

Fight for Your Rights

How to avoid diabetes-related discrimination at work—and what to do if it happens to you

By Barbara Brody
November 2019



Eric Hinders/Mittera

Kim BuMiller, a ticket seller at the San Diego Zoo Safari Park, knew the rules: Eating on the job was not permitted. But BuMiller wasn't just any employee; she was an employee who had been living with **type 1 diabetes** since childhood.

In 2005, not long after she started her job, BuMiller told her boss about her condition, explaining that it required her to check her blood glucose throughout the day and eat when she needed to prevent or treat a low (**hypoglycemia**). But she says she was repeatedly told that eating in front of visitors—never mind checking her blood glucose—was against the park's policy.

Over the course of the next few years, as BuMiller was stationed at various locations throughout the park, she attempted to hide her condition, discreetly checking her blood glucose, injecting insulin (she uses a pen), and sucking on small candies to raise her glucose levels when she was low. That was fairly easy when she worked behind the scenes and on her own, such as when she was assigned to feed the giraffes, but it became tricky after she was transferred to a zoo parking lot where security cameras closely monitored the area.

During a few episodes of severe hypoglycemia in 2012 and 2013, BuMiller felt she had no choice but to eat something. On several occasions, she says she was reprimanded and written up for breaking the rules. Believing her health was in jeopardy, BuMiller sent her supervisor a note explaining her medical needs, along with printouts about type 1 diabetes. She says she got no response.

In 2015, BuMiller's conflicts with her employer came to a head. "After my shift ended, my supervisor called me in and said she saw me testing my blood sugar and that I was creating a biohazard," says BuMiller, 63. She says that zoo officials—who now instructed BuMiller to do blood glucose checks in her car during breaks—claimed that she had done a finger stick then immediately handed change to a guest entering the park. She doesn't deny checking her blood glucose during work hours but says she was always careful to properly sanitize her hands and her workspace before and after.

With her health in danger, BuMiller says she had no choice but to quit.

She ended up suing her former employer for unlawful discrimination in violation of California's Fair Employment and Housing Act—and she won. In 2018, San Diego Zoo Global was ordered to pay her nearly \$400,000 (most of which was reimbursement for attorney fees).

Know Your Rights

BuMiller is one of the many people with diabetes who face workplace discrimination each year, according to Katie Hathaway, JD, vice president of legal advocacy for the American Diabetes Association (ADA). It happens despite various state and federal laws. Under the Americans with Disabilities Act, which was passed in 1990 to prohibit discrimination against people with disabilities in all areas of public life (including the workplace), employers are required to make reasonable accommodations for any person with a disability. And with the passing of the Americans with Disabilities Act Amendments Act of 2008, the government established that certain health conditions—including diabetes—qualify as disabilities.

"For practical purposes, I don't consider myself to have a disability, but legally I do, which means I have the protection of the law," says Greg Paul, JD, an attorney in Santa Rosa, California, who serves as chair of the ADA Legal Advocacy Subcommittee. He has type 1 diabetes.

Under the law, if you have a disability, you're entitled to take a leave of absence if it's medically necessary, even if you just started a new job, says Paul. You also must be granted what you need to stay healthy with diabetes on the job. That might include a refrigerator for your insulin, extra breaks to check your blood glucose, or permission to eat snacks to maintain your glucose levels. Your employer isn't allowed to force you to hide your disability (say, by telling you to only check your glucose in the bathroom).

The Americans with Disabilities Act makes it illegal to ask someone if they have a disability on an application or during a job interview. It is, however, permissible to require employees to submit to medical exams or inquiries once they've been hired.

In recent years, there have been a number of instances in which people with diabetes have been blocked from a particular job simply because of their condition. That's what happened to Daniel O'Hearn, who had his application to be an ambulance driver rejected by the California Department of Motor Vehicles (DMV) thanks to a policy that said anyone who uses insulin, which raises the risk for hypoglycemia, can't drive an ambulance. He previously told *Diabetes Forecast* (in 2014) that he filed a civil suit against the DMV before the parties finally settled and he was granted an ambulance driver's certificate.

Most broad policies, such as prohibiting insulin users from driving a commercial truck, are now illegal, says Paul. The Federal Motor Carrier Safety Administration began allowing people with well-managed diabetes and stable insulin regimens to operate commercial vehicles in 2018. "You used to be disqualified from being a commercial truck driver if you took insulin unless you got a special exemption," he says. And that was not easy to do. It entailed a lot of red tape and a several-months waiting period. "People [who needed insulin] used to delay going on insulin because they knew they'd be disqualified from their job."

Although most blanket bans have been overturned, people with diabetes still can't enlist in the military. And they aren't allowed to be commercial airline pilots in the United States; Daniel Lorber, MD, CDE, associate director of the Lang Research Center and director of endocrinology at NewYork-Presbyterian hospital in Queens, is currently working with the ADA's legal advocacy team to change this. ([Go here for more on pilots with diabetes.](#))

The question, says Lorber, isn't whether you have diabetes. It's whether you have any diabetes-related complications that would affect your work. Most people would not want to get on a plane if they knew the pilot was prone to severe hypoglycemia. Same goes for driving on a highway next to a truck driver whose retinopathy made it hard to see the road. However, many people with diabetes can do these jobs without posing a risk.

It's perfectly reasonable for your employer to want proof that you can do a particular job safely; depending on the position, you may be required to share a letter from your doctor proving that your vision is up to par or that you haven't been hospitalized for diabetes complications for a certain period of time. However, "people deserve to be evaluated based on their own credentials and medical history and not lumped together," says Hathaway. "If you want to be a firefighter and you don't have a history of hypoglycemia or anything else that would interfere with your performance on the job," then there's no reason you should be banned from that position.

To Tell or Not to Tell

There aren't any surefire ways to sidestep workplace discrimination. One question that comes up often is whether you should willingly disclose that you have diabetes.

There are pros and cons, says Hathaway. The obvious downside of revealing your diagnosis is that you open yourself up to the possibility of discrimination. But you also can't request reasonable accommodations if no one knows you have diabetes. "If you think you're going to need help or you need an accommodation, the only way you get that is by telling your employer," she says. And, of course, you can't claim that you've been discriminated against if your employer doesn't know that you have a condition that's protected under the law.

While an employer can't unlearn information you've shared, you can decide to reveal your health status at any time—even if you've been at your job for months or years. If your condition is well-managed, keeping mum at work might be fine; if you later develop complications and need an accommodation, you can tell your employer at that point and still be protected under the law.

Signs of Trouble

Just because you're legally entitled to certain protections doesn't mean that your employer will do what it's supposed to, as BuMiller found out during her tenure at the San Diego Zoo Safari Park. Facing discrimination in the workplace as a result of having diabetes is "much more common than people realize," says Hathaway.

Each year, anywhere from 500 to 1,000 cases related to workplace discrimination are referred to the ADA's legal advocacy department for help coping with workplace discrimination issues, whether it's filing a formal request for accommodations, determining whether something qualifies as unfair treatment, or getting a referral for lawyers and medical experts who are well versed in how diabetes might affect a job.

Only a lawyer who specializes in this area can tell you whether your situation meets the legal criteria for discrimination. However, if you think you're being unfairly treated because of your diabetes, take action. Some smart steps:

1. **Document everything.** "If something doesn't feel right to you, take notes and e-mail them to yourself," says Hathaway. If someone talked to you about your diabetes in a way that you thought was inappropriate, note who it was, when it happened, and what they said. "If you need an accommodation," she says, "put the request in writing and save a copy."
2. **Call for backup.** In some cases, resolving the issue could be as easy as bringing in a letter from your doctor explaining why you need a reasonable accommodation or attesting to the fact that you're healthy enough to take on a particular role. ([Find a sample letter, along with other related tools here.](#))
3. **Consult an attorney.** A lawyer can help explain your rights and flex a little legal muscle. (Sometimes an attorney's note to an employer, warning that it's violating your rights, is enough to prompt changes.) Laws vary by state, but you generally have six months from the triggering incident—whether you were fired for eating on the job or turned down for a request to take time off as you adjust to a new medication—to file a charge with the Equal Employment Opportunity Commission, the federal organization charged with enforcing laws that make it illegal to discriminate against an employee who has a disability.

Even if you never end up filing a suit, following these best practices for challenging an employer (or potential employer) dramatically ups the chances that you'll be given the accommodation that you want. And in the event that you do end up in a legal battle, the steps you take beforehand matter a lot.

"What Kim [BuMiller] did was extremely important in that she made the effort to go to her supervisor and explain her diabetes and what she needed so she could work safely," says her lawyer, Kriss Halpern, JD. "She tried many times, and we were able to prove that she tried. That was critical in allowing us to win the case."

Get Help

If you feel you've been discriminated against, contact the American Diabetes Association at 1-800-DIABETES (800-342-2383) or e-mail askADA@diabetes.org.

PAID CONTENT

