

Type 2 diabetes

At Lincoln Occupational Health, we are often asked to comment on whether an employee's condition is likely to be classed as a disability under the Equality Act 2010. The reason being that if so, the employer is expected to accommodate the illness *within reason*. Ultimately though, this is a legal and not a medical decision and the below case highlights the complexity surrounding such a decision.

For a condition to fall within the remit of the Equality Act, the physical or mental impairment must be substantial, long term and impact on daily living activities, with each condition being assessed in the hypothetical sense as if the individual was not receiving/had not received treatment. The ultimate decision is made by the Employment Judge rather than the medical profession. Notwithstanding this, Occupational Health (OH) professionals could be asked to comment although we are clear that this is purely our opinion rather than a legally binding statement.

One of the dilemmas recently faced is regarding type 2 diabetes, and whether or not this condition would be seen as falling under the remit of the Equality Act. Diabetes is a lifelong condition that can cause a person's blood sugar level to become too high and type 2 diabetes occurs when the body doesn't produce enough insulin to function properly (or the body's cells don't react to insulin).

Type 2 diabetes is far more common than type 1 diabetes (which occurs when the body doesn't produce any insulin at all) and the rapid rise in the number of adults developing type 2 diabetes is due to increasing levels of obesity, a lack of exercise, an increase in unhealthy diets and an ageing population.

So the question remains – is type 2 diabetes classed as a disability?

In 2015, an Employment Appeal Tribunal (EAT) case considered the question of whether type 2 diabetes, controlled by diet, automatically qualifies as a disability for the purposes of the Equality Act 2010.

Whilst it was accepted by the EAT that someone suffering from type 2 diabetes who does not properly manage his blood sugar levels might be at risk of suffering a hyperglycaemic attack, the Judge (who himself suffers from this condition) found it *"difficult... to see how a perfectly normal abstention from sugary drinks could be regarded as a medical treatment"*. It went on to say that there was nothing to suggest that there has been any substantial interference with the person's normal day-to-day activities, and did not consider abstaining from *"Coca-Cola and fruit juice to be an impairment in ordinary day-to-day activities"*. As such, the EAT found that the employee was not disabled under the Act.

However, a word of caution here... as it should not be assumed that all individuals with a diet-controlled condition are incapable of satisfying the definition of a disabled person under the Act.



'Diabetes is a lifelong condition that can cause a person's blood sugar level to become too high.'





About Us

We work with employers to provide support and practical guidance regarding effective management of sickness absence and other relevant employee health issues.

Our services aim to help you:

- ▶ avoid costly claims by ensuring you meet your legal and statutory responsibilities
- ▶ comply with Health and Safety and Disability legislation
- ▶ reduce the costs to your business of staff sickness absence
- ▶ prevent and remove health risks arising in the workplace
- ▶ achieve maximum staff productivity by reducing absences due to ill-health
- ▶ improve the overall health and wellbeing of your workforce
- ▶ increase your staff retention and productivity
- ▶ effectively manage employees who are off sick (especially long-term cases) and develop individual return-to-work strategies
- ▶ introduce cost-effective and proactive health promotion campaigns
- ▶ address complex stress and mental health cases.

Contact detail

To discuss your specific requirements and obtain a quote please contact:



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