to its employees), working *in pain* certainly affects the conditions of one’s employment. The benefit/privilege provision in the statute and regulation makes the broader point that the accommodation requirement is not as limited as the district court held. This Court has embraced this broader understanding of the accommodation requirement, noting that the “reasonable accommodations” requirement extends beyond essential job functions, as that term may include workplace “[m]odifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment. . . .” *Kiphart v. Saturn Corp.*, 251 F.3d 573, 586 (6th Cir. 2001) (quoting 29 C.F.R. § 1630.2(o)(1)). See also *Curry v. Empire Berol, USA*, 1998 WL 13407, at *4 (6th Cir. Jan. 7, 1998) (same).

Other courts of appeals, and district courts, likewise have held that an employer’s obligation to provide reasonable accommodation extends to more than essential job functions. See, e.g., *Feist v. La. Dep’t of Justice*, 730 F.3d 450, 453-54 (5th Cir. 2013) (holding that “the district court erred in requiring a nexus between the requested accommodation and the essential functions of Feist’s position” because reasonable

accommodations are not restricted to modifications that enable performance of essential job functions); *Sanchez v. Vilsack*, 695 F.3d 1174, 1180-81 (10th Cir. 2012) (holding that employer must provide transfer as a reasonable accommodation to employee who needed it to obtain medical therapy, even though employee could perform essential job functions without transfer) (Rehabilitation Act case);⁵ *Buckingham v. United States*, 998 F.2d 735, 741 (9th Cir. 1993) (employee who is able to perform essential job functions may nonetheless be entitled to reasonable accommodation of a transfer so he can receive better medical treatment) (Rehabilitation Act case); *see also Fedro v. Reno*, 21 F.3d 1391, 1395-96 (7th Cir. 1994) (Rehabilitation Act may require accommodation for employees to pursue therapy or treatment for their handicap or enjoy the privileges and benefits of employment equal to those enjoyed by non-handicapped employee); *Jacques v. Clean-Up Group, Inc.*, 96 F.3d 506, 515 n. 9 (1st Cir. 1996) (same under ADA); *Nawrot v. CPC Int'l*, 259 F. Supp. 2d 716, 726 (N.D. Ill. 2003) (accommodation obligation under the ADA includes removing barriers that prevent individuals with disabilities from obtaining medical treatment). Therefore, regardless of whether Gleed needed an accommodation to perform his essential job functions, AT&T's accommodation obligation included making modifications or adjustments that would enable him to avoid aggravating his pain or other symptoms of his disability while working.
