

**Dogs4Diabetics Workplace Accommodation Issues Questions & Answers**

The following is a discussion of workplace accommodation issues for a Medical Alert Dog to support Type I, Insulin-Dependent Diabetics in identifying the onset of Hypoglycemia. The Questions and Answers were developed from research of materials available from the EEOC and a variety of outside support groups. The prominent two groups were the Job Accommodation Network (JAN), a contractor for the Office of Disability Employment Policy of the U.S. Department of Labor; and, ADA Pacific Center, which is one of 10 regional centers in the U.S. whose purpose is to build partnerships between the disability and business communities to promote full and unrestricted participation in society for persons with disabilities through education and technical assistance.

The following Q & A’s will briefly address issues specific to Diabetes and Service Dogs as have been or might be raised by employers in the evaluating accommodation requests prepared by our clients. They will provide support to others in preparing their requests and responding to questions as they go through this process.

**1) Is having Type I Diabetes considered a disabling condition under ADA?**

Yes, with the 2008 amendments to the ADA, Diabetes was clearly included in the updating of conditions that qualified as a disabling condition under the revised ADA, canceling the impact of the previous Supreme Court ruling.

Since the ADA was originally passed, the Supreme Court ruled that simply having a condition like diabetes did not qualify a person as disabled. The determination of a qualifying disability must take into consideration whether the person is limited in performing a major life activity *when using a mitigating measure. That means if the person has little or no difficulty when using the mitigating factor, the person will not meet the first definition of disability.* As a result of this decision, the determination of whether a person had a disability was determined by taking into account the positive and negative effects of mitigating measures. *(1) EEOC “The ADA: Your Responsibilities as an Employer” P.1*.

The mitigating measure in the case of diabetes is the use of insulin therapy. However, when considering the positive and negative effects of that therapy, diabetics can be significantly impacted by episodes of hypoglycemia, which is a disabling side effect. *(2) EEOC Instructions for Field Offices: Analyzing ADA Charges after the Supreme Court Decision addressing “Disability” and “Qualified”. P.1, P.6 Item IV C. 4.*

Additionally, if the client has developed significant ‘hypoglycemic unawareness”; the consequence of this side effect is exacerbated and can significantly hamper a person’s ability to perform major life activities, and also

place them in extreme jeopardy. Accordingly, these conditions would qualify under the ADA, even with the changes that were mandated by the Supreme Court. However, based on the 2008 amendments, these are not the governing rules in

2010.

**2) Can an individual with diabetes request accommodations under the ADA?**

Diabetes can be a disabling condition under the ADA, and accordingly, does raise the right of the employee to ask for any number of accommodations to assist them in avoiding problems in the workplace in managing their disease and avoiding the disabling conditions. See the JAN Brochure, “Employees with Diabetes”, which lists a whole series of accommodations from allowing food in the workplace to storage of medications, areas for testing and administering medications, to rest areas, to stable work shifts, stress reduction, etc. The brochure even mentions service animals for mobility purposes. (D4D’s medical alert dogs are not included in the brochure). The accommodations requested by someone would need to be appropriate for their condition.

Accommodations do not have to be static and unchanging. The duty to provide accommodations is ongoing. Conditions can change and additional accommodations can be requested and should be appropriately considered by the employer. *(3) EEOC Enforcement Guidelines P. 22 Q. 32*

The EEOC specifically mentions the requirement that an employer must accommodate a diabetic who takes insulin because of the side effects of his medical treatment. (4) EEOC Enforcement Guidelines P. 24, Q. 39

**3) Can employers discriminate against a person with a disability in any way?**

No. The ADA is clear that employers cannot discriminate in recruitment, pay, hiring, firing, promotion, job assignments, training, leave, benefits and all other employment activities. *They also cannot retaliate against an employee for asserting his rights under the ADA.* (5) EEOC “ADA: Your Responsibilities as an Employer” P.2

The person with the disability must be qualified to perform the essential functions of the job with or without reasonable accommodation. That means that you have to have the proper qualifications and that you are able to perform the job, with or without qualifications. In the situation of the diabetic employee, when their blood sugar is in control, they must be able to perform their job. The purpose in requesting accommodations is to assist the employee in keeping their disease in control to allow them to continually perform the essential functions of their job.

**4) Must an employer provide accommodations?**

The ADA ***requires*** employers to provide reasonable accommodations to qualified disabled employees, unless to do so would cause undue hardship*. (5) EEOC*

*Enforcement Guidelines P.3, General Principles.*

Accommodations can include adjustments to the work environment; or the

manner in which the job is customarily performed to allow the disabled individual to perform the essential job functions; and to provide modifications to enable a qualified individual to enjoy equal benefits and privileges of employment as other similar, non-disabled employees.

The only statutory limitation on an employer’s obligation to provide reasonable accommodation is “undue hardship”. That means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relation to the cost or difficulty involved. Undue hardship refers not only to the cost, but also to accommodations that are unduly extensive, substantial or disruptive, or that might fundamentally alter the nature or operation of the business. *(6) EEOC Enforcement Guidelines P.5 Undue Hardship*

**5) What types of accommodations are reasonable?**

The law allows for the evaluation of alternative forms of accommodation, with the suggestions of the employee and the employer considered. However, weight can be granted to the employee’s suggestions. Case law has indicated that if the employee shows that an accommodation seems reasonable on its face, the burden of proof then rests with the employer to provide case-specific evidence that the accommodation would cause undue hardship in the particular circumstances. *(7)*

*EEOC Enforcement Guidelines P. 29 Burden of Proof.*

**6) Is the employer required to provide the reasonable accommodation that the individual wants?**

The employer may choose among reasonable accommodations as long as the

chosen accommodation is effective. This question and answer are direct from the

EEOC Enforcement Guidelines on Accommodations, and should be read in full.

It goes on to say that if more than one accommodation is effective, “the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations.” (*8) EEOC Enforcement Guidelines P. 9, Q. 9.*

Our client’s response should be that no other available monitoring tool available to diabetics provides the same support as a medical alert dog. See the following Q&A, paragraph 3.

**7) Are service dogs required to be accommodated under the ADA?**

According to JAN, the answer is “Maybe”. (9) *See JAN “Service Animals as Workplace Accommodations” P. 4.* ADA Title I does not specifically address service animals. In their inquiry to the EEOC, the EEOC representative indicated

that an employer must consider an employee with a disability to use a service animal at work unless doing so would result in an undue hardship.

It would be appropriate for D4D clients to read the JAN Accommodation and Compliance Series: Service Animals as Workplace Accommodations and the attendant brochure be aware of the issue involved.

**There will be several issues to address, including the primary one, which is why is a service animal an appropriate support tool. The answer to that is based on D4D’s client’s own experience, which is that the dog provides an on-going monitoring capability that warns of the impending blood sugar**

**drop, allowing the client to treat the onset of hypoglycemia before becoming symptomatic. This type of monitoring device is not available in current technology, as glucose meters and continuous monitoring devices measure blood glucose levels on a lagging basis. The dog alerts the clients of the impending drop, 15 to 30 minutes before it is measured by a meter.**

Other issues will be specific to the employer, the job and the physical accommodations required. They may include an environment dangerous for the dog, such as a factory, or an area where the dog may not be appropriate, such as a sterile lab or medical treatment area. Each of these will need to be addressed individually; however, many can be addressed. Cases have been held that a doctor could have a service dog in the hospital, but simply not in a sterile treatment area. The FDA by policy, even allows dogs in food service environments, as long as the employee takes specific action in washing hands before handling food.

Other issues may be put forth as problematic in having a dog in the workplace, such as allergies of other employees, care of the dog, a place for the dog to be relived, persons with fear of being bitten, etc. Again, each of these issues should not pose problems that would constitute undue hardship and can be accommodated.

**8) Does the EEOC specifically address the issue of service dogs in their literature on accommodations?**

I have reviewed several of the EEOC Q&A documents as it pertains to accommodating individuals with disabilities. They include documents on Food Service Employees, Attorneys with Disabilities and Persons with Blindness or Vision Impairments. Each of these documents provide many examples of people with many types of disabilities and how they might be accommodated based on actual cases determined by the EEOC. Several cite diabetes and its complications and side effects as conditions that warrant accommodation. There are few mentions of service dogs.

Courtesy of Dogs for Diabetics, Inc. [www.Dogs4Diabetics.com](http://www.Dogs4Diabetics.com/)

The Food Service employee document address service dogs on P.12, Q. 25, and indicates that a request for a service animal in a food service environment is allowed. The FDA provides certain directions to be applied for washing hands prior to handling food. The guidance regarding Blindness and Vision Impaired does require modification of employer policies to allow the use of a guide dog in the workplace. *(10) See EEOC, Q&A’s about Blindness and Vision Impairments in the Workplace, P.7 Accommodating Individuals with Visual Disabilities.*

We will expand this document as additional questions may be raised and require additional research.

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This information is provided only as guidance.