

## Accommodating Diabetes in the Workplace



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## Goals

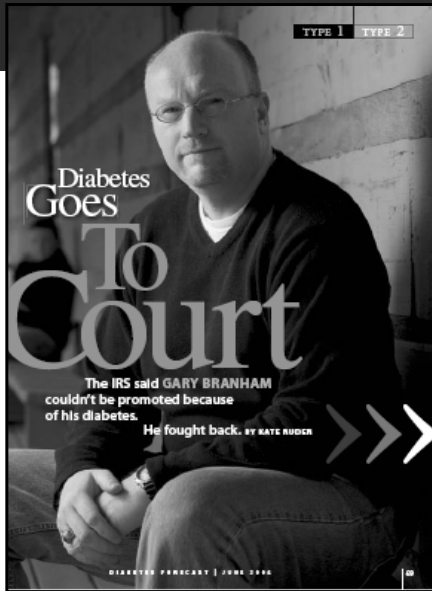
- For each person with diabetes to be able to hold any job for which he or she is otherwise qualified
- For each person with diabetes to have any reasonable accommodations necessary to protect his or her health on the job

## Key Legal Protections

- Americans with Disabilities Act
- Rehabilitation Act of 1973
- Congressional Accountability Act
- Family and Medical Leave Act
- State Anti-Discrimination/Leave Laws

## Purpose of Anti-Discrimination Law

- To prohibit discrimination in employment against a “qualified person with a disability”
- To make sure that misinformation and fears about medical conditions don’t stand in the way of an employee getting a job he or she deserves and the employer getting the very best employee possible.



## The Diabetes Conundrum:

### Too Sick or Not Sick Enough?

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diabetes.org

## Too sick? Qualified and Direct Threat

**Legal standard: qualified v. direct threat (an issue of burden of proof)**

**Qualified: Can perform essential functions of the job with or without a reasonable accommodation**

**Direct threat: Requires proof that an employee poses a significant risk of substantial harm to self or others.**

- that cannot be reduced below the direct threat level through reasonable accommodation.
- based on an individualized assessment supported by "reasonable medical judgment relying on the most current medical knowledge and/or on the best available objective evidence."

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## Can *this* person with diabetes do *this* job?

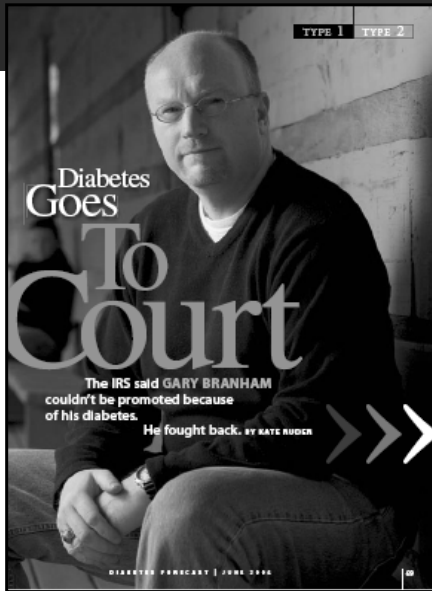
The three hallmarks of successful *individual assessment* are:

- Individual job and the individual applicant – not blanket rules
  - In *most* jobs there is no valid safety issue
- Expertise of both health care professionals with knowledge of occupational medicine and those with knowledge of the medical condition at issue.
  - Include treating physician
- Realizing there simply is not going to be one test and one cut-off score

## Can *this* person with diabetes do *this* job?

Importance of guidelines *but* make sure the guidelines are appropriate to the specific job

- Firefighters: National Fire and Protection Association
- Law Enforcement: American College of Occupational and Environmental Medicine
- Commercial Driving: Federal Motor Carrier Safety Administration exemption program



**Jury: “not a  
direct threat”  
(not too sick)**

**So what went  
wrong?**

## The “ Document” Doctor Internal Revenue Service United States Department of the Treasury

### What information did he ignore?

- Opinions of experts in diabetes.
- The judgment of Mr. Branham’s endocrinologist.
- Information he received from Mr. Branham.
- Mr. Branham’s history of no diabetes problems.
- The opinions of Mr. Branham’s IRS bosses.

## Not A Direct Threat

*Trial Testimony*



Dr. Charles Clark

*He was not a direct threat....  
...risk is minuscule*



Dr. Cohen

*Could not disagree  
with Dr. Clark*

## Sick Enough? Diabetes as a Disability

- Impairment
- Substantially limits
- Major life activity

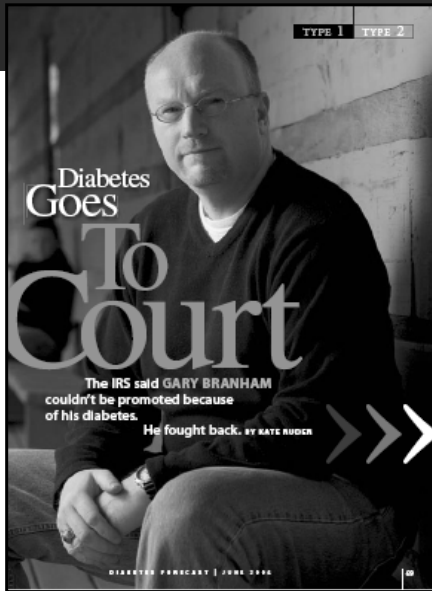
## **Sick Enough: Diabetes as a Disability**

- Individual assessment
- Understand diabetes
  - Type 1 or 2
  - Medications and their side effects
  - Long and short term complications

## **Sick Enough? Diabetes as a Disability**

### **What major life activities can impact people with diabetes?**

Eating	Caring for Oneself	Working
Working	Thinking	Learning
Walking	Seeing	Manual Tasks
Reproduction	Etc.	



Jury: “has a disability” (sick enough)

What went wrong?

### Gary Branham’s Disability VS Average Person

No.	Limit	Branham	Average Person
1.	Constant blood sugar vigilance	YES	NO
2.	Monthly/quarterly doctor visits & lab tests	YES	NO
3.	Multiple insulin shots each day	YES	NO
4.	Frequent insulin changes each day	YES	NO
5.	Side effects from insulin	YES	NO
6.	Multiple blood test each day	YES	NO
7.	Calculate food quality and quantity	YES	NO
8.	Limits on type and quantity of food consumed	YES	NO
9.	Adjust food for insulin and diet	YES	NO
10.	Adjust exercise for insulin and diet	YES	NO
11.	Adjust insulin for exercise and diet	YES	NO



## Reasonable Accommodations

Employer is required to make reasonable accommodations such as

- making existing facilities readily accessible
  - job restructuring
  - part-time or modified work schedules,
  - reassignment to a vacant position, and modifying equipment
- unless doing so would cause undue hardship

## Reasonable Accommodations for People with Diabetes

**Usually small, easy to accomplish, little or no cost to employer**

### Daily care:

- Time to check blood glucose and treat by administering insulin or food
- Place for blood glucose checking/treatment (work station except in rare circumstances)
- Consistent shift for some people

### Responding to long term complications:

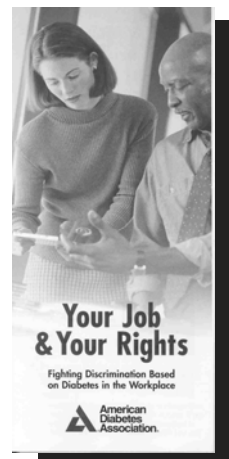
- Larger computer screen
- Chair
- Avoiding walking long distances
- Part-time or modified work schedules

## The American Diabetes Association Four Step Response

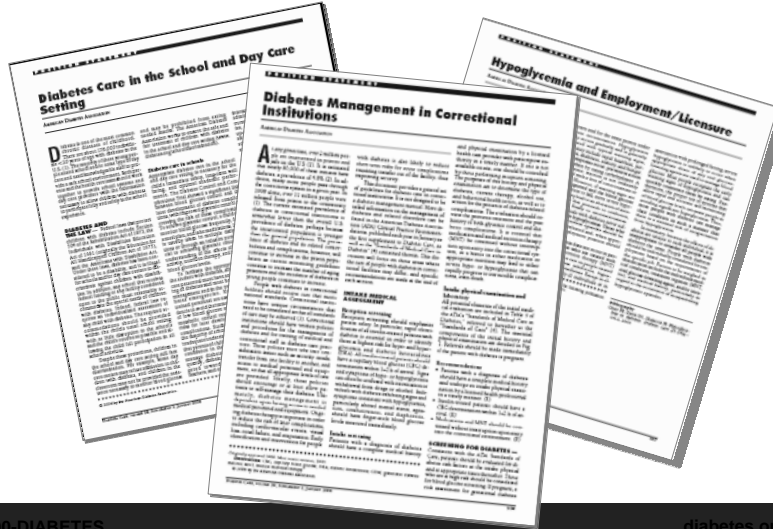
- Educate
- Negotiate
- Litigate
- Legislate

## EDUCATE

- Inform workers of their rights
- Educate employers about diabetes and the rights of workers with diabetes
- Provide resources for attorneys



## ADA Position Statements



1-800-DIABETES

diabetes.org

## ADA Employment Discrimination Information For People with Diabetes

### ADA Web Resources

[www.diabetes.org/advocacy-and-legalresources/discrimination/employment.jsp](http://www.diabetes.org/advocacy-and-legalresources/discrimination/employment.jsp)

- **Your Job and Your Rights**  
Information to help people with diabetes understand their rights in the workplace.
- **Federal Employment Laws affecting people with diabetes**  
Explanation of laws that protect workers with diabetes.
- **Diabetes Discrimination Success Stories**  
Legal victories by people with diabetes in employment discrimination cases.
- **Commercial Drivers and Diabetes Discrimination**  
Information on the legal rights of commercial drivers with diabetes.
- **Fire Fighters and Diabetes Discrimination**  
Information on the legal rights of fire fighters with diabetes
- **Pilots and Diabetes Discrimination**  
Information on the legal rights of pilots with diabetes.
- **Americans with Disabilities Act Restoration Legislation**  
Information about the American Diabetes Association's legislative efforts to amend the Americans with Disabilities Act's definition of disability.
- **EEOC and Diabetes Discrimination Issues**  
Collaborative efforts between ADA & EEOC help to prevent discrimination against workers with diabetes.
- **Employment Discrimination Resources**  
Organizations that protect people with disabilities from discrimination and provide further understanding of legal rights.

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## NEGOTIATE



- **Collaboration with other organizations and government agencies**
- **Develop standards for reasonable individual assessment to address “qualified/direct threat” issues**
- **Provide attorneys with tools for successful settlements**

## LITIGATE



- **Support for lawyers**
- **ADA as an amicus curiae**
- **ADA as a plaintiff**



## LEGISLATE

**Americans with Disabilities Act Restoration Act**