

Libre Libre Briefing

WEARING A LIBRE SENSOR IN THE WORKPLACE



Many of those of us with diabetes don't actually think of themselves as being "disabled" and certainly don't want to stand out for this reason. But the nature of managing our glucose levels means that it does affect our day-to-day activities and sometimes this can be an issue in the workplace, whether it's affecting our role, our employer's business or interactions with our colleagues.

The use of med tech such as the Libre sensor in

the workplace is relatively new and is throwing up all sorts of issues. In certain environments there are health and safety issues with employees wearing a Libre sensor and in others it's security concerns around the use of a smartphone and in particular the camera function that are causing employer's problems.

This article considers our employment rights with a focus on wearing a Libre sensor in a work environment.

DIABETES AS A DISABILITY

Type one diabetes is classified as a disability under the Equality Act 2010 .

The nature of the condition means that it meets the description of a disability under this law.

A disability is **“a physical or mental impairment that has a large long-term negative effect on a person’s ability to carry out normal day-to-day activities”**.

It doesn’t matter what medication you take or whether you administer this by injection or a pump. The definition is based on how your diabetes would affect you if it wasn’t treated. Using a sensor to manage your control is a part of this and in doing so means that any issues around the sensor are likely to be covered by the Act too.

that is potentially discriminating can be not only the actions, and failure to act in some situations, by an employer but also by employees and others closely associated with the employer’s business. It is likely to be any abuse related to diabetes including any hurtful remarks, jokes, mocking, nick-name calling or form of intimidation.

An employer can be held liable for the actions of their employees and in some circumstances the acts of others where there is a close connection with the business.

GETTING A JOB



WHICH RIGHTS APPLY?

The rights that apply in the workplace include those covered by the Equality Act 2010 or the Disability Discrimination Act 1995 in Northern Ireland. These rights give those with diabetes the right not to be discriminated against. In practice this means that an employer should not place you in a situation where you are disadvantaged as a result of your diabetes.

Discrimination can take many forms. It may be direct, indirect, by association or perception, or amount to harassment or victimisation. Behaviour

There is generally no legal requirement to tell an employer that you have diabetes and it is unlawful under the Equality Act to ask about your health as part of the process for determining if to offer you work. You may be asked about your health on the basis of equality monitoring or if you need any adjustments to enable you to attend and access the interview location or participate in

A CASE OF INTIMIDATION

An example of where intimidation amounts to disability discrimination is a case that went to an employment tribunal in 2019. From the start of a new job the employee was “humiliated” and “highly embarrassed” by her employer’s “excessive, invasive and heavy-handed questioning’ about her condition”. One particular incident that was highlighted during the case was that she was shown around the office and introduced to first aiders as “a diabetic”. She was also told not to tell a colleague about an incident of low blood sugar, or she would be “sacked on the spot”. After the employee was dismissed, she successfully pursued a case for disability discrimination and harassment against her former employer and was awarded a substantial payment.

the selection process. Employer's must keep this information separately and not use it to decide whether or not to make a job offer.

Some types of work may require a health assessment prior to starting work. This is permitted by the Equality Act only to the extent that the assessment relates to the specific requirements of the role.

However, an employer may be in breach of the Act if they ask disability-related questions at the interview stage and you don't get the job because of the answers you gave.

Employers can make a job offer that is conditional on medical checks and then ask health-related questions without being in breach of the Equality Act.

TELLING YOUR EMPLOYER

An employer may only be liable where they are aware – or should reasonably be aware – that you have a disability. If a situation such as described on page 2 is likely to arise, it's usually best to inform your employer. This can be done in confidence and your medical information must not be disclosed to others without your agreement, except in an emergency situation.

TELLING YOUR COLLEAGUES



There are advantages to telling colleagues that you have diabetes and you may find that they're more understanding and supportive if they have some background knowledge of your situation and daily needs.

REASONABLE ADJUSTMENTS

Where an employer is aware of a disability or reasonably ought to know of such, they should consider making reasonable adjustments. This could be making allowances or changing policies in terms of some of the situations which are specific to managing diabetes and glucose levels.

Some of these I've outlined below, although not a complete list.

- Checking glucose levels
- Eating at regular or set times
- Treating hypos (and recovery)
- Managing sickness
- Injecting insulin or pump adjustments
- Time off for medical reasons

Any adjustments your employer can make will depend on a range of factors including the particular circumstances of your role and the nature and size of your employer's business. Employers are not required to make all recommended adjustments but should follow a formal process for considering what 'reasonable' adjustments can be made.

Reasonable adjustments are about making changes so that you have the same opportunity to do your job effectively as others. This could mean removing physical barriers or providing extra support in another way. Reasonable adjustments should be accommodated by employers at the interview and selection stages for a job applicant as well as to those employees that it knows have a "disability".

TIME OFF FOR SICKNESS RELATED TO DIABETES



Under the Equality Act 2010, employees should not be discriminated against for time off due to their “disability”. In some workplaces the Bradford Factor is used, as described below. However, this may be discriminatory and employees may need to raise this with their employer, as the nature of diabetes means that short-term absence is more likely to trigger the sickness absence policy of companies using this tool.

BRADFORD FACTOR

In some workplaces when calculating absence a formula is used to identify patterns of when employees take time off work, to differentiate between short term and longer term absences. This is known as the ‘Bradford Factor’ and its aim is to give more weight to the number of frequent short-term absences an employee takes as these are more disruptive to a business.

Using the Bradford Factor points are assigned to absences and when an employee reaches a certain level on the scale defined by their employer, this usually triggers the employer’s absence policy and disciplinary consequences often follow.

As we know, living with diabetes is challenging on a day-to-day basis and it’s difficult to predict one day to the next how our management will affect us, even if we generally have good control.

Where an employer knows that you have diabetes, they should make reasonable adjustments to record any related absences separately, so they do not count as part of the Bradford Factor score, if this is used. Time off for seeing a health care professional in relation to the Libre sensor can also be a reasonable adjustment and also time off to attend a DAFNE (Dose Adjustment For Normal Eating) course, or similar though you will still need to go through your employer’s normal procedures and any time off may be unpaid.

LONG TERM ABSENCE

If you are off sick for a long period, your employer may consider what options are available to enable you to return to work and assist you in your role. This may require making additional reasonable adjustments or other measures that could avoid dismissing you on the grounds of capability. Once options have been considered and the situation discussed as appropriate, it may be fair to dismiss you if there are no further adjustments or changes possible.

RAISING ISSUES

If you have any concerns around your diabetes or med tech in the workplace, in the first instance it is nearly always best to approach the issue informally. If this doesn’t resolve the situation then you should speak to a line manager or boss directly. If the business has a HR department this is another avenue for addressing concerns.

For formal matters you will need to go through a formal grievance procedure – all employers are required by law to have one. See page 8 for other sources of support.

HEALTH AND SAFETY



Under the Health and Safety at Work Act 1974, employers are responsible for ensuring the health, safety and welfare at work of all employees and others on their premises. This involves carrying out risk assessments and training as appropriate to the workplace.

Further information on health and safety in the workplace is available on the Health and Safety Executive's website, <https://www.hse.gov.uk/disability>

RISK ASSESSMENTS

If your workplace has over five employees, then your employer is required to carry out a risk assessment. The assessment may help to identify any reasonable adjustments that could make the workplace safer.

There is no requirement to carry out a specific, separate, risk assessment for a disabled person. However, employers must ensure that risk assessments cover risks relevant to all those with a disability and that these take into account individual circumstances.

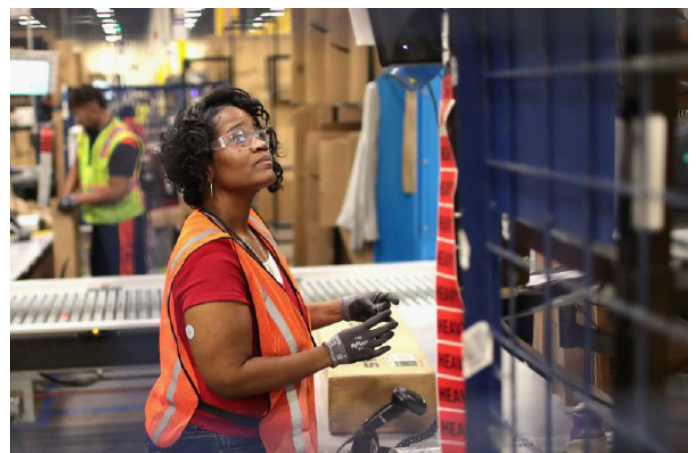
Employers have a duty to consult their employees and should share the final assessment with you. They may also involve occupational health in this process.

An assessment must:

- focus on the individual, not general assumptions about people with diabetes;
- consider the facts of your circumstances;
- get individual specific medical advice;
- include the person in discussions about how reasonable adjustments can be made.

The risks in terms of the Libre sensor are low-level as the main risk would usually be personal i.e. the risk of it being knocked off either by another person or physical feature of the workplace, but it's also relevant to consider the type of work done and environment.

As far as the employer's concerned, the risk factors to consider are whether there is a health and safety risk in you wearing a medical device and the consequences of this. Jobs involved in food and health sectors are most likely to have a 'ban' on employees wearing jewellery and employer's may take the view that wearing a Libre sensor is covered by their Uniform Policy in the same way.



MEDICAL RECORDS

Your employer may need to access your medical records or contact health care professionals involved in your care to understand any effects that your disability may have in the workplace, in relation to health and safety and how to minimise risks and make reasonable adjustments.

To do this, you will need to give your employer your consent and although employers have a right of access to reports provided by medical practitioners in connection with employment, this is limited to information that is relevant to the job role or insurance (if applicable).



Employees can refuse consent, agree to a medical report being disclosed directly to the employer, or can request that the report is sent to them before it is submitted to their employer.

Employers are required to provide employees with details of their rights at the time of consent under The Access to Medical Reports Act 1988.

A WEE INCONVENIENCE

An age-old topic that comes up frequently in many workplaces is the issue of where to inject or make any pump adjustments. Taking medicine i.e. insulin, is covered by the Equality Act and is it is a reasonable adjustment that your employer should accommodate by providing a private space for this. It's not hygienic or acceptable that you should be expected to do this in the toilet!

REDUNDANCY

You will also be covered by the Equality Act, If you are unfortunate to be in the position of being made redundant. Your employer should consider making reasonable adjustments to their redundancy criteria and policies if a disabled employee is in the selection pool for redundancy. This applies whether the redundancy is voluntary or compulsory.

An example of discrimination would be if you are selected based on your sickness record but this includes time off related to your diabetes.

HOW CASE LAW HAS DECIDED WHAT'S A REASONABLE ADJUSTMENT

There are several discrimination cases that have been brought by individuals that are relevant to reasonable adjustments in the workplace:

- The prohibitive cost of reasonable adjustments can justify the withdrawal of a job offer and be lawful.
- An employer may not be required to adjust the standards expected of a role as a reasonable adjustment.
- Employers are not required to make adjustments for disabilities they have no knowledge of, or reasonable knowledge of a disability.
- There is no discrimination where an employee's disability could cause a danger to others. For example, in the operation of machinery if their condition affects their ability to carry this out safely.
- Where an employer reduces a disabled employee's hours, there may be some exceptional cases where the employer should continue to pay the employee full pay.
- Employers should consider all reasonable adjustments before commencing performance reviews.

TIPS FOR THE WORKPLACE

We shouldn't feel that we need to hide our diabetes in the workplace (or in life in general). Problems often arise due to misunderstandings but by taking a proactive approach to our diabetes management, it needn't be an issue for employers, colleagues or employees.



Here are some tips for keeping things cordial in the workplace.

- *Be organised, especially when it comes to dealing with hypos. Always keep a supply of treats handy and let a colleague or someone with first aid training know where these are and what they should do in the event of a hypo and /or emergency. Show them how to get readings from your sensor.*
- *Plan ahead. If your workplace has a custom of handing around sweet treats or cake on special occasions, decide in advance how you will deal with this or try to plan your insulin requirements in advance. Keep your sensor reader or phone handy and take extra readings to correct if appropriate.*
- *Be aware. If you struggle with stress and anxiety try to take steps to avoid situations that will adversely affect the management of your diabetes. The Libre sensor is a great tool but be aware that micro management can also have consequences for our mental health. Ensure you get regular breaks and move around, outside if at all possible.*

HELP AND SUPPORT

ACAS (Advisory, Conciliation and Arbitration Service)

If you have a workplace problem, ACAS can help talk you through your options and inform you regarding rights. They do not give an opinion or legal advice.

Helpline: 0300 123 1100

Website: <https://www.acas.org.uk>

Equality and Human Rights Commission (EHRC)

Non-departmental public body that operates independently providing expert information, advice and support on discrimination and human rights issues.

Website: <https://www.equalityhumanrights.com>

Equality Advisory and Support Service (EASS)

Independent advice for individuals on issues relating to equality and human rights, across England, Scotland and Wales.

Helpline EASS: 0808 800 0082

Website: <http://www.equalityadvisoryservice.com>

Citizens Advice

Independent charities that provide free impartial advice online, over the phone or in person.

Website: <https://www.citizensadvice.org.uk>

Disclaimer

This article is not legal advice and is provided for guidance only. Every effort has been made to ensure that the information provided is accurate but Love My Libre cannot be held liable for errors or omissions. The law can change at any time and you should always check with a legal professional for specific advice. We do not endorse the FreeStyle Libre or Abbott Inc. The author is a type 1 diabetic and user of the FreeStyle Libre 1 on NHS prescription.

LOVE MY LIBRE



Thank you for reading this Libre Life Briefing presented by Love My Libre Ltd. We are a small family business, born from an idea by my 12-year-old son who wanted to make his mum's sensor look less like a medical device.

Our Libreband is designed to be worn on the upper arm in a similar way to runners wear their phone so needed to be light-weight, robust and suitable for wearing in all weathers. Comfort was also a key factor as was being able to put it on easily.

In partnership with Warwick Manufacturing Group, the armband has been further developed and tested before being brought to market.

OUR PRODUCTS

“The armband is amazing, my son plays contact rugby, spars in boxing, and plays football. The armband has protected his sensor and then some.”

Our Librebands are especially for wearing over a FreeStyle Libre and are suitable for sports, exercising, swimming and everyday wear. The current range of designs available:



SUBSCRIPTION OFFER

For more information about us, other designs and new products please visit our website and subscribe to receive a copy of our **Libre Life Newsletter**.

For new subscribers who haven't yet tried a Libreband we offer a 10% discount for purchases from our website, enter SUBSCRIBE10 at checkout*.

**Applies to email subscribers only.*

FOLLOW US ON SOCIAL MEDIA



CONTACT US

Email: hello@lovemylibre.co.uk
Web: lovemylibre.com

Love My Libre and Libreband are registered trade marks of Love My Libre Ltd.