Diabetics in the Workplace Confront a Tangle of Laws

By N. R. KLEINFELD

John Steigauf spent more than a decade fiddling with the innards of those huge United Parcel Service trucks until an icy day two years ago when the company put him on leave from his mechanic's job. A supervisor escorted him off the premises.

His work was good. He hadn't socked the boss or embezzled money. It had to do with what was inside him: diabetes.

U.P.S. framed it as a safety issue: Mr. Steigauf's blood sugar might suddenly plummet while he tested a truck, causing him to slam into someone.

Mr. Steigauf considered it discrimination, a taint that diabetes can carry. "I was regarded as a damaged piece of meat," he said. "It was like, 'You're one of those, and we can't have one of those.'"

With 21 million American diabetics, disputes like this have increasingly rippled through the workplace:

A mortgage loan officer in Oregon was denied permission to eat at her desk to stanch her sugar fluctuations, and eventually was fired.

A Sears lingerie saleswoman in Illinois with nerve damage in her leg quit after being told she could not cut through a stockroom to reach her department.

A worker at a candy company in Wisconsin was fired after asking where he could dispose of his insulin needles.

In each instance, diabetics contend that they are being blocked by their employers from the near-normal lives their doctors say are possible. But the companies say they are struggling, too, with confusion about whether diabetes is a legitimate disability and with concern about whether it is overly expensive, hazardous and disruptive to accommodate the illness.

The debate will probably intensify. The number of diabetics in America swelled by 80 percent in the past decade. Experts say the disease is on its way to becoming a conspicuous fact of life in the nation's labor force, raising all sorts of issues for workers and managers.
Even an outspoken advocate for diabetics like Fran Carpentier, a Type 1 diabetic and a senior editor at Parade magazine, understands the implications for business. "Knowing what it's like to live with the disease hour by hour, day by day, I wonder if I owned my own company if I would hire someone with diabetes," she said. "I'm being bluntly honest. And it kills me to say this."

Doctors, though, say that with improved medications and methods of self-testing blood sugar, most diabetics can do almost any job if they properly manage their illness. Yet myths about the disease persist, advocates say, leading many companies to shun diabetic employees.

"It's not all about ignorance, but if I can get rid of ignorance, I can get rid of a lot of discrimination," said Shereen Arent, the director of legal advocacy for the American Diabetes Association.

Part of the confusion is a byproduct of the disease itself, a capricious illness of elevated, damaging levels of sugar in the blood. Type 1 is a malfunction of the immune system that usually appears in childhood, while the far more prevalent Type 2 is closely associated with obesity and inactivity. Many people with diabetes will face withering complications like blindness, amputations and heart disease. Others will not.

For some, particularly insulin users prone to the abnormal drops in blood sugar known as hypoglycemia, the illness can cause dizziness, fainting or muddled judgment. Doctors, however, say those constitute a tiny number of readily identifiable cases.

Nonetheless, the risk of plunging blood sugars has fueled a longstanding reluctance to employ diabetics in jobs like those of truck driver or police officer, if they are on insulin. Until this summer, the National Fire Protection Association cautioned against making it too easy for even non-insulin-dependent diabetics to become firefighters. Now the association recommends an individual assessment.

Federal law bars diabetics from joining the armed services and prevents diabetics on insulin from becoming commercial pilots.

Innumerable diabetics, though, are engaged in more mundane jobs uninvolved in matters of life and death. For these people, secretaries and factory workers and programmers, a "reasonable accommodation," like permission to eat at one's desk or to be excused from fluctuating shifts, can make the difference in whether they can function.

When disputes can't be resolved, the cases often land in court or before the Equal Employment Opportunity Commission. The commission, which enforces the Americans With Disabilities Act of 1990, says diabetes-related complaints have been on the rise, one of the few conditions generally showing an increase in complaints. Diabetes accounts for nearly 5 percent of the
15,000 annual allegations that the commission gets under that act, trailing only back impairment, other orthopedic injuries and depression.

Often the courts are of scant help in bringing clarity. Mr. Steigauf has spent two years trying to thread his way through the disability discrimination law. The federal law can be fuzzy, for it mentions no illness or handicap by name but supplies a legal test under which plaintiffs must usually demonstrate that a "major life activity," like walking or vision, is "substantially limited."

This is easy enough for anyone who has lost sight or a limb. But the restrictions of diabetes are often invisible. Diabetics thus can find themselves teetering on a balance beam, needing to prove they are disabled enough to fit under the law but not so impaired that they can't do a job.

Judges in nearly identical cases have ruled in completely opposite ways, leaving diabetics bewildered and businesses unsure what, if anything, they should do. While some courts, for example, have held that the eating restrictions diabetics face satisfy the substantial limitation, others have disagreed.

"Usually the battle is over that word, 'substantially,'" said Craig A. Crispin, an Oregon employment lawyer. "If you say the person is disabled because of the impact on eating, the other side will say: 'Hey, look, she's eating a sandwich. Where's the disability?'"

Seeking Accommodations

The quarrels are as varied as working life: a musician rejected for a cruise ship's cabaret band, baggage handlers and plane cleaners fired by an airline, a blackjack dealer dismissed by a casino.

The American Diabetes Association fields about 100 calls a month about workplace tussles like these. Many of them revolve around accommodations, though the changes sought tend to be modest: predictable hours, a place to test blood, freedom to snack when sugars get unbalanced.

Companies often cite workplace safety as their paramount concern, though there is little hard evidence to suggest that diabetics are a risk.

In one case in 2002, ConAgra Foods withdrew a job offer to Rudy Rodriguez at a Texas baked bean plant after a physical suggested that his Type 2 diabetes was so out of control that he was a hazard. Mr. Rodriguez had performed fine as an interim laborer, but the examining doctor declared there was nowhere he could safely work "outside of a padded room where he could even then fall and break his neck from dizziness or fainting."

An appeals court found otherwise and held that ConAgra had violated the law. The case was settled, and Mr. Rodriguez now works for a printer.
"Some people who have a problem with hypoglycemia should not be doing public safety-type jobs," said John W. Griffin Jr., a lawyer from Texas with Type 2 diabetes who handles discrimination cases. "But I guarantee you that that baked bean factory was not public safety."

There has been other progress for diabetics: the San Antonio Police Department's barring of diabetics on insulin was struck down. Insulin-using diabetics in good control of their illness can get private pilot's licenses.

In the lingerie saleswoman's case, Sears agreed to a consent decree awarding the woman $150,000 and stipulating that the store train supervisors about disability discrimination.

Employers, however, prevail in a vast majority of cases (many are settled). It is hard even to get lawyers to pursue complaints since prejudice is tricky to prove. Establishing discrimination has become harder since 1999, when the Supreme Court held that if a disability can be corrected with medicine or things like prostheses, it is not necessarily protected. Advocates for the disabled say the ruling warped the intent of Congress.

Ruth Colker, a law professor at Ohio State University who studies disability discrimination, said that very few working people with diabetes now find themselves guarded by the law.

Judges, in fact, have deemed these diabetics not disabled: a Maine store manager who had trouble walking because of poor circulation, and a New York security guard without vision in one eye and declining vision in the other who had four episodes of hypoglycemia in two years.

In some instances, employers have said they took action against an employee because of diabetes, but the court still found that the worker was not disabled and threw out the case.

"There's not a remedy for every wrong," said David A. Copus, a lawyer who represents employers and specializes in disability issues. "There are employers who don't like ugly people. They're not protected by the law."

Mr. Copus said he was not unsympathetic. His father had diabetes; it was very debilitating.

Wary of bad outcomes, many diabetics conceal their illness on the job. Brian T. McMahon, a professor at Virginia Commonwealth University who studies workplace discrimination, said: "You get to the question of whether or not to disclose you have diabetes. Most people opt not to, for they fear: Am I inviting more trouble?"

Figuring Employer Costs

There was a time, four or five decades ago, when you wouldn't find one diabetic on the entire floor of a factory. Now, Type 2 diabetics are commonplace. It is not only the ascendency of the disease, but also the fact that a condition once considered a corollary to old age is striking
people sooner, catching them long before retirement. And this comes as companies are already struggling to balance productivity in the workplace with soaring medical costs.

To understand the brutal math of diabetes, all a business has to do is consult the Web site diabetesatwork.org, set up by the government to furnish advice on addressing diabetes in the workplace. One of its tools is a calculator that uses rough assumptions to suggest what costs might be involved.

Businesses plug in the number of employees, the tally is multiplied by 8.2 percent (a slightly dated national prevalence rate for diabetes), then that figure is multiplied by $13,243, an estimate for yearly medical costs of a diabetic. Voilà: the price tag of diabetes. It is a burden more than five times that of workers without diabetes.

Ron Z. Goetzel, a vice president for Thomson Medstat, which analyzes health care costs for businesses, said that if absenteeism and productivity losses are added, diabetes ranks third among major conditions as an economic cost to employers, after heart disease and hypertension.

Companies have only started to reckon with this, and with the disease's ancillary concerns. Even if advocates say safety is rarely a factor, companies argue they cannot take chances with some types of workers, like school bus drivers or even pizza deliverers.

Concessions may seem small -- for example, granting a bank teller more frequent breaks -- but many employers contend that if rules bend for one person, then that breeds resentment among other employees. Co-workers cannot see the diabetes, and if an employer gives preferential treatment to a diabetic worker, it cannot legally tell other workers it is because of the diabetes. Companies feel that indulging all diabetics trivializes the meaning of disability and of fairness.

"It comes down to how many extra points do I give you," said William J. Kilberg, a Washington employment lawyer. "Why is everybody a victim?"

He said too many people who are not disabled demand special favors. "I mean, I wear eyeglasses," he said.

In addition to the threat of a suit under federal or state disability law, businesses must grapple with the Family and Medical Leave Act, which requires them to grant unpaid leave to ill workers. That can create scheduling difficulties.

"This whole area gets complicated, because the medical leave act can mean employees absent from the workplace for extended periods," said Stephen A. Bokat, general counsel for the United States Chamber of Commerce. "That bothers employers even more than an employee needing a half-hour during the day to administer some insulin."
Health care consultants urge companies to become proactive, try to use tools like wellness programs to forestall diabetes' claim on their workers and install disease management programs to improve existing cases. And many do. Companies dangle $100 incentives (though more often a mug or a T-shirt) if an employee submits to a health assessment or accepts a phone call from a health coach.

But getting participation is hard. And the economic worth of these undertakings to a business is difficult to gauge with a progressive disease like diabetes. Sometimes the evident benefits of in-house health programs are years down the road, when an employee a business invested in may well be working elsewhere.

When Safety Comes First

John Steigaufl's fellow mechanics called him "Flunky." The name caught on after Mr. Steigaufl gave advice to a prickly supervisor, who thundered, "I'm not going to let some flunky mechanic tell me how to do my job." Mr. Steigaufl, 47, wanted it embroidered onto his uniform. Supervisors said forget it.

He joined United Parcel in Minneapolis in 1991, turning wrenches from the start. Five years ago, he learned that he had Type 2 diabetes. Though it often goes with being overweight, he had a wide receiver's build: 6-foot-2, 193 pounds. But his mother had diabetes.

He was put on pills and watched his diet, abandoning his cherished hot chocolate. Yet his blood sugar remained high. If it didn't drop, he would need insulin. That sent fear pumping through him.

U.P.S. requires mechanics, like its interstate drivers, to hold a commercial driver's license and to be cleared to drive out of state so they can road-test trucks. In reality, mechanics could go weeks without leaving the yard, but those were the rules. And at the time, federal officials did not grant interstate licenses to insulin-using diabetics.

They did dispense a few exemptions. But Mr. Steigaufl, who started using insulin only in 2004, stood no chance. The requirement was to have driven safely while on insulin for three years.

So Mr. Steigaufl tried starving himself, slicing off 30 pounds. It made him crabby, fatigued and so thin "that if I stuck my tongue out, I looked like a zipper."

His blood sugars did not budge. But after he took insulin, his diabetes settled down almost at once.

Later in 2004, he had to have a physical to renew his commercial license, a test he could no longer pass. Minnesota did not have the three-year rule, and since he had never had a hypoglycemic episode or other problems, Mr. Steigaufl got an exemption to drive within the
state. Given that he didn't even leave the county while road-testing trucks, he hoped that would be good enough.

It wasn't. For consistency, U.P.S. wanted all its mechanics to be certified to drive from state to state, whether they needed to or not. So Mr. Steigauf was sent home on disability, even though he felt fine.

Norman Black, a U.P.S. spokesman, said the company had always intended to find Mr. Steigauf another position. He said the company did not discriminate but was passionate about safety.

Studies tracking accident rates of diabetics are inconclusive; some indicate worse outcomes, others don't. But either way, Mr. Steigauf's direct supervisor at the time, Dan Welke, said he thought the company had gone too far, that somebody else could road-test the trucks repaired by Mr. Steigauf.

"It just seemed ridiculous," Mr. Welke said.

Mr. Steigauf also had trouble making sense of this. When his diabetes raged out of control, it had been all right to fix trucks. Now, with the illness under control, it wasn't.

When he spoke to someone in human resources, Mr. Steigauf said he was told that he would never come back. The notion that he was a human tinderbox punctuated his interactions. "I'd be told that I could pull a tractor up to a fuel pump and pass out and the thing would explode," he said. "I was like a grenade and was going to kill people."

At home in Bloomington, Minn., where Mr. Steigauf's tidy ranch is bordered by a soupçon of lawn, he, his wife, Dawn, their twin daughters and their severely autistic son struggled on a weekly disability check of $431, about half his old pay.

To keep going, he did odd jobs. Friends at U.P.S. dug into their pockets. The family cut one another's hair and skipped sending Christmas cards.

Finally, Mr. Steigauf asked U.P.S. to excuse him from interstate driving as a "reasonable accommodation" under disability law. After all, he had left the state for U.P.S. only once in 13 years. Some of his colleagues, he found out, did not even have commercial driver's licenses.

But U.P.S. refused, saying he was not disabled under discrimination law, and thus not entitled to an accommodation.

So, in early 2005, he filed a complaint with the Equal Employment Opportunity Commission and waited, interned in his house, as if he had evaporated -- all the while collecting disability from a company that said he was not disabled.
After seven months, U.P.S. offered him a lower-paying job, fixing trailers. He could not touch an engine or drive. But he took it while he battled for his former position.

Then he had some luck. Federal officials changed their rules on interstate licenses and Mr. Steigauf qualified for a waiver, allowing him to return to his old job. He is expected to start within a month or so.

This fall, the E.E.O.C. concluded that he had been discriminated against and that U.P.S. owed him relief. U.P.S. said it would contest the decision.

Mr. Steigauf is still bitter, not toward U.P.S. itself, but toward the way he believes it treats diabetics. Even now, he feels singled out.

"I've had unloaders at work say to me, 'Are you that diabetic guy?' " he said. "I don't know what they mean. Nothing? Or, 'You shouldn't be working here'?'"

To keep his exemption, he must obey a complicated protocol to show the Federal Motor Carrier Safety Administration that he remains fit. Every three months, he has to report how much he drives and his sugar levels. If he has an accident, even if someone rams his car while he's in a movie, he has two days to alert the government. He has seven days to let the government know if he has a new car or a new phone number.

"The exemption adds to the discrimination," he said one afternoon at home. "It constantly reminds me that I'm different."

His children skittered through the room.

"You become a show dog," he said. "I fix engines. I don't want to be a show dog."

Articles in this series are exploring the widening impact of the Type 2 diabetes epidemic.