

FACT SHEET: DIABETES AND UNEMPLOYMENT INSURANCE

1. What is unemployment insurance?

Every state has an unemployment insurance program which provides payments to individuals who lose their job “through no fault of their own.” Each state has its own version of unemployment. Programs vary significantly depending on the state.

Generally, employers are required to pay for this program. The fees do not come out of the employee’s salary. Typically, unemployment insurance benefits provide employees with significantly less income than their former salary and can be paid for a maximum of 26 weeks. During times of high unemployment, additional weeks of benefits may be available. Some states choose to provide additional benefits. Benefits are subject to federal income taxes and must be reported on your federal income tax return.

2. How do I start an unemployment insurance claim?

You should contact your state’s unemployment insurance program. The United States Department of Labor provides basic information and a directory of state offices here: <http://workforcesecurity.doleta.gov/unemploy/index.asp>.

3. Can I start receiving unemployment payments immediately?

Most states have a so-called “waiting week” during which time you cannot receive benefits.

4. Who qualifies for unemployment insurance?

Some people are not covered by the unemployment insurance program. While most individuals who work for large companies are covered, there are several exclusions which vary by state. Generally agricultural laborers, domestic workers, and workers employed by their spouses are not covered. You must research your own state’s laws.

5. If I receive unemployment insurance benefits, may I still bring an Americans with Disabilities Act (ADA) claim?

Yes. Receiving unemployment insurance benefits does not prevent you from making an ADA or other discrimination claim. For example, if your employer found out you had diabetes and fired you on this basis, you could both apply for unemployment insurance benefits and file an ADA claim.

National Office

1701 North Beauregard Street
Alexandria, VA 22311
Tel: 703-549-1500

Diabetes Information

call 1-800-DIABETES (1-800-342-2383)
online www.diabetes.org
The Association gratefully accepts gifts through your will.

The Mission of the American

Diabetes Association is to prevent and cure diabetes and to improve the lives of all people affected by diabetes.

6. Should I try to find a job when I am receiving unemployment insurance benefits?

Yes. Unemployment insurance programs often require that you seek other employment and provide resources for doing so. Accepting other employment should not hurt an ADA claim. In fact, it can be helpful. For example, if your employer fails to accommodate your diabetes and then terminates you, but you obtain other employment that demonstrates you are able to fully perform your job with reasonable accommodations, this may be strong evidence that your former employer discriminated against you.

7. What does “through no fault of the employee’s own” mean?

Employees generally are not entitled to unemployment insurance benefits if they are terminated for willful misconduct in connection with their work, are participating in a labor strike, or if they choose to quit. Employers have to prove you were terminated because of misconduct. Examples of willful misconduct include:

- criminal conduct
- insubordination and dishonesty
- unjustified absences
- alcohol and drug use

In some instances, your absences may be justified. For example, if you made properly documented requests for leave under the Family and Medical Leave Act (FMLA), but your employer violated the FMLA and then terminated you for your absences, you would be terminated “through no fault of your own.” However, if you are tardy or miss work or otherwise violate your company’s attendance policy for unjustified reasons, you may not qualify for unemployment insurance benefits.

8. What if my employer fires me because of fears and stereotypes about my diabetes?

Federal and state laws prohibit employers from discriminating against employees on the basis of race, color, religion, sex, national origin, age, and disability. If you are terminated for discriminatory reasons, you have lost your job “through no fault of your own” and you are eligible for unemployment insurance benefits as long as you meet other requirements.

9. What if I quit because my employer refused to reasonably accommodate my diabetes?

You have the burden of proving that you did not voluntarily quit but that you left your job “for good cause.” You will need to show you had no choice but to quit and that your employer knew you could not continue working in the same conditions. For example, if you quit because your employer refused to permit you to take breaks to perform diabetes self-care even after you had asked for permission to do so, you could argue that you did not voluntarily quit but rather became unemployed “through no fault of your own.”

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10. What can I do if my unemployment claim is denied or challenged by my employer?

You must follow your own state's appeals procedure. It is essential to meet all deadlines and follow all procedures. Although you are permitted to represent yourself in this process, you may want to consider obtaining an attorney to represent you.

If you think that your job loss is due to discrimination because of your diabetes, you should state that you were terminated in violation of the ADA (and any applicable state and local laws). You should raise this concern as soon as possible and throughout all stages of defending your right to unemployment insurance benefits.

11. How can I obtain evidence that will support my claim for unemployment insurance benefits?

- Keep copies of all policies and communications with your employer
- Request that your employer provide you with written confirmation of the reasons for all adverse job actions, including any disciplinary measures taken and your termination
- Keep a written log of all conversations between you and your employer
- Pay attention to how other employees are being treated. For example, is the attendance policy strictly enforced against all employees?
- Obtain a copy of your personnel file

12. Who can I contact if I need to find a lawyer?

The American Bar Association has an online resource for finding legal assistance in your state at: <http://www.abanet.org/legalservices/findlegalhelp/home.cfm>.

A list of organizations in each state that specialize in disability law (called Protection & Advocacy organizations) is available at www.ndrn.org.

If you think you are being discriminated against because of your diabetes, call 1-800-DIABETES (1-800-342-2383) for additional information and to learn how you can speak with one of the Association's Legal Advocates.

Important Note: This fact sheet describing the legal rights of individuals with diabetes is for your general information and review only, and is not to be construed as a substitute for the advice of legal counsel.

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