Workplace Checkup: Keeping Patients With Diabetes Employed and Safe on the Job

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Fred is job hunting. Since being laid off 3 years ago as a result of the recession, he has worked in a series of temporary jobs that have kept food on his table but provided no health insurance, vacation, or other benefits. Fred is just like millions of other unemployed or underemployed people who desire a fulfilling job with fair pay. The only difference? Fred has diabetes.

Because of this, Fred must find out about more than just the job duties, dress code, and pay structure of potential employers. He must also seek information about whether he will be able to manage his diabetes on the job and what policies potential employers have for hiring and accommodating workers with disabilities. Fred tries to get this information second-hand because he does not yet want to reveal his diabetes and risk lessening his chances of getting a job.

Fred's situation probably sounds familiar to many of the more than 18 million Americans who have been diagnosed and live with diabetes today.¹ Employment provides many benefits to people with diabetes, not the least of which is the income necessary to afford diabetes supplies. Such benefits, in turn, allow workers to manage diabetes so they can remain healthy enough to work.

But employment is not always trouble free for people with diabetes. Data show that lost productivity at work, absenteeism, and even early retirement contribute indirectly

to the enormous costs (not only to individuals, but also to society) of diabetes.²

Just as damaging can be discrimination on the job because of diabetes. Diabetes discrimination comes in many forms and includes not only the failure to hire or promote a person because of diabetes, but also the failure to provide an employee the reasonable accommodations necessary to manage diabetes on the job, as well as termination based on fears that diabetes will make a person unsafe to perform a particular job. For workers with diabetes, it is the retail manager who will not permit the cashier to keep food or drink at her checkout station to avoid hypoglycemia, the bus driver who will not be hired because he has an A1C of 8%, the office worker who is terminated because she experienced hypoglycemia on the job, or the highly qualified individual who cannot be hired into a federal agency because of across-the-board, one-size-fits-all policies about diabetes.

Legal Protections

Individuals with diabetes have legal rights under federal and state laws to work free from discrimination. The federal Americans with Disabilities Act and, for some jobs, the Rehabilitation Act of 1973 require employers to follow rules to ensure that workers with diabetes are treated fairly. However, these protections are available only when a worker's medi-

cal condition constitutes a disability under the law.

Diabetes is considered a disability because of—among other reasons—the effect the disease has on the body's endocrine function.³ But it is crucial to remember that disability and inability to do a job or perform other functions are two separate things. A disability need not negatively affect a worker's performance for the worker to be protected from discrimination.

The common-sense recognition that diabetes is a disability is a fairly new development. If Fred had been job hunting at the beginning of the recession in 2008 and was not hired because of his diabetes, he might have had a hard time pursuing a legal claim because the defendant employer likely would have argued that his diabetes was not a disability. This was a common problem before 1 January 2009, when changes to the Americans with Disabilities Act went into effect—changes that had a positive impact on people with diabetes by making it clear that they are covered by antidiscrimination laws.

Under federal law, employers may not ask workers whether they have a disability (including whether they have diabetes), and they are limited in what type of medical inquiries and exams they may require of workers and when they may require them. For example, during an interview, a prospective employer may not ask applicants whether they have ever blacked out at work because of

low blood glucose or whether they take any medication. And because there are new rules regarding the collection of genetic information, employers also may not ask questions about an applicants' own or family medical history that could reveal the presence of a disability or a genetic predisposition for a disability.⁴

Once a job offer has been made, an employer is permitted to ask medical questions and require a medical exam, but only if those are required of all employees in that job category. Once a worker is hired, medical inquiries and examinations are permissible only under certain circumstances. An examination can be required when an employer has a "reasonable belief, based on objective evidence" that an employee's medical condition will impair his or her ability to perform the essential functions of the job, or cause the employee to pose a direct threat to his- or herself or others. It would not be permissible for an employer to send a worker with diabetes for a medical evaluation simply because the employer is curious about how well the worker's diabetes is managed or because the employer fears that the worker will become suddenly incapacitated because of diabetes.

On the other hand, for some professions such as police officers, firefighters, or other public safety positions, routine, annual medical evaluations are often allowable as job related and necessary to ensure that the job can be performed safely, as long as the requirement for such evaluations is uniformly applied.

The law allows employers to assess the safety of its employees under certain circumstances. Employers must have a legitimate reason for requiring employees to submit to a medical examination. It is illegal for employers to require

current workers to provide medical documentation or submit to an evaluation unless there is reason to believe the workers' diabetes negatively affects job performance or puts the workers or others in danger. In some circumstances, however, it may be appropriate for workers who have experienced hypoglycemia on the job to be evaluated to ensure that safety is not compromised.

Employers may also obtain medical information about employees when the employees have requested an accommodation and such a need is not obvious. Employers must provide "reasonable accommodations"—changes to a job or work environment that help a person perform the "essential functions" of the job. The accommodations must be individualized, and they must be reasonable.

But employers often ask for much more information than is needed to assess such requests. A request for accommodation is not supposed to trigger a fishing expedition into all aspects of the employee's health. Unfortunately, employers sometimes try to use it for that purpose.

In judging whether an accommodation is reasonable, the law looks at factors such as whether the accommodation would be too difficult or too expensive to provide in light of the employer's size and financial resources and the needs of the business. Employers may not refuse to provide accommodations simply because doing so would cause them to incur some expense.

For most workers with diabetes, simple accommodations to facilitate diabetes management on the job (e.g., allowing breaks for a worker to test blood glucose, take medication, or eat or granting a worker permission to keep diabetes supplies nearby and to treat diabetes wherever needed) have little to no associated costs. Other accommodations (e.g.,

modifying a no-fault attendance policy to account for sickness or diabetes emergencies, granting a modified work schedule or a standard shift instead of a swing shift, or providing medical leave beyond that provided by law) can be more difficult for both the worker and the employer. In all cases, the key is for the worker and the employer to initiate open dialogue about the worker's needs and the employer's capacity to meet those needs. This "interactive process" is required by law.

Reasonable Accommodations

It is important for health care providers (HCPs) to know that disability law includes an affirmative obligation for employers: the duty to reasonably accommodate disabled workers and engage in an interactive process with them to determine appropriate accommodations. This is an affirmative duty to treat employees with disabilities more favorably than others in the workplace if circumstances require it. The idea is that the employer and employee should work together to develop a workable solution (e.g., keeping supplies close at hand or allowing time to test blood glucose) to ensure that the employee can do the job.

Some employers still are not honoring this obligation to work with their employees in this regard. Part of the problem is that, for years, the courts often ruled that diabetes was not a disability at all, much less one that needed accommodation. Now that diabetes is considered a disability, a thoughtful note of explanation from an HCP can make a big difference in ensuring that employees with diabetes receive the accommodations they deserve.

The Safety Question

A common issue faced by workers with diabetes is the claim that diabetes makes a person unsafe to perform

a particular job. Safety fears—whether they are based on stereotypes and outdated myths about diabetes or on the application of one-size-fits-all policies—can be one of the biggest hurdles for employees. Once again, diabetes HCPs can play an important role in helping their patients avoid or overcome discrimination.

For most types of employment, there is no reason to believe that diabetes will put the person with diabetes, other employees, or the public at risk.⁵ In some jobs where the individual must carry a firearm or operate dangerous machinery, there may be a safety concern should the employee suddenly become disoriented or incapacitated. In many cases, accommodations can be made that help the worker manage his or her diabetes to avoid severe hypoglycemia.

When assessing whether a particular employee poses an unacceptable safety risk, context is important. An office worker who experiences mild hypoglycemia, even if he receives help from a coworker who retrieves juice or another sugar source, may not pose a safety threat despite the low blood glucose level. A bank teller whose job does not inherently involve safety and who experiences severe hypoglycemia—even a loss of consciousness or hypoglycemia that requires the assistance of another person—should not automatically be deemed a safety threat just because she experienced hypoglycemia on the job. However, a police officer who experiences mild or severe hypoglycemia in these circumstances probably requires an evaluation to assess whether the officer can still safely perform the essential functions of the job. Finally, a teacher who experiences hypoglycemia in her sleep may never experience hypoglycemia on the job.

The first step in evaluating safety concerns is to determine whether

the concerns are reasonable in light of the job duties the individual must perform. In the first example, the office worker's hypoglycemia was not severe, and he was able to resume his duties after treating his hypoglycemia and waiting for his blood glucose level to rise. In the second example, although the worker's hypoglycemia was severe and she required more significant treatment, her duties as a bank teller probably do not make her a direct threat to herself or others. This context, as well as other factors such as whether it was the first time this problem occurred, is relevant in determining whether she poses a safety risk. The example in which the police officer experienced mild or severe hypoglycemia likely would require a deeper look at the job and the circumstances of the hypoglycemia. And in the final example, unless the nocturnal hypoglycemia affects the teacher's job performance (e.g., by making it difficult for her to arrive to work on time), there is likely no justification for an employer to question her ability to safely perform her job.

Safety concerns may arise on broad policy levels with the application of medical certification rules to a class of workers. As noted above, some professions require regular medical screening to ensure that workers can perform their jobs safely and without jeopardizing the public they serve and protect. Law enforcement personnel, firefighters, and other first responders; commercial drivers; pilots; and several types of federal jobs, including those with the Foreign Service, the U.S. Marshall Service, the Federal Bureau of Investigation (FBI), and the National Park Service, all require workers to meet specific medical criteria to be hired and remain employed.

For many years, these jobs were off limits to people with diabetes, particularly if they were treated

with insulin. (Many of the rules that eliminated people with diabetes based on insulin use were developed decades ago and do not address hypoglycemia caused by use of sulfonylureas.) Until 2003, individuals with insulin-treated diabetes could not obtain U.S. Department of Transportation medical certification to work as a commercial driver, based on the belief that insulin use created an unacceptable hazard to safe driving no matter how well the person's diabetes was managed. Today, an exemption program exists to allow certain qualified individuals to maintain their driving career after starting insulin therapy, and there are nearly 2,500 drivers with insulin-treated diabetes certified under this program.

In 2007, guidelines for the evaluation of law enforcement officers⁶ and firefighters⁷ with diabetes were established through a collaboration between occupational medicine professionals and experts at the American Diabetes Association (ADA). In the past 2 years, both sets of guidelines were updated. Also in 2011, the U.S. State Department finalized new medical assessment criteria and began allowing individuals with diabetes to be hired into the Foreign Service if they meet certain markers for well-managed diabetes, again through a collaboration with the ADA. As a result of litigation brought by ADA volunteers Kathy Butler and John Griffin, the FBI and the U.S. Marshall Service now have procedures in place to individually assess applicants and employees with diabetes.

There remain several fields in which hiring rules have not caught up to modern diabetes management. People with diabetes still cannot enroll in any of the branches of the armed services, although some individuals who are diagnosed with diabetes once enlisted have

successfully petitioned the military for a medical waiver allowing them to remain in the service. (The armed services have strict medical rules that are not subject to federal antidiscrimination laws and involve different processes that are beyond the scope of this article.)

Some federal agencies such as the Central Intelligence Agency also have a ban on people with diabetes working in certain jobs. Federal Aviation Administration policy precludes people who use insulin from being hired as commercial pilots based on fears of sudden incapacitation from hypoglycemia. Importantly, these policies do not call for decisions to be made on the basis of assessment of individuals and how diabetes affects them.

Individual Assessment

For both a worker who has experienced hypoglycemia at her desk job and a firefighter who must undergo regular medical examinations, it is important that assessments be individualized and involve HCPs with expertise in the treatment of diabetes. A truly individualized assessment is accomplished when a worker's diabetes is evaluated in conjunction with an assessment of the essential functions of his or her job. A history of severe hypoglycemia may disqualify a person from some high-risk, safety-sensitive jobs, but the circumstances of each episode should be examined to see if other factors were involved and to determine the likelihood of recurrence. Individuals who have managed their diabetes for an extended period of time without experiencing severe hypoglycemia are less likely to experience this condition in the future. Likewise, people with a history of impaired hypoglycemia awareness may be at risk for a sudden episode of severe hypoglycemia unless they are able to show that they can make changes to lessen

this risk. In other cases, people with diabetes-related complications may be considered unsafe for one job but not for another.

In recent years, there has been a trend of using A1C test results as a threshold for employment for people with diabetes. Although the data obtained from this test are clinically useful, A1C testing has limited to no applicability in the employment context because it does not tell employers anything about individuals' ability to perform the essential functions of their job. Because A1C results reflect an average blood glucose level over a 2- to 3-month period, they cannot provide any useful data about whether individuals have experienced severe hypoglycemia or have developed complications of diabetes that could be relevant to their job performance.

Relative Risk

One crucial point to keep in mind regarding workplace safety is that no human endeavor is without risk. Too often, the "risk" referred to for people with diabetes is actually a stereotypical fear about diabetes that is based on inaccurate and limited information. In the federal employment context in particular, experience has shown that agencies have not kept pace with advancements in diabetes treatment. All too often, agencies who hire workers to do jobs that require long shifts, such as many law enforcement positions, are under the misapprehension that if people with diabetes have to go without food for any period of time, they will not be able to do their job. These same agencies assume that people with diabetes cannot successfully work abroad unless there is a modern medical facility close by. Both of these presumptions are false for many individuals with diabetes. Only individualized assessment can properly determine whether a person

is qualified to do any job, whether it is safety-sensitive or not.

Another critical point is that the same agencies that will automatically assume that people with diabetes are unsafe will not even analyze the risk of having middle-aged, severely overweight, hypertensive smokers in the same job, let alone compare the risks to determine which type of employee would be the safer one. HCPs can assist employers in ensuring that good medicine, rather than assumptions, determines who is too risky for any given job.

Role of Diabetes HCPs

What should you, as a diabetes HCP, do if Fred comes to see you and mentions problems at work related to his diabetes? As the HCP who best knows how diabetes affects your patient, you are perfectly positioned to be Fred's advocate. You can help troubleshoot the employment problem and connect your patient with expert legal resources to resolve any workplace discrimination issues.

Diabetes HCPs have a crucial role in anticipating and identifying workplace discrimination problems. During the review of blood glucose logs at office visits, ask questions about any readings or trends that seem unusual. If you notice, for example, large gaps between tests during work hours, discuss with patients the reasons for such aberrations and whether they need special permission to test their blood glucose at work. If so, it may be appropriate to discuss requesting a reasonable accommodation to allow them to take breaks as needed or to keep diabetes supplies nearby so that testing can happen more frequently. If there is a pattern of hypoglycemia, especially during work hours, probe for reasons and ask whether any safety concerns have been raised. Ask questions

to understand patients' job duties, and consider these duties as you ask routine questions about whether they can recognize hypoglycemia or the symptoms of diabetes complications. Discussing such issues early can help prevent more serious consequences—both medical and job-related.

Sometimes a patient will come to see you after safety concerns have already been raised. In this situation, your expertise will be required to evaluate the patient's diabetes and assess the legitimacy of the safety concern. For example, you may be asked to evaluate a patient's risk for severe hypoglycemia and be provided with a job description to aid in your evaluation. You may be asked to communicate with a company medical director or another HCP (sometimes a nurse handles all occupational medical evaluations for an employer), or you may be asked to communicate with a human resources professional who has no training in diabetes. Use the opportunity to educate the decision-makers about diabetes and about your patient. If the patient experienced a single episode of severe hypoglycemia but has no similar history (or no other recent episodes), explain to the employer what this means and how you have counseled the patient. If the patient has made changes at your direction or has committed to obtaining diabetes education, explain this and how it influences your recommendation.

Another way to proactively help patients is by broaching the topic of employment even if they do not mention any problems and there are no clues of anything amiss in their medical records. Help your patients understand that they have

certain legal rights and that there are resources to help them protect those rights. Refer patients who do raise concerns to the ADA's legal advocacy program (1-800-DIABETES or diabetes.org/gethelp), through which they can speak with a legal advocate about workplace or other discrimination issues.

Finally, be knowledgeable about the resources available to fight discrimination. Familiarize yourself with practical tools, such as a sample letter requesting reasonable accommodations, that are available online at diabetes.org/patientrights. Look for opportunities to educate employers about the proper treatment of people with diabetes by including a copy of the ADA's position statement on diabetes and employment with your letters and evaluation documents.⁵ Call on the ADA's legal advocates yourself if you have questions about discrimination or how you can help patients with diabetes.

Conclusion

Workers with diabetes have a legal right to be assessed based on their own merit, to be granted the reasonable accommodations needed to perform the essential functions of their job, and to work free of discrimination. Much progress has been made in recent years to open up fields that were previously closed to workers with diabetes. There remain many cases in which workers are treated unfairly because of outdated notions about diabetes and a lack of understanding by employers about their legal obligations with regard to workers with diabetes. Diabetes HCPs play a key role in keeping patients with diabetes employed and safe on the job.

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