

# Defeating Discrimination

A new law protects people with diabetes in the workplace and beyond *By Katie Bunker*

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JOHN STEIGAUF WAS FIGHTING a losing battle with type 2 diabetes. Diet, exercise, and medication: None of it was working, he felt exhausted all the time, and friends said he no longer looked like himself. Still, Steigauf put off what he really needed—insulin injections—for fear he would lose his job.

When Steigauf, then 47, finally went on insulin in 2004, his health improved but his fear proved well founded: He was deemed unfit to keep his position of 14 years with United Parcel Service. It was more than a decade after the passage of the Americans with Disabilities Act, landmark civil rights legislation that was supposed to protect Americans with disabilities, including those with chronic diseases, from workplace discrimination. But a string of Supreme Court decisions and lower court rulings had undermined the law's effectiveness, leaving Steigauf and others at the mercy of unsympathetic or uninformed employers.

A broad disability rights coalition, including advocates from the American Diabetes Association, knew only one strategy could restore what the courts had taken away: pushing a reform of the 1990 law through Congress and the





John Steigauf at the International Association of Machinists and Aerospace Workers, where he's still fighting to protect the rights of employees.

White House to bring people with diabetes and other chronic medical conditions back under the legislation's umbrella. Last September, after years of advocates' lobbying, President George W. Bush signed the Americans with Disabilities Act Amendments Act, or ADAAA. The new law, which went into effect January 1, promises to bolster the rights of people with diabetes and many others for generations to come.

## A Catch-22

The key to changing the law turned out to be a matter of language, first and foremost. The 1990 Americans with Disabilities Act defines disability to mean a "physical or mental impairment that substantially limits one or more major life activities." That had become a problem for people like Steigauf after a pivotal 1999 Supreme Court ruling. In *Sutton v. United Air Lines Inc.*, two sisters had sued United after they were denied jobs because they couldn't pass an eye exam if they weren't wearing glasses. In deciding whether the sisters should be protected under the Americans with Disabilities Act, the Supreme Court looked at the women's abilities when they used "mitigating measures"—in this case, eyeglasses—to correct their condition. With glasses, the women's vision was normal, so the court ruled that they weren't substantially limited in any major life activity and, therefore, weren't protected by the law. Yet United had not allowed

[law]. And two, what it meant for me personally as a person who uses insulin: that I very well might not be protected by the law."

Indeed, many people with diabetes found they could be discriminated against explicitly because of their diabetes but deprived of the right to fight discrimination, primarily because they used "mitigating measures" such as insulin or oral medications. It was as if the courts were saying insulin was a cure, not a treatment requiring accommodation, Kohrman says. And the better someone with diabetes managed the disease, the more likely a court was to rule the person had no disability.

In the cases of Steigauf and Milt Klise, another UPS employee with diabetes who lost his position, because they used insulin the law at the time made them ineligible for renewal of a federal Department of Transportation certification that UPS required. Unlike many UPS employees, though, Steigauf and Klise were not delivery drivers but mechanics. No law required that they have federal certification to do their jobs; they spent almost no time behind the wheel at work. Steigauf and Klise argued that they were entitled to "reasonable accommodation" under the law. They asked UPS to evaluate their individual situations and waive the requirement that they be licensed for interstate driving.

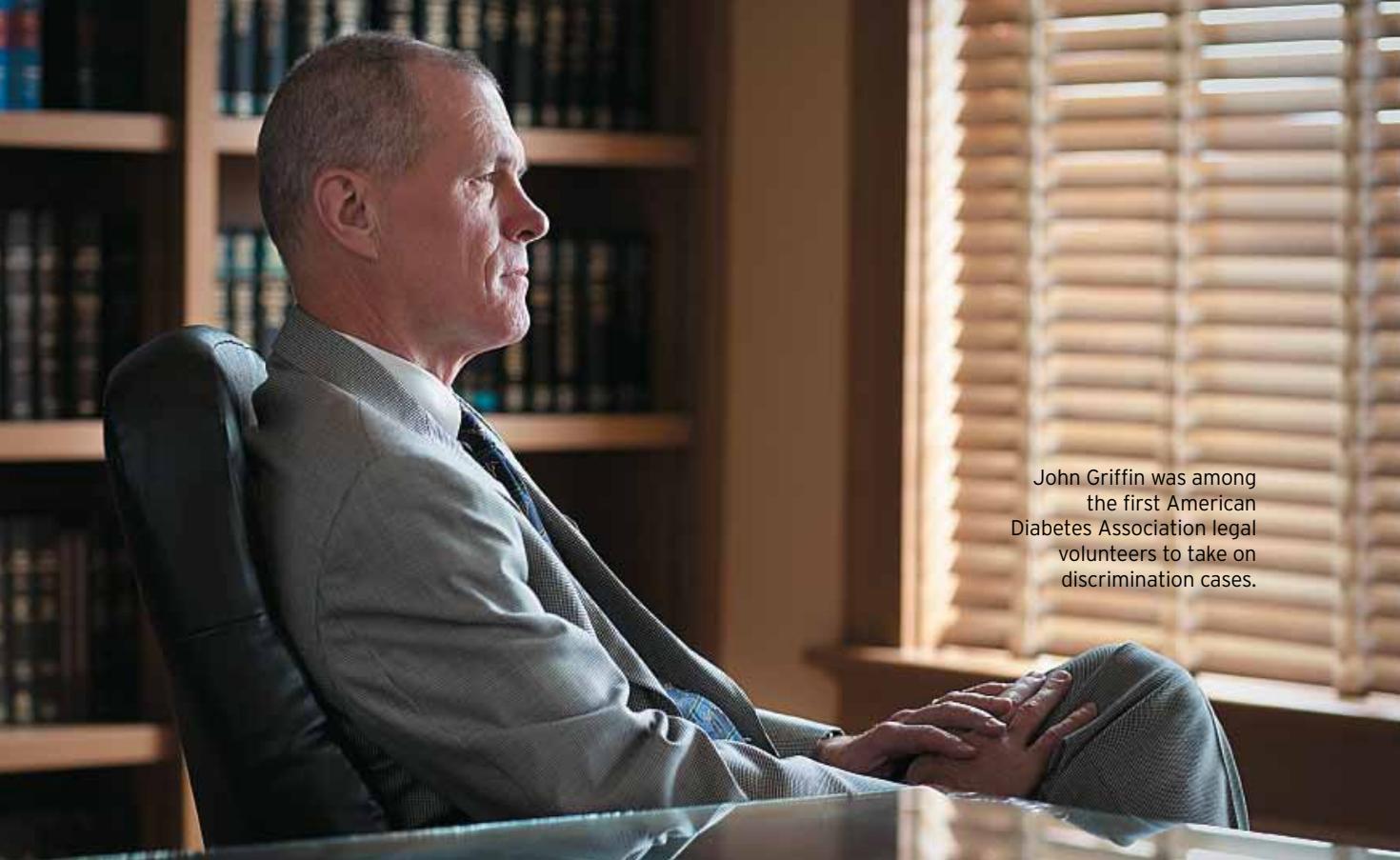
In response, UPS asked the men's doctors to state in writing whether their patients were "substantially limited in any major life activities." According to John Griffin, a lawyer who worked on both cases as an American Diabetes Association volunteer,

**"Disability to people means one thing,  
and disability to the law means something else."**

the women to take their eye exams with glasses.

It was a catch-22: The women couldn't become United pilots because of their sight, but because they were able to correct their vision, they weren't protected under the law. "When I heard the decision, I had two reactions," says Daniel Kohrman, a senior attorney with AARP Foundation Litigation in Washington, D.C., and chair of the Legal Advocacy Subcommittee at the American Diabetes Association. "One, the Supreme Court was taking away what many people had worked so hard to accomplish by being so overly restrictive in an interpretation of the

this question posed a trap for doctors unfamiliar with the legal definition of disability. A doctor who answered no—who rightly felt that diabetes did not hold anyone back from leading a full life—might unwittingly undermine the patient's right to seek redress for discrimination. Indeed, the company said that the law did not protect the men, because diabetes wasn't legally a disability. To UPS, it was a safety issue. "UPS is always going to err on the side of safety, and we believe with commercial vehicles on public roads that DOT certification is required," says UPS spokesperson Susan Rosenberg.



John Griffin was among the first American Diabetes Association legal volunteers to take on discrimination cases.

## Defining Disability

When an African American man gets passed over for a promotion because of his race, or a woman isn't hired because of her sex, either of them may sue for discrimination. No one questions the basis of their claims. But for people with diabetes, epilepsy, multiple sclerosis, muscular dystrophy, and many other conditions, the Americans with Disabilities Act was being interpreted to mean that their conditions were not disabilities. Their cases were dismissed.

Of course, many people, especially those who have diabetes, would hardly consider the disease a disability. For example, Griffin, a trial lawyer from Victoria, Texas, was among the first legal volunteers with the American Diabetes Association to take on discrimination cases and is now vice chair of the Association's board of directors. No one who knows him would call him "disabled." But he does have diabetes. And as a lawyer, he knows that "disability to people means one thing, and disability to the law means something else." If you don't meet the legal definition of disability, then it is lawful to discriminate against you because of your diabetes.

After the *Sutton* decision, courts continued to narrow the scope of the Americans with Disabilities Act. In 2002, the Supreme Court ruled that to

have a disability, a person must have a condition that severely restricts key daily activities. As a result, "people had to reveal intimate details [about their lives], like how they engage in sexual activity," says Alexandria Finucane, vice president of legal and government affairs at the Epilepsy Foundation.

Employment discrimination lawyers and advocates grew increasingly frustrated as they sought legal remedies for people facing discrimination. "The civil rights laws were not intended to be this huge sifting mechanism that allowed just a few to argue discrimination," Kohrman says. "The point was to identify groups who often experience discrimination and give them a way to fight it."

For people with diabetes, discrimination sometimes comes at the hands of employers who are just plain misinformed. A manager or human resources staffer may incorrectly assume that all people with diabetes are a safety risk. Employers may be concerned that hiring someone with diabetes will increase their health insurance costs. "Some employers ... think that if they make exceptions [for employees with diabetes], they're opening the barn door," says Kohrman. "But that isn't true."

Fighting employment discrimination can be stressful and costly. After the federal Equal

Employment Opportunity Commission or a state fair-employment agency reviews a case and grants the right to sue in court, the ensuing process often lasts for years. For many people, the legal costs are prohibitive. While hundreds of people turned to the American Diabetes Association for help with discrimination cases, handled by attorneys like Griffin and Kohrman, the cases were so hard to win that many other lawyers didn't want to take them on. "The American Diabetes Association developed legal arguments and medical support, we taught seminars, and we organized a network of more than 600 lawyers willing to work on diabetes discrimination cases," says Shereen Arent, executive vice president for government affairs and advocacy at the Association. "When we were able to work closely with lawyers and experts, we had a great deal of success. Still, it took an enormous amount of work and resources to win these cases. Many people were too discouraged to even try to fight."

## A Coalition for Change

As early as 2000, the American Diabetes Association and the Epilepsy Foundation started sowing the seeds for going back to Congress to strengthen the law. A former California congressman, Tony Coelho, focused national attention on how the rights of people with disabilities were being eroded. Coelho, who has epilepsy, had plenty of reason to be concerned. A Democratic member of the House of Representatives for a decade, he had risen in 1986 to become majority whip. His signature achievement was sponsoring the original Americans with Disabilities Act. Now he saw his law being remade and, in his view, gutted by the courts.

A coalition to change the law, led by ADA's Arent, Epilepsy's Finucane, and others, started to build. By 2006, it gained critical mass, as disability rights advocates found allies in Congress ready to take on the issue. Key players included House Majority Leader Steny Hoyer (D-Md.), Rep. James

## THEIR DAY IN COURT

*While many of the people who have battled disability discrimination in the past two decades never had their cases heard, others successfully fought the odds with help from the American Diabetes Association. Here are five people who made it to the courtroom—and won:*

### JEFF KAPCHE

applied in 1994 to be an officer with the San Antonio Police Department. After passing tests with flying colors, Kapche had to take a physical—and was dropped from consideration because all people who used insulin were considered a safety risk. ADA volunteer lawyer John Griffin took on Kapche's case with assistance from Michael Greene, former ADA chair of the board and founder of the Association's Legal Advocacy Program. It took more than six years and two appeals before a court ruled that Kapche needed to be considered on an individual basis, a victory that served as an important precedent for cases to follow.

### GARY BRANHAM

was an Internal Revenue Service agent in Indianapolis who applied in 1999 for a promotion to special agent. He was denied the job on the basis that his insulin-treated diabetes would interfere with his ability to use a gun and work undercover. Branham's lawsuit, filed in 2001, was dismissed when a judge ruled that his diabetes was so well controlled that it wasn't a disability. Griffin agreed to handle the appeal of his case, and Branham eventually won.

## “Many people were too discouraged to even try to fight.”

Sensenbrenner (R-Wis.), and Sens. Tom Harkin (D-Iowa), Orrin Hatch (R-Utah), Edward Kennedy (D-Mass.), and Arlen Specter (R-Pa.). The coalition helped congressional staffers craft wording to restore what they believed was the 1990 law’s original intent: to broadly protect the rights of people with disabilities. Congress heard testimony from people like diabetes advocate and pharmacist Stephen Orr, who described how he lost his job because he had diabetes. Advocates sent more than 73,000 e-mails to Congress, met with elected officials, made phone calls, and had letters to the editor published.

Ultimately, disability rights advocates joined last year with the U.S. Chamber of Commerce and other business leaders to hammer out a compromise. The measure passed unanimously in both the House and the Senate. Two years after the first congressional hearings on reforming the law, President Bush signed the ADA, restoring the protections

in the original legislation that his father, President George H.W. Bush, had signed 18 years earlier.

The ADA addresses the definition of “disability” more specifically than the original law did, emphasizing that the word should be interpreted broadly. It states that mitigating measures shall not be considered in assessing whether or not a person has a disability. It clarifies that an impairment that “substantially limits one major life activity need not limit other major life activities in order to be a disability.” And, importantly for people with diabetes, it expands the definition of “major life activities” to include a list of bodily functions such as that of the endocrine system.

The new law protects against more than workplace discrimination. People with diabetes and other chronic diseases often face problems in schools, day care centers, and places of public accommodation like restaurants, amusement parks, and concert venues. “The changes [established by

### REBECCA FRASER,

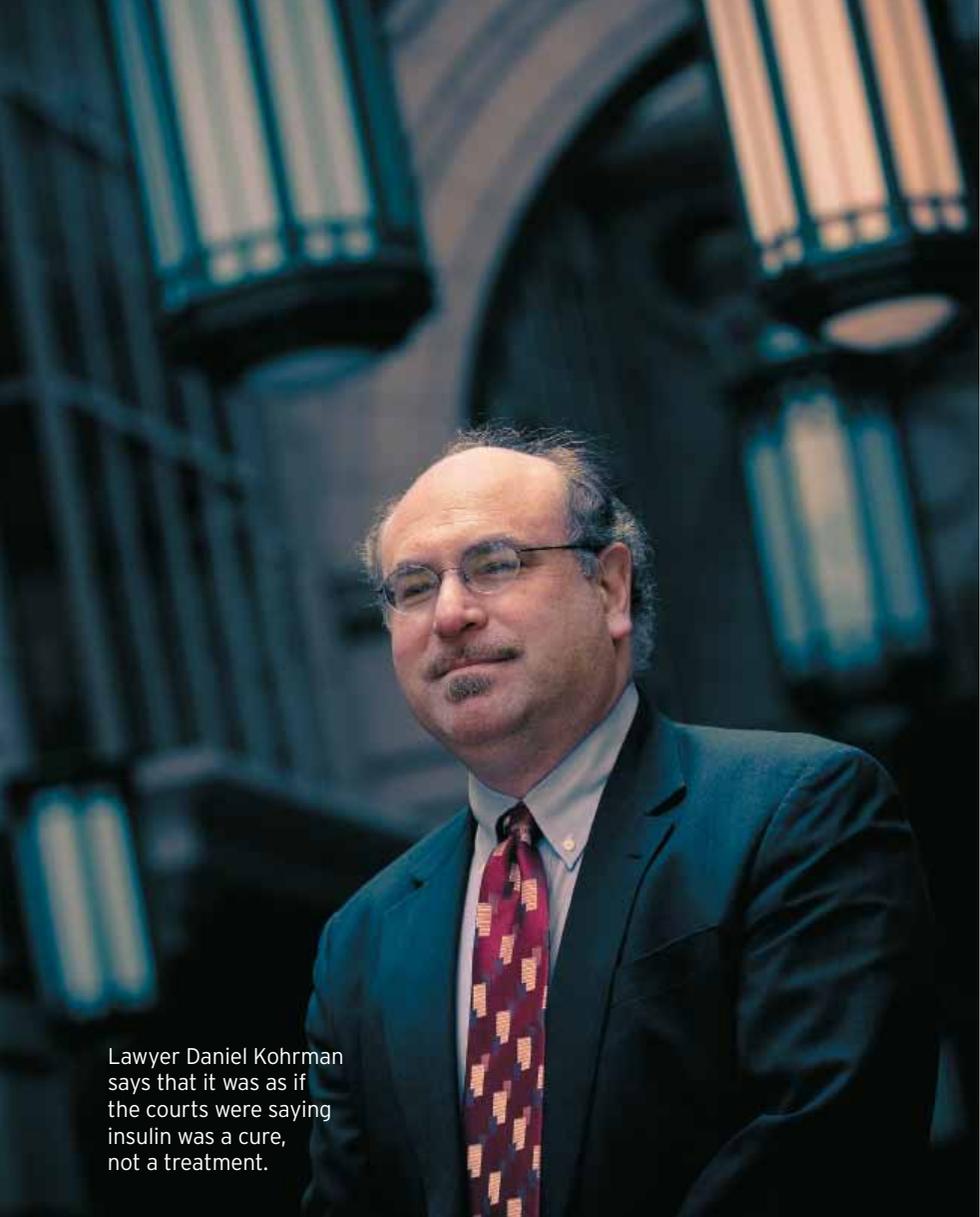
working in 1998 as a senior account specialist for U.S. Bancorp in Portland, Ore., requested a “reasonable accommodation” to keep food at her desk so she could prevent hypoglycemia. Her manager refused, and one day Fraser passed out. A few months later, she was fired. Fraser lost her first court battle in 2001 when her diabetes was ruled not to be a disability. On appeal, ADA volunteer lawyers Greene, Carl Kiss, and Daniel Kohrman assisted Fraser’s lawyer, Craig Crispin, and the decision was reversed.

### RUDY RODRIGUEZ

was a temporary employee at a ConAgra plant in Fort Worth, Texas, when he was offered a permanent position in 2002, pending a physical exam. A physician concluded that Rodriguez was not fit for the job because he had “uncontrolled [type 2] diabetes.” However, the doctor never looked at Rodriguez’s medical records or spoke with his physician; he based his decision largely on one urine glucose test. Rodriguez sued in federal court in 2003, but his claim was dismissed on the basis that he wasn’t covered as a person with a disability. On appeal, with Kohrman assisting Rodriguez’s attorney, Donald Uloth, the ruling was reversed.

### GILBERTO WISE

was approaching mandatory retirement from the Immigration and Naturalization Service in 2002 when he found a job in San Antonio as a federal courthouse security officer. Then he was diagnosed with type 2 diabetes. A year into the job, the U.S. Marshal Service fired him for a poor A1C test result, even though he had later lowered his blood glucose level. Represented by ADA volunteers Griffin and Kathy Butler, Wise filed suit in federal court. Wise was killed in a 2005 automobile accident before his case was heard. His wife, Peggy, continued his battle, winning a favorable settlement and a change in U.S. Marshal Service policy.



Lawyer Daniel Kohrman says that it was as if the courts were saying insulin was a cure, not a treatment.

the new law] will have a great effect in a wide variety of ways,” Griffin says. “Some schools would take the position that a child is doing so great with their pump or insulin injections that they don’t have a disability and don’t have a right to an education plan at school.” These plans, which are created under Section 504 of the Rehabilitation Act, another federal antidiscrimination law that was also amended by the ADAAA, lay out how a child’s diabetes care can be managed at school. Without such protections, kids with diabetes would have no guarantee of full inclusion in the classroom.

sions but also how the battles fought in the courts and in Congress by the American Diabetes Association and many others helped expand the rights of the disabled. “I was in tears when it passed both houses of Congress,” Griffin says, “because of my personal stake as someone who actually has diabetes and who has fought against real odds alongside our brothers and sisters in the disability rights community.” That collaboration, Kohrman says, is an achievement in and of itself. And the result of that collaboration is a law that should give new meaning to all efforts to improve the lives of people with diabetes. ▲

## Hopes for the Future

For disability rights advocates, passage of the ADAAA isn’t the end of the battle. Now they’re working to educate lawyers, health care professionals, businesses, and all Americans about people’s rights under the new law.

By the time the ADAAA was signed, Steigauf, the former mechanic, had already reached a settlement with UPS. Klise settled his case soon after the law went into effect. After first being demoted to lower-paying jobs, both men were later reinstated to their original positions when the Department of Transportation started offering exemptions on a case-by-case basis for people with insulin-dependent diabetes. Steigauf has since gone to work for the International Association of Machinists and Aerospace Workers, where he’s still fighting to protect the rights of employees. “My hope is that through this legislation and education, employers will understand that this disease may require some accommodation but can be dealt with relatively easily,” he says.

Lawyers Kohrman and Griffin celebrated not only the new law’s provisions

## WHERE TO FIND HELP

If you believe you have been discriminated against because of your diabetes, call the American Diabetes Association at 1-800-DIABETES (1-800-342-2383) to request a **free packet of information**, plus assistance from a legal advocate.