# Ask JAN! Q&A

## [Introduction]

**TRACIE DeFREITAS:**

Happy New Year, everyone. Thank you for joining us today for this JAN Accommodation and Compliance Series "Ask JAN! Q&A." My name is Tracie DeFreitas. I'm the Director of Training, Services, and Outreach for JAN.

Today marks the launch of JAN's 2023 A&C series. It's pretty exciting. We took a month off, but now we're back at it. These JAN webcasts include practical guidance and information about navigating the accommodation process, applying and leveraging the Title I provisions of the ADA and job accommodation situations and solutions. If you've not already, we encourage you to register for all of the webcasts in the series. Go to the training page at AskJan.org to get started.

This "Ask JAN! Q&A" webcast kind of differs from our others in the series, as it's less structured, allows for some open dialogue, and also the opportunity to answer a few more attendee questions than we might typically have time for. We've gathered a few of JAN's leading consultants to respond to questions today. I've had the privilege of working with these exceptional colleagues for many years. Let me introduce Melanie Whetzel, Principal Consultant and Lead on JAN's cognitive/neurological team; Lisa Mathess, Lead Consultant, ADA Specialist, and lead on JAN's motor team; and then Teresa Goddard, Lead Consultant, Assistive Technology Services, and lead on JAN's sensory team. JAN team, thanks for joining us today.

Now let's get started with the necessary housekeeping items on the next slide.

First, if you experience any technical difficulties during the webcast, please use the Q&A option located at the bottom of your screen to connect with our tech team. You may also contact JAN at 800-526-7234 or use the Live Chat at AskJan.org. That's A-S-K J-A-N dot O-R-G.

We do offer an FAQ that might answer some of your questions. See the login email you received today for the FAQ link. You can also find it in the AskJan.org webcast registration page as well.

Questions for presenters should be submitted using the Q&A option, not the chat. All questions will be gathered into a queue and answered as time permits.

The link to download PowerPoint slides for this webcast can be found in the login email that you received today. The link is also posted in the chat now and can be found on AskJAN.org on the web page for this particular presentation.

To access live captioning, use the closed caption option at the bottom of the webcast window or view captions in a separate browser using the link shared in the webcast chat.

And this presentation is being recorded and will eventually be available on the AskJAN.org website and our YouTube page.

Finally, at the end of the webcast, we'd like to know your feedback, so please do complete the evaluation. If you are seeking a CEU, the approval code will be provided after the webcast evaluation is completed.

## [About JAN]

So, let's get started. We'll begin with a brief introduction to the Job Accommodation Network or JAN service. I'll offer a quick look back at 2022 and some of the top impairments, limitations, and accommodations, and then we'll begin the Q&A. I'll prompt attendees to ask questions during that segment, so when we get to that. You're certainly welcome to send in questions before we get to the Q&A segment as well.

One note, Melanie will need to hop off the webcast early in order to participate in a second training today, so we're going to start the Q&A segment with some questions for her.

All right. So let's take a look at the job accommodation service. We realize that oftentimes we don't talk much about JAN during our webcasts, so for those of you attending who are not fully aware of our service, maybe you've attended our webcasts, but you've never contacted us before. We do want to share some brief information about JAN.

JAN was established in 1983 and is a leading source of expert, trusted, and confidential guidance on job accommodations and Title I of the Americans with Disabilities Act and related legislation. We're a free national consulting service provided by the U.S. Department of Labor's Office of Disability Employment Policy. We have a small staff of about 30 people, mostly located in Morgantown, West Virginia, off campus at West Virginia University. However, operating remotely has now kind of enabled us to hire new consulting staff from other parts of the country, so we welcome them.

So what does JAN do? JAN provides individualized consultation that includes practical guidance, technical assistance on job accommodation solutions, Title I of the ADA and related legislation like Section 501 of the Rehab Act and the Family and Medical Leave Act.

We also offer information and referral services. These services are available to anyone, including employers and their representatives; rehabilitation, medical, educational, and other professionals; and individuals with disabilities, medical conditions, and their family members or advocates.

We also offer a self-employment and entrepreneurship consulting service for individuals with disabilities.

So by providing trusted guidance on the employment provisions of the ADA and practical accommodation solutions, we're here to kind of help employers cultivate disability-inclusive workplaces where people feel welcome and where they're seen and valued and appreciated for their contributions at work.

We offer an extensive website, AskJAN.org, as I've mentioned. It does make it easy to find a lot of information on accommodation and ADA topics. We do encourage people to get on and take a look around. You'll find a lot of information that can help you in your day-to-day role as maybe someone who is in H.R. or a supervisor or manager or if you're an individual with a disability who's trying to figure out what your rights are or how to request accommodations.

We offer an A to Z listing related to impairments, limitations, kinds of accommodations that you might be able to search on. So it's a great place to start when you're looking for information on these topics.

But of course, you can certainly give us a call. You can reach out to us via Live Chat or send an email, and we will be glad to help you and provide that consultation one-on-one.

I encourage you to check out the AskJAN.org site.

That's just a quick overview of the basic services that we offer, but we just want to make sure everyone knows who we are and what we do and how we can help. So certainly take a look at that site and contact us if you ever have questions on ADA and accommodation issues.

## [A look back at 2022]

All right. So now let's do what people do when the year turns anew. Let's take a look back at the previous year, 2022. What we've done is sort of anecdotally and a little bit of searching on past cases to kind of get a feel for what are the reported causative factors, the impairments, the types of medical conditions that people have reported over the past year. We've also looked at past functional limitations, so what are some of the top limitations that people have expressed when they've contacted JAN. And then we've also collected some information among ourselves related to the hot topics around accommodations, and so this is sort of a brief overview to kind of get us started thinking about what your questions might be around these topics as we move forward today.

Some of the top causative factors, medical conditions, that we've heard about over the past year: mental health conditions at the very top of the list. Certainly our inquiries related to mental health conditions — anxiety disorders, depression, post-traumatic stress disorder — have risen tremendously. Also, attention deficit hyperactivity disorder, back impairments, questions related to asthma, respiratory impairments, and autism spectrum disorders. So this isn't a scientific top five, necessarily, but we can tell you that these are the top medical conditions, some of the top medical conditions that we've heard about over the past year.

With reported functional limitations, stress intolerance. We have heard this quite a lot over the past year, past couple of years, really. So it's something we will talk a little bit more about here in a second. Also, general cognition, people having difficulty with attentiveness, concentration, brain fog, oftentimes as part of post-COVID conditions, long COVID for example. Also executive functioning. So these general cognition and attentiveness, concentration, memory, prioritizing, planning. Those can fall into that executive functioning category, and so that has been heard quite a lot. Respiratory distress and breathing problems as well, and then also sometimes limitations around either the impact or effect of taking medications or treatments or receiving medical treatment, needing to perhaps take leave to receive medical treatment. So these are those top limitations that we have heard about in 2022.

And then looking to accommodations, these are sort of hot topics, so not necessarily specific accommodations requested, but accommodation topics that we've heard quite a lot about. As you would expect, telework is at the top of that list. We have been hearing about telework for quite some time now. And so it remains at the top — I think it will be there for quite some time, actually — and other types of flexible work arrangements, too, like a hybrid work arrangement, so maybe not just telework but also looking at having some sort of flexible work arrangement. Modified scheduling, where people might need to reduce their time or work at a different time. Leave is also something we've heard a lot about in the past year. Reassignment as a form of accommodation when someone maybe has difficulty performing the essential job duties. Managing performance, looking at situations where we're having to maybe manage performance in different ways or people are having trouble meeting performance requirements due to disability-related limitations. Service and emotional support animals, of course, we're hearing a lot about that where, for example, I would say even more emotional support animals than service animals. And we do get a lot of questions about taking dogs to work, and I think we've seen probably an increase of that since the pandemic and people are returning to the workplace. Long COVID, certainly I think that's going to be a topic that we're going to continue to hear more about, and we certainly have seen that a number of people are requesting accommodations around Long COVID or employers are look for guidance on that. So, these are just some hot topics and I think — hopefully these resonate with many people who are out there listening today.

Just to offer some additional information regarding prevalent workplace accommodations, I wanted to offer the Disability Management Employer Coalition, or DMEC. They partnered with Matrix Absence Management and Reliant Standard Life Insurance to produce the 2022 Workplace Accommodations Pulse Survey. This explores how organizations are addressing workplace accommodation issues and leave management issues. In this particular survey there were 284 respondents. The survey collected information from companies of various sizes, 51 to over 50,000, for example. in various industries as well — health care, insurance, hospitality, retail. Some of the most prevalent accommodations reported in the survey do align very much with what JAN has seen as well. So, for example, flexible work, and there we're talking about things like modifying policies, modifying schedules, telecommuting. They also saw leave as a top prevalent accommodation, too. Modifying equipment or acquiring equipment in order to provide accommodations like standing desks or headsets, a cube shield. Modification of policies like vaccination requirements, dress code requirements, fragrances, even service animals. They also noted physical workplace accessibility as something that they were hearing a lot about too and reassignment, too. So you'll see that these are similar to what JAN has experienced over the past year, but on a much smaller scale and a more focused scale, I would say. But I just thought it would be helpful to also give you that information since they did do a survey specific to these types of issues.

All right. So just some general information to start, get us all kind of thinking about questions as we sort of launch into our Q&A here in just a few minutes. I do want to mention we talked about stress intolerance and how this can be tricky, and we've heard a lot about this, so I want to throw this out to our team today to see if you have any comments and thoughts on maybe how to deal with stress intolerance. I would imagine that certainly, Melanie, this is probably something that you have heard a lot about over the last year or many more honestly. Is there anything you'd like to talk to us about? Maybe talk about some accommodations that could be considered?

**MELANIE WHETZEL:**

Sure. I think identifying the specific triggers that cause the stress is really important. We tell employers and employees alike to drill down. Look at what it is specifically, because if you say, "My job is stressful," the employer has no idea what that means, and stress is different for different people. We have seen such an increase since COVID hit. You know, I think a lot of people had anxiety, maybe were borderline and were able to control their symptoms or manage their symptoms. With everything that's happened, they're not able to. So looking at exactly what triggers that stress to reduce it. A lot of times that's working from home. A lot of times it is social, personnel issues. Sometimes it's workload. Sometimes it's related to other impairments such as memory or concentration, which causes even more stress if I can't get my work done and I'm nervous about that.

The second point there, if the trigger is a job duty and no form of accommodation will help, consider reallocating the duty, also looking at how or when that duty is done. It brings to mind — This question comes up frequently and particularly with people with autism. They'll have a job where part of the essential function is answering the phone, talking to people, or maybe working a window, a bank teller or working at a local government where they go to the window and they talk to people. They say, "I can't do that," and the employer does haven't to remove that part of the job, but they can look at, "How do we do that? Can we allow them to work when the window is not as busy? Can we let them work with a mentor, somebody who can really help them learn how to interact with people easier? There are lots of different accommodations that might work in looking at how or when the job is done and not remove those essential functions. And then of course there is reassignment — We see that a lot — to a position. You have to be careful when you are looking at reassignment that you don't want to put that person in a job where the same duties or same issues are going to pop up and cause the stress to pop up again or to exacerbate, so you want to be careful when you look at reassignment.

**TRACIE DeFREITAS:**

That's very helpful. Anyone else like to weigh in, offer anything else?

All right, we'll move to the next slide then.

### [Telework]

So of course telework has had its moment. Telework has been something that many of us have been required to do over the course of the pandemic, and now we're kind of back to looking at it as something that needs to be looked at as a possible form of accommodation. We know telework has always been a possible accommodation, but it's really something that is coming to light again, because many people are being asked to return to the workplace. So I thought we could talk a little bit about telework and some things to consider around telework as an accommodation. Who would like to jump on that one?

**LISA MATHESS:**

So I'm on the motor team, and so we're dealing with telework a lot just because a lot of people with motor impairments and medical conditions that come to our lineup are taking immunosuppressants. They're still fearful of COVID. Is the pandemic over? None of us know, but people still have mental health fears and stress exacerbations in conjunction with these underlying medical conditions where their immune system is suppressed for a variety of reasons, so we are still getting these telework requests even though the employer has tried to open up that worksite back to normal operations, as it was the beginning of March 2020. They’re trying to return to business as normal. Normal, it's a new perspective or a new normal.

Practically speaking, consider whether your original telework policy covers the request. We should not have people with disabilities jumping through additional hoops to gain access to the existing policy. So if your policy says anybody on payroll can work two days a week at home, regardless of what reason, don't make this an ADA issue if someone asks for two days at home. Do not be collecting medical. Now if they ask for something beyond your policy, then that could evolve to an ADA accommodation. So kind of be mindful of your policies. Don't make people jump through additional hoops to gain access to those privileges.

And whenever you're looking at telework, if it's feasible for a job category, did you remove those essential functions, those primary fundamental duties? Some of us did have our job stripped down in order for us to be mandated telework back in 2020. ADA has always said we don't have to remove essential functions, we can if we want. So to continue teleworking, an employer is probably going to look at are those essential functions doable from home or not? Not every job is 100% remote, and that's the truth, but also I tell employers to get creative. If you can't do 100% telework, can you do a hybrid model? Whether that be you start your morning at home and then on lunch go to the work site, or is it three days at home, two days on the work site. There's a lot of creativity we can get with a telework arrangement.

And EEOC has said we might have denied telework before the pandemic, the pandemic has served as this trial period and proven to a lot of us a lot more jobs are doable from home than we originally thought. My job included. We were never allowed to work at home. But it forced JAN to our homes, and we're still here, and that's why we have virtual backgrounds, and you don't see our messy homes. Because we're thriving, and all those essential functions are getting done remotely, so it is a new way of doing business, so I wouldn't do blanket denials of telework. Take that case-by-case approach. If Melanie and Teresa have anything to weigh in.

**MELANIE WHETZEL:**

I was going to say what you said there at the end. It is a case-by-case, and an employer shouldn't take that everybody is coming back, no exceptions. There are modified policy under the ADA which says an employer can change a policy for someone with a disability, and that could be the telework policy that every single person returns. No, let's look at this. If somebody needs to work at home because of a disability or medical condition, then look at that. If somebody wants to work from home because they got comfortable, that's something different, and that person can be required to work from home. But again, you can't make those blanket — and we see it over and over and over. I think that's most of the calls we're getting about telework right now is, "Everybody's been called back, and I can't do that. Is my employer allowed to do that?" We do want to stress looking at that modified policy and doing the accommodations based on case-by-case.

**TRACIE DeFREITAS:**

I'm glad you mentioned that, Melanie. I was about to throw a question at all of you that came in, and it basically addressed the issue of many employers who are just saying, "No, everyone's coming back. We're not making any exceptions." Overall the issues here to consider is we don't want to just make that determination that no one can work from home. You really do have to look at it case-by-case. You answered it without me even asking.

### [Service/Emotional Support Animals]

All right, we'll go ahead and move to the next topic real quickly. Service and emotional support animals and Title I of the ADA. Great topic. One that we get a lot of questions about, I think mostly because there aren't a lot of other entities out there who are answering these types of questions. We'll hit it real briefly because of the sake of time, but we are getting a lot of questions. Maybe if we could focus a little bit on the emotional support animal issues. Certainly we have people who ask, "Do I need to allow an emotional support animal into the workplace as a form of an accommodation?" Could we talk about that for a little bit?

**MELANIE WHETZEL:**

Sure. I think the note's on here "Don't automatically exclude emotional support animals," absolutely true. Do it as an accommodation request just as you would anything else and look is it going to be reasonable? Is it practical? Do you have medical documentation that the person has a medical condition or a disability? And one of the most important things, I think, is looking at is the dog trained appropriately? You can't request that certification, but you can certainly find out through demonstration, through talking to the person if the dog is trained, and that can mean a lot of different things. Somebody trains an animal at home, it may be fine at home, but it may not be appropriately trained for the workplace, depending on what that is. Let's say it's a preschool with a lot of little children, that may be different training than somebody in an office that's going to be in a room by themselves with a closed door as opposed to somebody who works out in the public. I think looking at, again, changing that policy — That's probably going to come up several more times is changing a policy for somebody with a disability, and that could be changing the "no animal" policy. You can't bring your pet, but you can bring emotional support or service animal.

**TRACIE DeFREITAS:**

Okay, very good. We have included some resources related to these few accommodation hot topics that we have picked out here. Those are included in the chat if you're interested in learning a little bit more about these topics.

### [Long COVID]

All right. I'll move to the next one, long COVID. Of course, with long COVID, this is something that we're all learning about, I think. Employers, individuals, everyone is continuing to learn about the effects of long COVID, and not everyone is going to be affected in the same way. There of course are multi-organ effects which can affect people in various ways, in different things that they do in their lives. And so we want to keep all of that in mind. We're just sort of mentioning it here because we want it to be at the forefront. We want people to recognize that employers are going to be receiving accommodation requests related to long COVID. Individuals, if you're experiencing symptoms and functional limitations associated with long COVID, know that this may be something that you could request accommodations for.

So it is brought up here as just an awareness-type topic, so that you know that if you need assistance looking for information about this topic, accommodation ideas, we recently released "Accommodation and Compliance: Long COVID" publication, and we have a few others on our site that can help. We also have a resource for employers, "Supporting Employees with Long COVID." It's a guide designed for employers. So as you're learning more and as you're trying to navigate the accommodation process in those types of situations, know that JAN's here as a resource for you. We're certainly here to help.

## [General Q&A]

All right, so let's go ahead and start a little bit of a casual Q&A, and I'm going to prompt everyone. Now is a good time. I know I've seen some other questions coming in, but if you have follow-up questions on those topics we've already mentioned or other questions, feel free to go ahead and send those in now. While you're doing that, I'm going to throw a few questions at our experts, and we're going to start with Melanie. So, let's see here what we have.

So, Melanie, let's talk about a few questions that the cognitive/neurological team has received. So the first is from an individual, and it's related to disability disclosure. The question is what is really the optimal time to disclose? I want to be honest, but I'm afraid to until after I'm hired.

**MELANIE WHETZEL:**

Okay, and that is one of the questions that we answer the most, I think. Our team takes a lot of calls and answers questions about disabilities that are unseen, and people don't know. How do I tell my employer this? It's not something they automatically know. There's no real good reason — no real good answer for that. The reason is really personal. We would say that you can disclose at any time when you feel you need to do that. A lot of people feel, "Hey, I want to be honest and open and do it up front," but you're not being dishonest if you don't do it up front.

If you don't need accommodations during the hiring process, interview, you may not want to disclose for that reason, because you may not want your employer to know before you're hired that you have a disability. Sometimes people don't know exactly what they are going to do, so they don't know what kind of accommodations they'll need, so they don't want to disclose.

But we will say an optimal time to disclose is if you haven't, and you're on a job, and you're having difficulty with your job performance, and that difficulty is related to your disability. You want to disclose at that time, especially if your employer's brought it to your attention. You don't want to get into performance issues, go down that performance discipline when it is disability-related. Your employer doesn't have to excuse any kind of behavior or conduct issues that happened before they knew there was a disability. So you want to let them know. If they come to you and say, "Hey, we've noticed you're having trouble doing this, getting your reports done on time." You want to say, "Yeah, I am having difficulty. I do have a disability, or I have a medical condition. Can we talk about that?" And that would be a good time to disclose. Some people don't know about the ADA, so they're not sure when they can disclose, and some people have had bad experiences. They really hesitate to do it at all. But we would say the best time if you are having any kind of difficulties is to do it then and not wait too late.

**TRACIE DeFREITAS:**

Very good advice. And JAN does offer a lot of resources related to disclosure topics, so we do encourage everyone to go to AskJAN.org through the A to Z on the topic of disclosure for more on those topics. You can also go to the individual page as well.

All right. I'm going to ask you another question, Melanie. This question came in, and it says, "What are your thoughts on providing interview questions upfront for neurodiverse candidates? Would providing sample questions up front serve as an accommodation for a neurodiverse candidate in lieu of providing the actual interview questions?"

**MELANIE WHETZEL:**

Okay, I think I'm understanding that. We do get a lot of questions of "Can I get questions up front? Can I get them ahead of time?" I think it's a great accommodation. If there are certain questions that you want to evaluate a candidate's ability to think on their feet, then those kind of questions shouldn't be given ahead of time. For certain jobs, people need to think and act quickly in emergency situations and all, but every job is not like that.

Sometimes when people with anxiety, social difficulties, get in situations where it causes more stress, and an interview would certainly do that. I've been in an interview where there were five people across the table in this tiny little room, and it's me over there by myself. Think about what kind of anxiety and stress that can bring on, and it can cause people to freeze up, and there is no way they can answer the questions.

And you really want to give the candidate opportunity to present themselves in the best way, and just because someone doesn't interview as well, doesn't mean they're not going to be good in the job. And so you want to give everybody that opportunity, I think, to interview well, to represent themselves well. The only thing I would say is, if those questions, if it's a job-related task to be able to think on your feet and answer quickly, then it's probably not a good idea to give some of those questions out ahead of time. But I think for the most part, a lot of those questions can be given ahead of time.

**TERESA GODDARD:**

Can I jump in?

**MELANIE WHETZEL:**

Sure.

**TERESA GODDARD:**

I love this question, and one reason is that, as a person on the sensory team, I take a lot of questions on people with communication disorders. People with communication disorders could also benefit from this type of accommodation, because it could allow them to better prepare for the interview or to feel more calm as they approach the interview. The specific conditions I'm thinking of include stuttering, where a person may have some anxiety around speaking during the interview and may like the idea of being at least able to know the topics that might be discussed ahead of time, if not the full questions, so that they can prepare and practice. And also, people who use augmented and alternative communication devices could really benefit strongly from this, if they have a chance to preprogram in some of the vocabulary that they would need to answer the questions so that they can answer really efficiently and effectively during the interview, because of that preparation. Sometimes people might need to program in certain communication options if they want to be able to access them quickly.

**TRACIE DeFREITAS:**

All right, very helpful. Thank you both.

There was one follow-up question related to if you're providing these questions in advance — in this particular question it was related to those who were neurodiverse, but let's just look at this generally. Does that mean you have to provide questions in advance to all candidates?

**MELANIE WHETZEL:**

No, I don't think that is a case where — I think giving them out to the people who ask for them because of a disability, it kind of levels that playing field where other people don't need those ahead of time. They can think on their feet, they are not as nervous or anxious, and they don't need that advanced, but it's certainly something you could do, and that way people don't have to ask for that as an accommodation. Going into the interview, you don't know who has a disability and who doesn't based on who asked for questions ahead of time.

**TRACIE DeFREITAS:**

That makes sense. Melanie, I'm not sure — how long do we still have you?

**MELANIE WHETZEL:**

I've got about seven, eight more minutes. How about that?

**TRACIE DeFREITAS:**

All right. That's great. That'll throw one more question at you. If I can, I will throw another question at you directly.

**MELANIE WHETZEL:**

Sure.

**TRACIE DeFREITAS:**

Let's see here. We have an employee whose performance has declined, but even after discussing ADA and accommodations, the employee is refusing to acknowledge the need for any help. What would be the next steps?

**MELANIE WHETZEL:**

Okay. That's a good question. I think next steps are going down the disciplinary road. Help the employee understand the seriousness. And here's the issue: With the people that we consult with on our team, there are a lot of cognitive issues. Sometimes people don't realize they're having cognitive issues. It needs really to be discussed and pointed out. Sometimes they're not aware that they're not doing their job. They think everything's okay. "Hey, I may only be doing this much of my job, in my mind, it is fine. I don't need any help." So I think sometimes to help them understand the seriousness, you can talk about, "You have to be able to do this full part of your job. You're not doing this. Let's talk about what we can do to help.

If you have an EAP program, that may be a good referral to help. I oftentimes suggest pulling in a family member. If there's something going on that is cognitive — Sometimes it is dementia, sometimes it's brain fog from COVID or even chemotherapy, side effects of prescription medication. Sometimes another person, a family member, a spouse, can come in and kind of help with that, and help explain to the person, and they will be likely seeing that at home as well, and that gives you kind of like a team to help the person, because I generally believe it's that they don't realize it, they don't understand. They can't really accept that, it's not that they're being belligerent or anything.

**TRACIE DeFREITAS:**

Okay, very helpful. Thank you. We will bid you farewell and if you are ready to leave, please go ahead and hop out. We really appreciate you hanging in with us today.

**MELANIE WHETZEL:**

All right. Thank you.

**TRACIE DeFREITAS:**

I will move on to, again, prompt everyone if you have questions, keep sending them in. Lots of great questions here. I'm going to put Lisa on the hot seat.

[Laughter]

So let's talk a little bit, Lisa. Lisa, of course, leads our motor team. She has received a lot of questions around telework. It is something that Lisa talks a lot about. So I'm going to look for some questions here around the telework topic again, and then also some other questions around temporary impairments.

So here's one on equipment that has come in. Let's see here. So one of the excuses that employers are using not to pay for equipment at home is that they can come in to the workplace, which has accommodation equipment. So do employers have to pay for equipment at home? This kind of aligns with a question we often talk about, do you have to offer equipment at both remote and onsite workplaces? So maybe you can talk about those two things together.

**LISA MATHESS:**

Yes, okay. So pre-COVID, pre-pandemic, what equipment an employer had to provide in a remote site, It was a gray area. It was not clearcut. EEOC hasn't made a formal stance on it. So practically speaking, beyond compliance, we've always said get the employee what they need at the work location, wherever that may be, at home or onsite. And to present day, whenever I get this question of "Do I have to give people at home equipment?" I ask an employer, is there is a vacant rolly chair, ergonomic chair, workstation at your old worksite that's not been touched in three years? Would it really pose a hardship to transfer that existing equipment that's sitting vacant to the home site so that individual has the tools and equipment they had before we were forced home? They're not out any more money. We're just transferring the location of the equipment. That would be a win-win for both parties.

Equipment issues kind of get hairy whenever we're looking at those hybrid schedules, where someone does maintain two workstations, we have one on site and one at home. So, it doesn't absolutely mean you have to recreate exactly what they have at the work site at their home location, but I think it's a good faith effort to kind of consider. Can we send an ergonomic chair to their home site? Are there options, tabletop adjusting options, for example? Those are often vastly cheaper than a whole adjustable workstation. They sit on top of an existing desk but still give people the ability to stand as needed, based on medical condition. So, again, you can get creative with some equipment that effectively meets their disability-related need without posing a hardship, disrupting business to the employer.

So all that to say, ADA is not clearcut on what equipment we have to furnish, but practically speaking, let's get employees what they need to be effective, efficient, successful employees. Happy employees are the most productive. We say it a lot here at JAN. So it makes good business sense. That's my spiel on remote equipment, Tracie.

**TRACIE DeFREITAS:**

I like the spiel, and I also love the "beyond compliance," of course. Certainly we've been talking a lot about that, so I'm glad you mentioned that. Okay. Let me see here what else we have. Also, so on the motor team, you do handle a lot of inquiries related to acute injuries or conditions that maybe aren't active all the time. Maybe they flare up. Here's a question: If an employee just has a temporary flareup, it's not ADA; right?

[Laughter]

**LISA MATHESS:**

Okay. So flareups, for ADA-defined disabilities, we are going to consider those limitations in their active state. So things that are episodic or in remission, to get ADA coverage, we're going to assume that it's during the flareup, they're having an exacerbation, and that is going to mean ADA coverage. So you're going to consider accommodation even for a flareup, which also means for a flareup, it's often a temporary accommodation. It doesn't mean you're locked into permanent accommodation if they only need it during a flareup. So, I think engage in that interactive process, assume it's active, assume it's ADA, and do what you can.

We love temporary accommodations. We love trial periods for accommodations to see if it's feasible, because even temporary impairments, if sufficiently severe, can rise to the level of an ADA disability. So don't just write it off if it's temporary, if it is less than six months, it is not ADA. Again, case-by-case determination, don't shut down that interactive process.

**TERESA GODDARD:**

This comes up a lot on the sensory team too, in terms of respiratory impairments. People will often ask, "Is a cold or a flu a disability?" We all have known for a long time that by itself, probably no, can't say for sure, but if somebody has an underlying condition that's exacerbated by those temporary viruses, those could be very serious for a person with an underlying condition like asthma. Something as simple as a cold could send someone to the hospital. So again those evaluations always have to be on a case-by-case basis. Even if you think you know, it just makes sense to double-check.

**TRACIE DeFREITAS:**

Great feedback, both of you. I'm going to follow up on this topic, because we're kind of getting into that realm of medical information and determining disability, and so a question that came in is around requesting medical certification. It says, "What is important for employers to know when requesting medical certification to support an ADA request, and what would be incomplete medical certification?"

**LISA MATHESS:**

I think what's important for an employer to know might be less than what ADA would permit you to request if the disability and the need for accommodation are not obvious. I think what's important to know is the limitations. What are we having trouble doing in the workplace? What are the job tasks that are not getting completed because of the medical impairment? I don't think it's that important to know the diagnosis, umbrella medical term. The ADA says you're probably entitled to it, but is it important to make an informed decision? Probably not. But I think the limitation's the most important thing, because that's going to be where the accommodations come in to help overcome those limitations in the workplace.

**TERESA GODDARD:**

I would start even earlier. I think that before the employer makes a medical inquiry, one of the most important pieces of information they can have on hand is what has already been provided, because an employer does want to prevent a situation where they're asking for information that has already been provided and asking questions that have already been answered. So I agree with everything you said, Lisa, but I even would back up the process a little bit more and check your file before you ask, just to make sure you're not overstepping right from the gate. The EEOC's guidance on the sufficiency of medical documentation and the definition of sufficient versus insufficient is really clear. I always tell people just look up that definition and to compare what you have already against those, and then you'll know where you are from the starting point.

**LISA MATHESS:**

Right. Yeah, and, I mean, we — I get lots of calls from employers, and yeah, you're entitled to limited information, but I ask the employers, "Have you talked to the individual?" A lot of times, an individual will know what they need. They're scared to bring it up without your prompting. They know their medical condition better than anybody. So ask those probing questions, "Hey, what do you think you need?" before you even get into the medical side. They can provide you more valuable evidence and information than a doctor can even provide you, in some cases, so start with that individual and see, "Hey, what are you having a hard time doing? Have you had accommodations at old jobs?" A lot of times we can implement similar accommodations if it's the same type of environment or something. So engage with that individual. They best know their condition and situation.

**TERESA GODDARD:**

Absolutely, Lisa. I can tell you as a person who's requested accommodations at work, occasionally I've had to go to my doctor to get a note, the first thing they always asked me, "Have you run into this before? What worked for you?" Even if you're getting it from the doctor, the person needs to have input into the whole process anyway.

**LISA MATHESS:**

Absolutely.

**TRACIE DeFREITAS:**

I know we could talk about these medical inquiry, medical certification issues for days, I think, but we'll go ahead and move on to a new topic. Thank you. That was very insightful. Very helpful. Let's see here. I'm going to bring Teresa, a little bit more focus on Teresa here for a second so we can talk a little bit about tech, because, Teresa, we know it's your favorite topic.

We have had some questions come in around some technology that I think might be of interest to you, so let's go ahead. I have an employee that is legally blind, and we purchased special magnifying software as an accommodation. The issue is that software is not compatible with the website that the employee needs to access. What do we do now?

**TERESA GODDARD:**

The first thing I would like to know is do you have control over this website, or is it something external to your organization where you don't have any control? And if you don't have control, do you have the ability to reach out to whoever is in control to see if some changes can be made? The second thing I would want to know is what's the nature of the incompatibility? Can you tell me exactly what the person is having trouble accessing? Because if I know that, there could be potentially some sort of workaround.

But if all else fails, the fallback for when you can't get technology to enlarge or if you're a screen reader user to read what you need on the screen, then sighted assistance would be the next fallback, somebody who can read the screen for you, be your eyes in that situation.

For a long time, we had the software — or I should say the app — "Be My Eyes," which uses volunteers to give visual feedback about something that a person is showing them through the app on their phone. There's another app that uses professionals who operate via a VPN to provide feedback on what a person might be seeing, whether out in the world or on a screen, and that's Aira.IO. Most excitingly, Aira is currently doing a beta test of a desktop client. So if you have someone who can't access a website or anything else on a computer, using their existing technology, you can look for a different type of technology, see if it works better. You can try to fix it. If those two things don't work and you can't get somebody onsite to be an assistant, you might want to see if they can sign up for this beta test. The Aira beta test of the desktop program might be a good option for some people.

**TRACIE DeFREITAS:**

All right. That's great. Teresa is always our go-to. She knows the latest, the greatest, and we're still not certain how she keeps up with it all. I'm going to throw another tech question at you. Let's see here. So we know captioning is something that's become widely used and can be helpful to a lot of people. Are there any new developments in captioning?

**TERESA GODDARD:**

I'm so glad that you asked. There actually was a recent development in captioning that is extremely exciting. So I know a lot of people are familiar with the Captel service, which is a way to get captions on a telephone call. And we've been asked for many years, "Is there an automated option so I don't have to have a person on my call providing my captions? I don't want an operator on the call listening in," and until recently, there wasn't a good way to do that. However, currently, if you are using the Captel 2400 phone, the Captel 840i, or the Captel 880i model of the Captel phone, you might be able to access a new option. What that new option does is allow you to choose whether you want to have auto captions that are entirely computer-generated, without any operator on the call, or if you would like to have assisted captions with an operator facilitating that captioning and making any corrections and providing other details. So there's a new development, and you can find out more on the Captel website in their knowledge base.

**TRACIE DeFREITAS:**

All right. That is fantastic. Let's see. I have one more we'll throw your way, and then we'll have a couple more just general, and we just won't have any more time left. So, how are return-to-work policies impacting employees who have suppressed immunity?

**TERESA GODDARD:**

Well, it's not good. We're hearing a lot of questions from employers who are dealing with a large number of telework requests, largely in response to return-to-work policies that they've been implementing and we're also hearing from a lot of employees who are trying to continue a telework arrangement during this period as we reemerge from the pandemic. I would say that it varies a lot from employer to employer. Some employers are taking a harder stance against telework than in the past, and some are very open.

I would say that employees may need to be prepared to go through a full and rigorous interactive process with employers, because a lot of them are giving a little more pushback than I might have seen in the past for telework, even for people who have successfully worked from home during the pandemic. And it is hard for people to get their requests put in place.

At the same time, it's hard for the employers, too, because we're in a period of time where there are a lot of requests coming in. Some of them are still COVID-related, but all of those same issues that caused people to request telework before 2020 still exist. And sometimes there's convergence between those two categories.

So to give you an example of what I mean: We're hearing from people who are blind who are being asked to return to the office, And they may be having difficulty commuting, just as they did before COVID, but now during this COVID area and also during this time of flu season and cold season and everything else, they want to avoid those things, too. But if you are blind and you're returning to an office setting, it's very difficult to social distance in the way that most of us are comfortable doing now, and it's very difficult to tell if someone who's speaking with you is wearing a mask. It's difficult to judge someone's distance from you and to keep that distance stable. So while there are accommodations that can help with all of this, some people would just feel more comfortable if they could work from home more often, so that's an example of a situation where a person might have wanted to telework before 2020, because of commuting issues or something else, but now they're having additional difficulties because of infectious disease exposure.

There's also some overlap because there are some medications that people take for chronic conditions that cause immunosuppression, but these conditions can also lead to other conditions like blindness, so a person could be immune-suppressed and also taking a medication that causes them to have things like diabetes. So, let's say a person has an organ transplant; they're taking prednisone for that. They've now got a suppressed immune system. Diabetes is a side effect from the prednisone, and because of the diabetes they are starting to lose their vision. I would just keep in mind that some of these employees are facing situations that are incredibly medically complex, and I would encourage employers to give grace and have compassion, even as they're doing their best to understand the nature of the limitations involved and the limits of what they can provide. I hope that helps.

**TRACIE DeFREITAS:**

It does, Teresa. Thank you so much. I think we could maybe squeak in two really quick short-answer questions, and then I'll just need a few minutes to wrap us up. This has been great. We've had so many questions come in; we would need about three more hours to answer them all. So maybe we'll have to do this again. So here's two quick sort of just ADA questions; okay? It's sort of a question of "Employers are allowed to remove essential job functions?" So I think someone must have heard something said, and now they're like, "What?"

**LISA MATHESS:**

I think I'm guilty of saying that.

[Crosstalk]

Under ADA, an employer is not required to remove essential functions, those primary, fundamental duties of a role. They can if they wish. Employers are free to go above and beyond what the ADA requires, and there's no problem in doing so. I do recommend documenting that you went above and beyond, just because memories fade and documentation can be everybody's friend, but an employer can go above and beyond what the law says, and that's fine, as long as you do so in a nondiscriminatory manner. So there's some helpful tips to go beyond the law. But it's fine. We encourage everyone to do so.

So during COVID, we often saw — on a temporary basis, because nobody knew how long COVID would last — that we were stripping down essential functions to enable people to work at home. That's not required under the ADA. It never has been. The pandemic didn't require it either. So now if you're just looking at the ADA, we do not have to remove essential functions, but we can if we want as employers.

**TERESA GODDARD:**

Sometimes it might make sense to do it for a short period while you're looking at other options.

**LISA MATHESS:**

Right. Exactly. If you're looking at if someone is safe to perform, if you can just strip down some of those questionable tasks while you're exploring medical, engaging in the interactive process, seeing what you can do for the more long term, let's remove some essential functions to keep people working. That is the whole point of the ADA is to keep people on the job if medically feasible. So if that entails removing essential functions and that eliminates the need for putting people on unnecessary leave, I think that shows a good faith effort.

**TRACIE DeFREITAS:**

Okay. Very good. I think I can squeeze one more in. So, we talked about reassignment kind of falling into the list of hot accommodations topics that have come up. So this question is, "Can reassignment as an accommodation change salary?" [silence]

**TERESA GODDARD:**

I'll jump in. If you're asking, "Is it potentially legal for a person to be reassigned and at the end of that process wind up in a position that pays less," there are ways that that can happen. But we know from the EEOC's guidance that an employer is supposed to, when searching for a reassignment, look for something that is lateral first, something that is equivalent in terms of not only pay but other relevant factors as well. Now if there isn't anything that's equivalent, an employer then has to look at positions that are not lateral, but lower-level. That's actually part of the process in how it's supposed to work. But you don't want to start at a lower level. You want to first see if there's anything lateral that would be suitable.

**LISA MATHESS:**

Absolutely. Similar status, similar pay, as long as they're qualified. And we have lots of articles housed on the website on reassignment and the path to reassignment that gets into some of those nuances of reassignment.

**TRACIE DeFREITAS:**

All right. Good answers and, yes, we absolutely do have a lot of resources. EEOC has actually excellent guidance on reassignment issues, so certainly you can find that through our website as well.

## [Conclusion]

All right, ladies, we have just a few minutes to wrap up, so I'm going to go ahead and do that for us. This was a great discussion. I think it was fun. Lots of great questions. What we will do is take a look at all of the questions that have come in — literally there's like 60 of them, maybe more than that — and we'll see if there's a way for us to maybe go ahead and distribute some answers in future communications and get you some more information on the topics that you're looking for. So we'll see what happens with that. We'll try to do our best.

We hope you were able to take away some useful nuggets of information from this fun Q&A. Of course, if you require additional information, please contact JAN via phone, use the Live Chat, or email. Go to that AskJAN.org site for full contact details.

Melanie, who is not here, but Lisa and Teresa, thanks so much for sharing your insight and expertise today. It was a great discussion.

Everyone, thank you for attending this "Ask JAN! Q&A" webcast. We do hope that you enjoyed it. Don't forget to register for the next JAN webcast, which will be "Supports and Services: Accommodations with a Heartbeat" on Thursday, February 9, at 2:00 Eastern. You can go to the JAN training page at AskJAN.org to get started doing that.

If you're seeking a continuing education unit for this training, we do offer one credit through HRCI that you can access, and in order to do that you can receive the credit by completing the webcast evaluation. So, we do appreciate your feedback. It does help us plan future webcast events, so please do take the time, if you can, to complete the evaluation. You want to keep the JAN webcast window open when the webcast ends. The evaluation will then pop up in a new window. Once it is completed, you can click on "View your certificate of completion." You can also go to AskJAN.org/evaluationreg.cfm to go ahead and just fill out the evaluation there too.

Lastly, thank you to Alternative Communication Services for providing sign language interpreting and captioning for this webcast event today.

To everyone, please enjoy the rest of your day, and thanks so much for joining us. This concludes today's webcast.