Before he was diagnosed with type 2 diabetes, Walter Kautz was suspended from work without pay for two months because of elevated glucose in a urine test. His doctor confirmed a diabetes diagnosis (and an A1C of 8.2 percent). According to legal records, Kautz began diabetes treatment and eventually was allowed to return to work. He spent only three months on the job after diagnosis before he was suspended again, this time because of an A1C test result.

Kautz had been driving buses for Coach USA since 1978 and had received recognition for 30 years of safe driving. Yet because of diabetes he was perceived by his company to be a safety risk.
It’s no surprise there are safety regulations in place for businesses built on transporting clients from here to there in one piece. Drivers with vision impairment or other health concerns could put themselves, customers, and other drivers at risk. To monitor health conditions, the U.S. Department of Transportation requires commercial drivers to undergo a medical exam every two years.

That shouldn’t have been a problem for Kautz. His diabetes was managed with oral medications, and he had no other medical conditions. But Coach’s company policy specified people with diabetes in particular. In order for employees with diabetes to be approved by Coach for work, they had to have an A1C at or below 7 percent.

The test result that triggered Kautz’s second suspension from work? An A1C of 7.1 percent.

**Out With the Old**

Kautz wasn’t the only bus driver with type 2 diabetes targeted by Coach. By the time a volunteer lawyer with the American Diabetes Association (ADA) filed a lawsuit in New Jersey state court in 2009, Kautz and two other men had claimed discrimination. Four years later, a similar complaint was filed in federal court by an Illinois man with type 2 who, after being hired by Coach, had to wait three months without pay before he could start—all because of elevated glucose in a company-required urine test.

It all came down to a policy that was at best misguided and at worst discriminatory. One major sticking point: the policy requiring drivers to have an A1C of 7 or lower. “Any transportation company that uses an A1C as an employment standard for disqualification is in violation of the Americans with Disabilities Act [which states that employers can’t deny people jobs or fire them from a position because of their diabetes],” says Greg Paul, a Pennsylvania lawyer in private practice and vice chair of the American Diabetes Association’s Legal Advocacy Subcommittee. He began working on the case when the New Jersey lawyer reached out for the ADA’s help.

“[An A1C result] has nothing to do with their ability to drive a truck,” says Daniel Lorber, MD, FACP, CDE, a New York City endocrinologist who works with the ADA on discrimination cases and who served as an expert for the New Jersey lawsuit. Lorber isn’t certain of the reasoning behind Coach’s policy, but he says it may have been based on ADA treatment guidelines that aim to reduce the risk of long-term diabetes complications. “Their rationale was a somewhat paternalistic one: ‘It’s up to me to make sure their diabetes is in control,’” Lorber says. “It’s not the job of the employer to prevent someone from doing a job because of possible long-term implications of [diabetes].”

Treatment guidelines, including A1C levels, are between a person and his or her health care provider. “A1C levels should not be used to make employment decisions,” says Katie Hathaway, the ADA’s managing director for legal advocacy. “The old protocol cited our glycemic goals as justification for their discriminatory policy. A1C is an average of blood glucose over two to three months and tells you nothing about any debilitating highs or lows that are the true safety factors.”

Ironically, low blood glucose (hypoglycemia) wasn’t a factor in the policy. “The biggest issue for safety in the workplace is low blood sugar, and yet a standard that says you’ve got to keep your A1C below 7 pushes employees to lower their blood sugar, maybe even unsafely.”

**Fight Back**

If you believe your employer is discriminating against you because of your diabetes, you can fight for your legal rights. Before you rush to file a lawsuit, Pennsylvania attorney Greg Paul suggests trying the following:

- **REACH OUT** to your employer (or ask your doctor to do so) with information about diabetes, such as that found at diabetes.org/workrights.
  “A lot of people just don’t understand diabetes,” Paul says. “There’s a lot of misconceptions about what diabetes is.”

- **CONTACT THE** American Diabetes Association, which can help advocate for you, including putting you in touch with an attorney experienced in diabetes discrimination cases, if necessary. Call 1-800-DIABETES (1-800-342-2383).
Exception to the Rule

How to apply for an exemption for a commercial license

Under federal law, interstate commercial drivers who treat their diabetes with insulin must obtain an exemption. To do so, go to the Federal Motor Carrier Safety Administration’s website, fmcsa.dot.gov, and download the diabetes exemption application.

As part of the exemption program, you’ll need to be evaluated by a certified medical examiner as well as an endocrinologist and eye doctor, both of whom must complete a form about your diabetes. A typical request for exemption is either granted or denied within 180 days.

If you’re permitted an exemption, the FMCSA will send information about the requirements of your two-year exemption period, such as any necessary safety or medical screenings you need to undergo. For more information about the exemption program, visit diabetes.org/driverexemption.

What it came down to, Kohrman and Paul argued, was a need for an individualized health assessment that took more than a single test result into account before a driver was suspended from driving.

In With the New

Four years after the first case was brought to court, the drivers settled with the North American division of Stagecoach Group, which owns Coach USA as well as other bus companies in the United States and Canada. Though details are hush-hush as a condition of the settlement, the most important outcome was a rewritten policy that ensures current and future employees won’t be discriminated against because of diabetes. (However, under Department of Transportation regulations, a person who uses insulin must obtain an exemption from the federal government in order to drive interstate commercial vehicles. See “Exception to the Rule,” above left.)

“In the end, we worked out an amicable agreement with Coach, who realized they needed to change their policy to a policy that was consistent with good science,” says Kohrman. Under the new policy, part of the December 2013 settlement, drivers with diabetes who do not use insulin aren’t automatically suspended without pay based on fasting glucose, urine glucose, or A1C tests.

Instead, a single test result may prompt additional testing with the goal of evaluating a person’s diabetes control. This second assessment may include checks for neuropathy (nerve damage) and retinopathy (vision impairment), both of which can make it difficult and often dangerous for a person to drive. The more thorough medical exam may include input from drivers’ doctors or a medical expert with experience in diabetes care when determining drivers’ ability to do their jobs.

“The policy is designed to keep healthy drivers on the road, protect our passengers and the public, and make sure that drivers who need medical attention receive it,” says Don Carmichael, executive vice president and senior vice president of safety for Coach USA. “We hope the new diabetes protocol can be a model for the industry.”

“In the end, we worked out an amicable agreement with Coach, who realized they needed to change their policy to a policy that was consistent with good science.”

—DANIEL KOHRMAN,
FORMER CHAIR, ADA LEGAL ADVOCACY SUBCOMMITTEE

says Daniel Kohrman, an attorney with AARP Foundation Litigation, former chair of the ADA Legal Advocacy Subcommittee, and a lawyer on the case. An A1C doesn’t provide any information about whether or how often a person with diabetes is having lows, or how severe they might be.

The A1C test wasn’t the only hindrance for people with diabetes. The policy required a driver to test negatively for urine glucose and have fasting blood glucose between 90 and 130 mg/dl. Both measures of eligibility, the drivers argued, were discriminatory.

Fasting glucose tests don’t show how often people experience low blood glucose or whether they have complications of diabetes that make driving unsafe. In fact, Lorber testified, the test is really only valuable in its ability to diagnose diabetes.

Urine tests are even less effective in determining whether a person is fit to drive. “There’s no rationale for using a urine test to determine if someone [with diabetes] can do a job,” says Lorber, noting that SGLT-2 inhibitors, a new class of type 2 diabetes drugs, lower blood glucose by increasing the amount of glucose in the urine. “If anything, it’s even less of a reason to use urine testing now,” he says.

Hathaway agrees, calling urine glucose tests outdated. “[Results are] more likely to be influenced by what you just ate or drank than by your diabetes management,” she says.
Many of the more than 200,000 children in America living with diabetes have no safety net or support system in school when they need insulin or face a diabetes emergency. Some are even turned away from their neighborhood school because of their diabetes.

The American Diabetes Association’s Safe at School® Campaign is fighting to make sure all children with diabetes have the care and support they need to succeed.

Learn how we help families facing discrimination – and what you can do to make sure kids with diabetes get the balanced support they need to be as safe at school as they are at home – by visiting diabetes.org/sas.