Rapid Research Report

What kind of protection is available for people with diabetes seeking reasonable accommodations under Title I of the ADA?

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EXECUTIVE SUMMARY AND DEFINITIONS

This report will explore what protections individuals with diabetes are entitled to under Title I of the Americans with Disabilities Act (ADA) in the context of employment.[1] The report will focus on federal guidance and cases that are relevant to the six states that the Rocky Mountain ADA Center serves, namely: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota.[2] Throughout the report, the author will use the term "diabetes" to refer to type 1, type 2, and gestational diabetes and will only specify the type of diabetes when a relevant case or guidance document does so. Broadly speaking, case law in the Eighth, Ninth, and Tenth Circuits shows that individuals with diabetes who need a reasonable accommodation in the workplace should do two key things to receive protection under the ADA: (1) clearly demonstrate that their diabetes is a qualifying disability; and (2) specifically ask for a reasonable accommodation and articulate the link to their diabetes symptoms or treatment.

I. INTRODUCTION

Diabetes is a long-term condition that impacts an individual's ability to make and/or release insulin.[3] Medical professionals typically categorize diabetes in one of three ways: type 1, type 2, and gestational.[4] Type 1 diabetes inhibits an person's ability to make insulin.[5] Type 2 diabetes, the most common of the three, impacts an individual's ability to both make insulin and to use insulin efficiently in the body.[6] Finally, gestational diabetes occurs in some pregnant women and can impact the health of both the mother and the baby during and after birth.[7] If an individual with diabetes is unable to make or release insulin appropriately, they may enter a state of hypoglycemia or hyperglycemia, which can have severe long-term consequences if left untreated.[8] Individual symptoms of diabetes vary widely, and people with diabetes can also experience diabetic neuropathy, fatigue, vision impairment, kidney functioning issues, and psychological stress, among other symptoms.[9]

People with diabetes manage and treat the condition in various ways, including exercising, managing food intake, measuring blood glucose levels at various points throughout the day, taking oral or injected medications, and using a service animal, among other strategies.[10] In order to receive protection under the ADA for their diabetes or diabetic treatment, an

individual must first demonstrate that their diabetes is a qualifying disability.[11] People with diabetes can often do so, as discussed below.[12] Once an individual demonstrates that their diabetes is a qualifying disability under the ADA, the individual can ask for a reasonable accommodation in the workplace to appropriately manage and treat their condition.[13] For example, an employee with diabetes who has to take insulin could ask for a reasonable accommodation under Title I of the ADA for breaks to test blood glucose levels and take medication to adjust blood sugar as necessary.[14]

This report will discuss diabetes as a disability in the workplace and diabetes-related reasonable accommodations. First, the report will explore when diabetes can be considered a qualifying disability under the ADA. Second, the report will give a brief overview of existing literature and Title I of the ADA. Third and finally, the report will explore existing case law on the issue in the Eighth, Ninth, and Tenth Circuits. This report is not an exhaustive analysis of every guidance document and case that has addressed this issue. Instead, it aims to provide a brief update on the current state of the law as it is relevant to the Rocky Mountain region.

II. THE AMERICANS WITH DISABILITIES ACT

a. Diabetes as a Disability

As readers likely know, the ADA prohibits discrimination based on disability. The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities…; a record of such an impairment; or being regarded as having such an impairment."[15] As mentioned above, individuals with diabetes can often demonstrate that their condition is a qualifying disability as a physical impairment if they show that their diabetes substantially impacts the daily life activities of endocrine function, eating, or working in certain contexts.[16] Indeed, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) specifically lists endocrine function as a "major bodily function," which implies that diabetes is a disability because it substantially limits the endocrine system.[17]

Furthermore, courts have also given deference to guidance from the EEOC regarding terms that the ADA does not directly define.[18] The EEOC has defined a "physical impairment" as "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting

one or more body systems, such as neurological, musculoskeletal, special sense organs, [. . .] and endocrine."[19] The EEOC has also stated that major life activities can include eating, working, and major bodily functions, including those of the endocrine system.[20]

Despite some consensus that diabetes is a qualifying disability, the Supreme Court has held that Type 1 diabetes is not automatically a disability in and of itself.[21] An individual must specifically show how their diabetes diagnosis and symptoms substantially limit their daily life activities.[22] Accordingly, courts have often concluded that diabetes is not a qualifying disability when a plaintiff fails to demonstrate that it does not substantially limit their major life activities.[23] Cases regarding this issue in the Rocky Mountain region are explored below. Based on this disagreement, it is important for individuals seeking reasonable accommodations for their diabetes to specifically demonstrate how their diabetes symptoms or treatment impacts their daily life activities, as discussed below.

Federal agencies, non-profit organizations, and other entities have published various materials regarding diabetes and the ADA, some of which are listed below.[24] For example, the Equal Employment Opportunity Commission (EEOC) has published several guidance documents on ADA protection for diabetes in the context of employment. [25] Similarly, the Job Accommodation Network, a non-profit organization, has published a non-exhaustive list of accommodations that employees with diabetes can seek, among other articles that deal with diabetes and the ADA.[26] Broadly, the literature recognizes diabetes as a qualified disability that entitles an individual with the condition to protection and reasonable accommodation under the ADA.

b. Title I

As readers may know, Title I of the ADA provides protection for individuals with disabilities in the context of employment.[27] If an individual can demonstrate that their diabetes is a disability, Title 1 allows them to request reasonable accommodations related to their diagnosis or treatment during the application process and during their employment.[28] Reasonable accommodations for diabetes in employment can include but are not limited to: breaks during the hiring process and while working to eat a snack or take a medication; a private place to test glucose levels, inject insulin, or rest until blood sugars become normal; a modified work schedule or shift change; a period of leave for treatment or recuperation; a reallocation of an

employee's non-essential tasks to another employee; the reassignment of a vacant position if an employee can no longer perform the essential functions of a job due to diabetes symptoms; and the use of a particular seat for individuals with diabetic neuropathy.[29] At all times, employers must keep all medical information regarding an individual's diabetes confidential.[30]

Prior to an offer of employment, an applicant with diabetes does not need to voluntarily disclose their diagnosis unless they need reasonable accommodations during the application process.[31] If a prospective employee does voluntarily disclose a diabetes diagnosis, an employer may not ask follow-up questions unless the employer believes that the prospective employee will require a reasonable accommodation.[32] For example, if an individual applying to a grocery store clerk job discloses that they have diabetes and that they need to monitor blood sugar levels and take insulin as necessary, an employer could ask a follow-up question about whether the break policy would be sufficient or if the employee would need a reasonable accommodation.[33] If an employer learns of an applicant's diabetes diagnosis, the employer may only inquire about the diagnosis as it relates to the prospective employee's request for a reasonable accommodation.

After an offer of employment, an employer may inquire about an individual's diabetes diagnosis and treatment if it relates to a request for a reasonable accommodation or if it relates to the individual's ability to perform the essential job functions safely.[34] Specifically, if an employer learns of an employee's diabetes diagnosis after an offer of employment, the employer may ask questions including the following: how long the person has had diabetes; whether the person uses insulin or oral medication; how often the person experiences hypoglycemic episodes; and whether the person will need assistance if their blood sugar drops at work.[35] An employer may not withdraw an offer of employment if the employer reasonably believes that the employee can perform essential functions of the job without posing a threat to the health and safety of self or others with or without a reasonable accommodation.[36] If an employee's diabetes-related needs change over time, the employee is required to inform the employer of their accommodation needs and cannot assume that an employer will be aware of changing circumstances.[37] At no time may an employer terminate an employee's position or disqualify an individual from a role purely based on the employee's diabetes diagnosis.[38]

III. RELEVANT FEDERAL CASE LAW

a. Colorado, Utah, and Wyoming (Tenth Circuit)

Case law in the Tenth Circuit suggests that individuals with diabetes should do two key things if they need a reasonable accommodation at work: (1) they should clearly indicate how their diabetes impacts daily life activities to ensure that it is considered a qualifying disability under the ADA; and (2) they should clearly ask for a reasonable accommodation for their diabetes symptoms and/or treatment proactively and not retroactively.

In the Tenth Circuit, which includes Colorado, Utah, and Wyoming, an individual with diabetes must demonstrate that their diabetes impacts daily life activities and must ask for a reasonable accommodation to address their diabetic symptoms and/or treatment.[39] If an individual fails to do so and is later fired from a job, they likely cannot claim that an employer discriminated against them based on their diabetes. In a Tenth Circuit Court of Appeals case, which is binding on all federal courts in Colorado, Utah, and Wyoming, the court undertook a lengthy analysis to determine that the plaintiff's diabetes was a physical impairment that substantially impacted one or more daily life activities.[40] In this 2011 case, *Carter v. Pathfinder Energy Services*, the plaintiff, Mr. Carter, worked as a directional driller at Pathfinder Energy Services, an oil and gas company.[41] Carter, who had diabetes and also had fibromyalgia, hepatitis C, and hypertension, experienced a decline in his health that caused him to reduce his workload, and Pathfinder subsequently fired him.[42]

In *Carter*, the court concluded that Carter had adequately shown that his diabetes was: 1) a physical impairment; that 2) impacted the daily life activity of caring for himself; and 3) that his experience of diabetes impacted the activity of caring for himself substantially.[43] Specifically, Carter showed that his diabetes and other conditions impacted his digestive and circulatory systems.[44] Even though his employer, Pathfinder, proffered non-discriminatory reasons for Mr. Carter's firing, including an altercation at a job site and a use of an expletive with a client, Mr. Carter successfully demonstrated that discrimination based on his diabetes was a determining factor in his firing.[45] Specifically, Carter demonstrated that Pathfinder had explicitly stated that Carter was fired because he could no longer work 24-hour shifts and that other employees who were working such shifts would be angry if Pathfinder did not fire Carter for his inability to work these long shifts.[46] The court's conclusions in *Carter* demonstrate that employees seeking an

accommodation must link their diabetes symptoms and treatment with a major life activity and that employees later alleging discrimination under the ADA must show how their termination was linked to their diabetes.

Previous to *Carter*, in *Sarsycki v. United Parcel Service*, a 1994 case from the Oklahoma Western District Court, the court concluded that an individual had sufficiently shown that his diabetes substantially impacted daily life activities and that he needed a reasonable accommodation.[47] This case is not binding on federal courts in Colorado, Utah, and Wyoming, but federal courts could turn to this case for guidance.[48] In *Sarsycki*, the United Parcel Service (UPS) told the plaintiff, Mr. Sarsycki, that he could no longer work in his role as a delivery driver because of a new diagnosis of insulin-dependent diabetes.[49] At the time, UPS had a policy that any employee that was insulin-dependent diabetic could not operate motor vehicles on public highways.[50] The employee subsequently took on two part-time non-driving jobs as a reasonable accommodation while he brought suit under the ADA for disability discrimination.[51] The court concluded that Mr. Sarsycki's diabetes did qualify as a disability under the ADA and that he was otherwise qualified to perform the job and did not pose as a direct threat to safety; therefore, he had a valid ADA claim against UPS.[52]

Unlike *Carter* and *Sarsycki*, in *Dewitt v Southwestern Bell Telephone Company*, a 2017 Tenth Circuit Court of Appeals case, the court concluded that a plaintiff failed to prevail on her discrimination claim under the ADA because she had not properly asked for a reasonable accommodation for her diabetes treatment.[53] This case is binding on federal courts in Colorado, Wyoming, and Utah.[54] In *Dewitt*, the employer, Southwestern Bell, fired Ms. Dewitt, a call-center employee, because she had improperly dropped customer calls several times, against company policy.[55] Ms. Dewitt, who had diabetes, alleged that she dropped the calls because she was disoriented due to symptoms of her diabetes and blood sugar fluctuations.[56] After she was fired, Ms. Dewitt asked for "retroactive leniency" for her behavior.[57] However, the court stated that reasonable accommodation requests must be made prospectively and that retroactive leniency is not considered a reasonable accommodation request under the ADA.[58] The court specifically cited EEOC guidance that clearly states that the reasonable accommodation process is prospective and not retroactive.[59]

Similar to *Dewitt,* in *Bowers v. Netsmart Techs., Inc.*, a 2021 case from the District Court of Kansas, the court concluded that an employee with diabetes could not prevail on his ADA claim because he had never asked for accommodations for his diabetes.[60] Furthermore, the court concluded that the plaintiff had not demonstrated that his diabetes substantially limited a major life activity and therefore had not shown how his diabetes was a qualifying disability under the ADA.[61] Importantly, this plaintiff had specifically stated that his diabetes, "did not restrict him at all in terms of his work and daily activities" which effectively foreclosed him from arguing that his diabetes was a qualifying disability under the ADA.[62] The court's conclusions in both *Dewitt* and *Bowers* reinforce the ADA's definition of disability and suggest that individuals with diabetes should clearly outline how their diagnosis, symptoms, and treatment impact daily life activities and should specifically request a reasonable accommodation prospectively.

Importantly, individuals with diabetes should be aware that they are not necessarily entitled to their accommodation of choice if another accommodation will suffice. For example, in *Vallejos v. Orbital Atk. Inc.*, a 2023 case from the District Court of Utah, a plaintiff with diabetes argued that his former employer failed to accommodate his reasonable accommodation request to change shifts to better control his blood sugar.[63] Prior to the incident at issue, the employer assigned the plaintiff to rotating day and night shifts.[64] The plaintiff thought that rotating shifts would make his blood sugar fluctuate too dramatically, so he subsequently submitted medical documentation and asked for a reasonable accommodation to only work during day-shifts so that his blood sugar would not fluctuate.[65] The employer considered the accommodation and offered alternatives, including regular breaks during night-shift work, which the plaintiff refused to accept.[66] The employer later allowed the plaintiff to temporarily swap shifts with another employee to avoid night-shift work.[67] The court concluded that the employer was not required to grant the plaintiff's specific accommodation and the employer properly offered other similar accommodations that would have sufficed and allowed the plaintiff to complete his work responsibilities and adequately monitor and treat his diabetes symptoms.[68]

b. Montana (Ninth Circuit)

Similar to the Tenth Circuit, the case law in the Ninth Circuit, which includes Montana, suggests that individuals should also follow the two important steps discussed throughout this report. For example, in *Fraser v. Goodale,* the Ninth Circuit Court of Appeals concluded that the

plaintiff, Ms. Fraser, had demonstrated that her insulin-dependent Type-I diabetes diagnosis and associated complicated treatment substantially limited her the daily life activity of eating.[69] In this 2003 employment discrimination case, Ms. Fraser's manager did not allow her to eat at her desk.[70] In the incident in question, Ms. Fraser's blood sugar dropped, she grew increasingly disoriented and asked to eat but was not allowed to, and she eventually fainted.[71] She subsequently formally complained about her manager's prohibition and was fired.[72] Ms. Fraser filed suit, alleging that her employer failed to provide a reasonable accommodation and retaliated against her assertion of her rights.[73] The trial court granted summary judgment in favor of the employer, concluding that Ms. Fraser had not presented enough evidence that her diabetes substantially limited a daily life activity and therefore did not show that her diabetes was a disability under the ADA.[74] The Ninth Circuit reversed the trial court's decision, concluding that Ms. Fraser's diabetes was particularly severe and required very specific treatment.[75] While the court concluded in favor of Ms. Fraser, the court reiterated that determining whether a person has a disability under the ADA is an individualized assessment.[76]

In a 2001 case, *Beaulieu v. Northrop Grumman Corp.*, the Ninth Circuit Court of Appeals concluded that the plaintiff's diabetes did not substantially limit any major life activities because it only required the plaintiff, Mr. Beaulieu, to modify his eating moderately.[77] In this case, Mr. Beaulieu alleged that his former employer fired him because he requested a reasonable accommodation for his diabetes.[78] The court disagreed, concluding that Mr. Beaulieu did not demonstrate that his termination was directly related to his reasonable accommodation request, which occurred six months prior to his termination.[79]

In *Hutton v. Elf Atochem North America Inc.*, a 2001 case from the Ninth Circuit Court of Appeals, the court concluded that the plaintiff, Mr. Hutton, could not prevail on his ADA claim because he was unable to perform the essential functions of his job safely and therefore posed a direct threat to himself and others and was not qualified for the job.[80] Mr. Hutton worked at a chemical processing plant and during his shifts he had to be "conscious, alert, and communicative" and was required "to work essentially alone."[81] During the tenure of his job, Mr. Hutton experienced several hypoglycemic episodes, which included having seizures and losing consciousness, and required his employer to call an ambulance on several occasions.[82] The court used guidance from the EEOC to determine if Mr. Hutton was a direct threat, implying that the inquiry is done on a case-by-case basis and that not all employees with diabetes would

be unqualified for this kind of job, but that Mr. Hutton and his specific diabetic symptoms and episodes made him unable to perform the essential functions of the job safely.[83]

c. North Dakota and South Dakota (Eighth Circuit)

The Eighth Circuit, which includes North Dakota and South Dakota, similarly follows the trends of the Ninth and Tenth Circuits with respect to the two important issues discussed throughout this report. Importantly, if an individual with diabetes cannot perform an essential function of the job, they may not be eligible for the job and would likely not receive an exemption from performing that essential function as an ADA accommodation. Case law from the Eighth Circuit further explores the context of what an essential function of a job is.

In a 2006 case, *Rehrs v. Iams Co.*, the Eighth Circuit Court of Appeals concluded that the plaintiff was unable to complete an essential function of his job and therefore could not receive ADA protection for his diabetes. The plaintiff, Mr. Rehrs had Type 1 diabetes and worked at an Iams warehouse in Nebraska.[84] Mr. Rehrs typically worked an eight-hour shift from 4 p.m.-midnight; however, after receiving his diabetes diagnosis, he and his doctor requested to work a fixed day-time shift to better control his blood sugar levels.[85] Iams, his employer, granted this accommodation and Rehrs worked a day-time shift for sixty days.[86] However, when Iams learned that Mr. Rehrs intended for the accommodation to be permanent, they informed him that the accommodation would end because rotating shifts was an essential function of his job at the warehouse.[87] When the accommodation period ended, Mr. Rehrs applied for and received partial temporary disability leave, and Iams continued to inform him of two other vacant positions that would accommodate a daytime schedule.[88] However, the company denied his application for one role because of his lack of experience, and Mr. Rehrs withdrew his application for the other role.[89] Mr. Rehrs's doctors eventually informed him that he would be unable to work and he received full disability leave.[90] Mr. Rehrs filed suit under the ADA and alleged that Iams failed to grant his requested accommodation for a day-time shift.[91]

In *Rehrs*, the court concluded that a rotating shift schedule was an essential function of the job that Mr. Rehrs was unable to perform.[92] Because employees requesting reasonable accommodations under the ADA must be able to perform essential functions of the job with or without a reasonable accommodation, Mr. Rehrs's ADA claim failed because he could not participate in the rotating shifts.[93] The EEOC filed an amicus brief in this case and expressed that

Iams should have assigned Mr. Rehrs to a vacant, comparable position and that Iams's efforts to send Mr. Rehrs available positions were not sufficient to fulfill this duty.[94] However, Mr. Rehrs did not raise this argument in his initial case, and rules of legal civil procedure did not allow him to raise it on appeal.[95] Nevertheless, the court concluded that even if he raised this argument, Mr. Rehrs failed to show that the positions offered were not comparable to his previous position.[96]

In *Berg v. Norand Corporation*, a 1999 case from the Eighth Circuit Court of Appeals, the court concluded that an individual's diabetes symptoms did not substantially impact her ability to work and therefore her diabetes was not a qualifying disability.[97] Ms. Berg worked long hours managing the tax department of Norand.[98] Ms. Berg received a diagnosis of non-insulin-dependent diabetes and informed her supervisors of her condition; but, she subsequently submitted her resignation because of the stress of the long hours and her condition.[99] Ms. Berg stated that she could continue working until she finished certain projects and then she would resign.[100] During this time period, however, Ms. Berg attempted to rescind her resignation and she asked for a reasonable accommodation of reduced work hours due to her diabetes.[101] During a meeting with a human resources staff person, Ms. Berg expressed suicidal tendencies because of her work stress. Norand placed Berg on immediate medical leave and insisted that she see a psychiatrist that afternoon, although she had an appointment with her own doctor the next day. The psychiatrist Berg planned to see was not immediately available, and as a result, Berg was admitted to the hospital overnight, allegedly against her will. She saw her own doctor and was released the following morning.[102] Ms. Berg subsequently returned to work and was terminated due to poor performance, according to her employer.[103] Ms. Berg filed suit under the ADA and argued that her diabetes was a qualifying disability because it limited her ability to work because of joint pain, difficulty with speech, and difficulty focusing on her work due to pain.[104] However, the court concluded that Ms. Berg was not substantially limited in her ability to work because she had never been unemployed, she subsequently opened her own tax practice, and she did not demonstrate any jobs that she was excluded from based on her diabetes.[105]

The Supreme Court subsequently denied certiorari for *Berg*, meaning that the Court decided not to review the case and therefore let the Eighth Circuit Court of Appeals decision stand.[106] When the Supreme Court denies certiorari, the denial does not necessarily imply that the Supreme Court accepts the Eighth Circuit's decision. To review a lower court decision, at

least four justices must vote to review. Therefore, a denial of certiorari means that fewer than four justices wanted to review the case.[107]

IV. CONCLUSION

As discussed above, employees with diabetes in the Rocky Mountain states who seek reasonable accommodations should take care to clearly show that their diabetes impacts daily life activities and clearly ask for a reasonable accommodation. Cases from the Eighth, Ninth, and Tenth Circuits demonstrate that employees must show how their diabetes diagnosis, symptoms, or treatment substantially impact a daily life activity. Furthermore, cases from the region show that employees with diabetes seeking a reasonable accommodation must specifically ask their employer for an accommodation and cannot assume that they have received one by disclosing a diagnosis, nor can they ask for retroactive leniency with employer policies because of a diabetic episode.

WORKS CITED

[1] Throughout this report, "ADA" refers to both the original statute, passed in 1990, and the amendments, passed in 2008. The amendments are often referred to as the ADA Amendments Act (ADAAA), but the Amendments and original statute will be referred to as ADA throughout the report for continuity unless the report is specifically discussing the ADAAA. *See* Americans with Disabilities Act, 42 U.S.C. §12101 (1990), As Amended.

[2] Rocky Mountain ADA Center, *About Us*, https://rockymountainada.org/about-us (accessed March 5, 2024).

[3] Centers for Disease Control, *What is Diabetes?*, https://www.cdc.gov/diabetes/basics/diabetes.html (accessed March 5, 2024).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] Note that "they" will be used to refer to individuals to provide a gender-neutral term instead of using he/she/they.

[9] Job Accommodation Network, *Accommodation and Compliance: Diabetes*, https://askjan.org/disabilities/Diabetes.cfm?cssearch=2881690_1 (accessed March 5, 2024).

[10] *Id.*

[11] Americans with Disabilities Act, 42 U.S.C. § 12102(4)(A) (2012).

[12] American Diabetes Association, *Advocacy: Is Diabetes a Disability?*, https://diabetes.org/advocacy/know-your-rights/is-diabetes-a-disability (access March 5, 2024).

[13] U.S. Equal Opportunity Commission (EEOC), *Diabetes in the Workplace and the ADA*, May 15, 2013, https://www.eeoc.gov/laws/guidance/diabetes-workplace-and-ada (accessed March 5, 2024).

[14] *Id.*

[15] Americans with Disabilities Act, 42 U.S.C. § 12102(4)(A) (2012); *see Berry v. T-Mobile USA, Inc*., 490 F.3d 1211, 1216 (10th Cir. 2007).

[16] EEOC, *Diabetes in the Workplace and the ADA*, (2013); https://www.ada.gov/law-and-regs/title-iii-regulations/; *see, e.g. Carter v. Pathfinder Energy Servs.*, 662 F.3d 1134, 1142 (10th Cir. 2011).

[17] American Diabetes Association, *Advocacy: Is Diabetes a Disability?; see also Tadder v. Bd. of Regents of Univ. of Wis. Sys.*, No. 13-CV-105-WMC, 2014 U.S. Dist. LEXIS 49557 at *19 n.9 (W.D. Wis. Apr. 10, 2014) ("Post-

ADAAA, the endocrine system is expressly listed as a 'major bodily function' . . . . This would appear to generally establish diabetes as an impairment imposing a substantial limitation on a major life activity.").

[18] *See Jarvis v. Potter*, 500 F.3d 1113, 1121 (10th Cir. 2007).

[19] 29 C.F.R. § 1630.2(h)(1).

[20] The full list states that major life activities can include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working [and] the operation of *major bodily functions*, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Although not specifically stated in the NPRM, the final regulations state that major bodily functions include the operation of an individual organ within a body system (e.g., the operation of the kidney, liver, or pancreas)." Equal Employment Opportunity Commission, *Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008*, March 25, 2011, https://www.eeoc.gov/laws/guidance/questions-and-answers-final-rule-implementing-ada-amendments-act-2008 (accessed March 11, 2024).

[21] *See, e.g., Sutton v. United Airlines, Inc.*, 527 U.S. 471, 483, 119 S. Ct. 2139, 144 L. Ed. 2d 450 (1999).

[22] *Id.*

[23] *See Carter v. Pathfinder Energy Servs.*, 662 F.3d 1134 (10th Cir. 2011).

[24] *See, e.g.* EEOC, *Diabetes in the Workplace and the ADA*, (2013); Job Accommodation Network, *Accommodation and Compliance: Diabetes;* Legal Aid at Work, *Diabetes in the Workplace*, https://legalaidatwork.org/factsheet/diabetes-in-the-workplace/ (accessed March 11, 2024); American Diabetes Association, *Advocacy: Your Rights on the Job*, https://diabetes.org/advocacy/know-your-rights/your-rights-on-the-job (accessed March 11, 2024); American Diabetes Association, *Advocacy: Safety Issues*, https://diabetes.org/advocacy/know-your-rights/safety-issues (accessed March 11, 2024); American Diabetes Association, *Advocacy: Americans with Disabilities Act*, https://diabetes.org/advocacy/know-your-rights/safety-issues (accessed March 11, 2024); JDRF, *Type 1 Diabetes in the Workplace: Your Protections*, https://www.jdrf.org/t1d-resources/newly-diagnosed/adults/workplace-protections/ (accessed March 11, 2024).

[25] *See, e.g.*, EEOC, *Diabetes in the Workplace and the ADA*, (2013).

[26] *See, e.g.*, Job Accommodation Network, *Accommodation and Compliance: Diabetes*, https://askjan.org/disabilities/Diabetes.cfm?cssearch=2881690_1 (accessed March 5, 2024).

[27] Importantly, employees of the federal government are protected under the Rehabilitation Act of 1973, not the ADA. *See* U.S. Office of Personnel Management, *Providing Accommodations*, https://www.opm.gov/policy-data-oversight/disability-employment/providing-accommodations/ (accessed March 11, 2024).

[28] EEOC, *Diabetes in the Workplace and the ADA*, (2013).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.* The employer must reasonably believe that the individual would need a reasonable accommodation.

[33] *Id.*

[34] *Id.*

[35] *Id.* The EEOC guidance does not specifically state why certain questions may be asked however, some questions likely relate to an employer's need to establish that an employee can perform job functions safely without posing a potential threat. Furthermore, questions related to insulin might be necessary to address potential sharp objects in the workplace, such as insulin injection needles, and proper disposal.

[36] *Id.*

[37] *Koessel v. Sublette Cnty. Sheriff's Dep't*, 717 F.3d 736, 745 (10th Cir. 2013).

[38] *See, e.g. Dewitt v. Southwestern Bell Tel. Co.*, 41 F.Supp.3d 1012, 1017 (D. Ka., 2014); *see also, Bombrys v. City of Toledo*, 849 F. Supp. 1210, 1219 (N.D. Ohio 1993).

[39] *See, Bowers v. Netsmart Techs., Inc.* 2021 U.S. Dist. LEXIS 98469 *1, *14 (D. Ka., 2021); *see also Anderson v. Textron Aviation*, 2022 U.S. Dist. LEXIS 196052 *1, * 6-7 (D. Kan. Jan. 4, 2024); see also *Davisson v. Am. W. Airlines*, 2004 U.S. Dist. LEXIS 34834 *1, *9 (D.N.M. Oct. 11, 2004); see *also Munoz v. W. Res., Inc*., 225 F. Supp. 2d 1265, 1276 (COURT).

[40] Carter, 662 F.3d at 1142-43; *see* United States Courts, *Court Role and Structure*, https://www.uscourts.gov/about-federal-courts/court-role-and-structure *(*accessed March 5, 2023).

[41] *Id.* at 1138.

[42] *Id.*

[43] *Id.* at 1142-43. The court noted that "Three factors govern this inquiry: "(1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long term impact or the expected permanent or long term impact of or resulting from the impairment." *See, Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1130 (10th Cir. 2003).

[44] *Id.* at 1142.

[45] *Id.* at 1149-50.

[46] *Id.* at 1147-48.

[47] *Sarsycki v. United Parcel Serv.*, 862 F. Supp. 336, 338 (W.D. Okla. 1994).

[48] *See* United States Courts, *Court Role and Structure*, https://www.uscourts.gov/about-federal-courts/court-role-and-structure *(*accessed March 5, 2023).

[49] *Sarsycki*, 862 F. Supp. at 338.

[50] *Id.* at 338.

[51] *Id.*

[52] *Id.* at 340-342.

[53] *Dewitt v. Sw. Bell. Tel. Co.*, 845 F.3d 1299, 1316 (10th Cir. 2017).

[54] *See* United States Courts, *Court Role and Structure,* https://www.uscourts.gov/about-federal-courts/court-role-and-structure *(*accessed March 5, 2023).

[55] *Dewitt*, 845 F.3d at 1316.

[56] *Id.* at 1304.

[57] *Id.* at 1316.

[58] *Id.* at 1316.

[59] *Id.*

[60] *Bowers v. Netsmart Techs., Inc.*, No. 2:19-CV-2585-JAR, 2021 U.S. Dist. LEXIS 98469 *1, *14 (D. Kan. May 25, 2021).

[61] *Id.* at *21.

[62] *Id.*

[63] *Vallejos v. Orbital Atk, Inc.*, 2023 U.S. Dist. LEXIS 133607 *1, *13 (D. Utah, 2023).

[64] *Id.*

[65] *Id.* at *2 and *9.

[66] *Id.* at *4-5.

[67] *Id.*

[68] *Id.* at *12 (quoting *Smith v. Midland Brake, Inc., a Div. of Echlin, Inc*., 180 F.3d 1154, 1177 (10th Cir. 1999).

[69] *Fraser v. Goodale*, 342 F.3d 1032 (9th Cir. 2003)

[70] *Id.* at 1035.

[71] *Id.* at 1035.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 1040-41.

[75] *Id.* at 1034.

[76] *Id.* at 1041-43.

[77] *Beaulieu v. Northrop Grumman Corp.*, 23 F. App'x 811, 812 (9th Cir. 2001).

[78] *Id.*

[79] Id.

[80] *Hutton v. Elf Atochem N. Am.*, 273 F.3d 884, 894-95 (9th Cir. 2001).

[81] *Id.* at 894.

[82] *Id.* at 886.

[83] *See id.* at 893.

[84] *Rehrs v. Iams Co.*, 486 F.3d 353, 354 (8th Cir. 2007).

[85] *Id.* at 355.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.* at 358.

[93] *Id.*

[94] *Id.* An amicus brief allows a group that is not a party in a legal action, but nevertheless has a strong interest in the matter, to write an opinion on that action and petition to submit it to the court. *See* Cornell Law School Legal Information Institute, *Amicus Curiae*, June 2022, https://www.law.cornell.edu/wex/amicus_curiae (accessed March 6, 2024).

[95] *Id.*

[96] *Id.* at 359.

[97] *Berg v. Norand Corp.*, 169 F.3d 1140, 1145 (8th Cir. 1999).

[98] *Id.* at 1143.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.* at 1143-44.

[103] *Id.* at 1144.

[104] *Id.*

[105] *Id.*

[106] *Berg v. Norand Corp.*, 528 U.S. 872, 120 S. Ct. 174 (1999).

[107] Cornell Law School: Legal Information Institute, *Certiorari*, July 2022, https://www.law.cornell.edu/wex/certiorari (accessed March 11, 2024).