# Accommodation and ADA Considerations: Reproductive Health Conditions and Pregnancy

## [Introduction]

TRACIE DeFREITAS:

Hello, everyone. Thanks for joining us for this JAN Accommodation and Compliance Webcast titled "Accommodation and ADA Considerations: Reproductive Health Conditions and Pregnancy." My name is Tracie DeFreitas.

Before we begin let's quickly cover some housekeeping items on the next slide. First, if you experience any technical difficulties during the webcast, please do use the question-and-answer option located at the bottom of your screen to submit a question. 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 org.

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Now, let's buckle up and get ready to learn. I have a lot of information to cover today in a very short period of time, so we have lots to get to.

Our discussion today focuses on reproductive health conditions and work. Likely a lesser-known fact, reproductive disorders do affect millions of Americans each year. What we do know is that work-related barriers associated with reproductive health conditions can often be addressed by reasonable accommodations provided under the Americans with Disabilities Act and/or related laws.

Our training on this topic starts with a brief overview of some common reproductive health conditions and associated symptoms and functional limitations, and then I'll share various accommodation situations and solutions with some practical accommodation and compliance considerations, so let's go ahead and talk about reproductive health.

## [Common Reproductive Health Conditions]

Reproductive health refers to the condition of female and male reproductive systems during all life stages. These are systems that are made up of organs and hormone-producing glands, including the pituitary gland in the brain. Different life stages are associated with specific reproductive health issues, including menstruation, chronic health conditions like endometriosis and polycystic ovary syndrome, fertility, pregnancy, and menopause. We only have an hour to cover this topic today, so I'll focus on a short list of some of the more common reproductive health conditions that we hear about at JAN.

We'll start with endometriosis. Endometriosis affects a woman's uterus. Tissue that normally lines the uterus can grow on the ovaries, behind the uterus, on the bowels, or on the bladder, causing intense pain in the abdomen, the lower back, or pelvic areas. Heavy menstruation is likely and so is infertility.

Next, uterine fibroids. These are noncancerous tumors made of muscle cells and other tissues that grow in and around the wall of the uterus, causing heavy and/or painful menstruation, lower back pain, and a feeling of fullness in the lower abdomen and also the need to use the restroom frequently.

Then there is interstitial cystitis or IC. This is a chronic bladder condition resulting in recurring abdominal or pelvic pressure and discomfort, frequent and urgent urination, tenderness, intense pain in the bladder or pelvic region, and severe lower abdominal pain that intensifies as the urinary bladder fills or empties.

Just a few more. Polycystic ovary syndrome or PCOS. This is a condition where the ovaries or adrenal glands produce more male hormones than normal. The condition results in pelvic pain, excess hair growth, thinning hair, some skin-related issues, dandruff, and infertility. People with PCOS are at increased risk of diabetes and heart disease and higher rates of anxiety and depression as well.

Then there is premenstrual dysphoric disorder or PMDD, which is a chronic condition where hormone levels begin to fall after ovulation, causing severe tension and irritability, depression or anxiety and pain, headaches, joint/muscle pain, fatigue -- a whole host of various symptoms including difficulty thinking and focusing.

There are several cancers that start with the reproductive organs, for example cervical, ovarian, uterine and testicular. Cancer may cause pain or pressure in the pelvic area, abdominal or back pain, bloating, and a frequent need to use the restroom as well.

Infertility is fairly common. This is in an umbrella term for a number of conditions that impact the reproductive system in men and women. One third of infertility cases are caused by male reproductive issues and one third by female reproductive issues and then another third by both female and male reproductive issues or unknown causes.

Though not a reproductive health condition, I wanted to include pregnancy in this discussion, because we do receive many questions about accommodating workers who are pregnant.

And fittingly, from a life cycle perspective, menopause is our last reproductive health issue. Menopause affects women and usually occurs naturally, most often after the age of 45, when the ovaries stop producing the hormones estrogen and progesterone. Changes in menstruation result as well as hot flashes and/or night sweats, trouble sleeping, mood swings, and difficulty focusing.

## [Common Symptoms and Functional Limitations]

From the descriptions I just shared, we can see that many of these conditions share some common symptoms and functional limitations. Some that have the most impact on working include chronic pain throughout the body, abdomen, pelvis, bladder, back, headaches. There is also heavy or irregular menstrual bleeding; frequent and/or urgent need to use the restroom; difficulty thinking, focusing, and remembering; and some moodiness and irritability and depression and anxiety; and lastly difficulty with lifting, standing, sitting, pushing, reaching, activities of that nature.

So we see a lot of different types of functional limitations. These symptoms and limitations can impact working. Some of the most common issues or work-related limitations are difficulty meeting attendance requirements, performing essential job duties, addressing personal needs, or completing executive functions and interacting with others.

## [Removing Stigma]

We are going to explore accommodations to address these limitations in just a few minutes, but before I do, I want to talk about disclosure considerations and facilitating accommodation conversations. Because many reproductive health conditions affect menstruation, I want to draw attention to the importance of normalizing conversations about menstrual function and all areas of personal health, really, in order to work to remove any stigma around associated symptoms.

How do we do that? Employers can create a safe space in which each employee knows they can talk about any challenges regarding all areas of their health including physical symptoms associated with menstruation, self-care, and also mental health. People with chronic pain, heavy bleeding, anxiety, or depression, they may find themselves not being honest about the reasons for missing work or having difficulty performing job duties. They should instead be empowered to be open when struggling and to advocate for themselves at work by prioritizing self-care.

For example, ask for what you need to do your best work by way of requesting reasonable accommodations. And, when an employee shares a connection between symptoms of their medical condition and a work-related issue, when they disclose personal health information, that's when an employer should really engage in that accommodation conversation.

Employers can facilitate the accommodation conversation by creating that safe space for openly and confidentially discussing personal health-related issues at work. If you're wondering whether an employee may be struggling with whether to ask for an accommodation, you might try asking open-ended questions like, "Is there anything I can do to support you to be successful in your role?" or, "What do you think might make it easier for you to do your best work?" Even, "Is there a challenge or barrier you are encountering you could help me understand?"

Active, empathetic listening to responses from open-ended questions about job performance and an employee's need for some form of support this often yields the best outcomes. This combined with open, encouraging body language and facial expressions and a warm tone will help the employee to feel more comfortable sharing their concerns discussing their disability and exploring possible accommodations. If you're not sure if the employee is making an accommodation request, it is okay to ask. So keep these things in mind.

## [Interactive Process]

The accommodation conversation often includes medical inquiries or a request for medical information in order to establish a person's medical condition and their need for accommodation. When gathering information to provide an accommodation for an employee with a reproductive health condition, or any medical condition for that matter, it is important to respect that personal health inquiries may feel invasive. Assure that the employee -- the employee that all information shared will be kept confidential and not shared with others. It is important to request enough information to establish the medical condition and their limitations and that need for accommodation, but you do want to limit inquiries to only what's necessary to provide a reasonable accommodation.

Also recognize that the individual is likely the best resource regarding their symptoms, their limitations, and the impact of their medical condition on work. As it relates to reproductive health conditions, keep in mind the employee is not going to see a healthcare provider every time they have symptoms. Many are chronic medical conditions that are cyclic -- they flare, and they improve. And each situation is unique. No two people will have the same exact symptoms or manage their medical condition in the very same way.

JAN does offer sample forms that can be helpful and can be customized to request limited medical information for ADA purposes, so certainly take a look at those if you're looking for what sorts of questions maybe you can ask when it comes to gathering that information for ADA purposes. Of course, one of the primary reasons employers gather medical information is to determine whether the individual is covered under the ADA by having a disability. A physical or mental impairment that substantially limits a major bodily function or other major life activity or having a history of such an impairment.

When it comes to reproductive health, this should not require significant analysis. The ADA Amendments Act added the operation of major bodily functions to the definition of major life activities. Major bodily functions include functions of the reproductive system. I'm not going to get into the specifics of ADA coverage for these reproductive conditions that I'm discussing today, but a good practice, given the ADA's directive to construe disability broadly, is to err on the side of finding coverage if it's debatable at all. Instead, just focus on whether a reasonable accommodation can be provided. That is the best path. Also, remember that employers are certainly free to provide accommodations even if somebody doesn't meet the ADA definition of disability. So you don't have to get too bogged down in all of that.

## [Related Laws]

Now, while our focus is usually on the ADA when it comes to providing accommodations, always keep in mind that related laws can also be in play. These laws can include the Pregnancy Discrimination Act, the PDA, which requires covered employers to treat employees who are temporarily limited or unable to perform the functions of a job due to pregnancy, childbirth, or a related medical condition in the same manner it treats other employees who are similar in their ability or inability to work.

There's also the Family and Medical Leave Act, or FMLA, which does require covered employers to provide job protected leave to qualifying employees when needed due to a serious health condition or pregnancy. And then there are of course state employment protections against pregnancy discrimination and provisions for accommodation and state family and medical leave and civil rights laws as well. So there's a lot to be aware of when we are making these kinds of decisions. So know your responsibilities and your rights when it comes to accommodations and leave issues around reproductive health conditions and pregnancy.

## [Situations and Solutions]

### [Endometriosis]

Now, let's explore some example situations and solutions. I'm going to approach each of these situations from the perspective of what both the individual and the employer can do to facilitate what we hope is a successful accommodation outcome. So let's begin with Robin on the next slide. Robin has endometriosis and experiences chronic debilitating pain. When she is in a lot of pain she is sometimes unable to work. Absences have been more frequent recently, leading Robin's supervisor to issue an attendance warning. The employer is unaware of the reason Robin is calling off, because she hasn't disclosed the medical condition.

What can Robin do in this situation? Well, it's important to consider disclosing her medical condition and explaining why the symptoms affect her ability to meet the attendance policy. This should lead to a discussion about accommodation or leave-related needs, which is where Robin can leverage the Family and Medical Leave Act or request -- in order to request intermittent leave and/or the ADA to request an accommodation.

What can the employer do in this case? Well ask, "How can we help?" This will facilitate the accommodation conversation. If reasonable, the employer can modify the attendance policy to allow some additional absences when necessary due to the medical condition and maybe approve intermittent leave under the FMLA or ADA.

An invaluable guide to how to engage in the interactive accommodation process is the Equal Employment Opportunity Commission enforcement guidance "Reasonable Accommodation and Undue Hardship under the ADA." The guidance explains modifying a policy as an ADA accommodation, and it also introduces the concept of leave as an accommodation, so it's an excellent go-to EEOC enforcement guidance that everyone should have in their back pocket when we're sorting through the interactive process.

Now, thinking about leave, leave provided under the FMLA and ADA, it must be job-protected. FMLA mandates this and, under ADA, if you don't protect or hold the employee's position during leave, you're not really accommodating the person. Of course, indefinite leave is not required, nor is it a best practice. FMLA does cap the time at 12 weeks, and ADA has no required duration, but employers can expect employees to return to work within a reasonable period of time, before the leave is a hardship for the employer. Indefinite leave is different than leave requests that give an approximate date of return, but repeated extensions of leave can become a request for indefinite leave.

Now employers, they may request different documentation to establish coverage under FMLA versus ADA, but do be careful not to request more information than is absolutely necessary. Also, keep in mind that ADA does have an undue hardship defense, but FMLA does not. FMLA does have a 12-week limit per 12-month period. If both FMLA and ADA apply, the employer must provide leave under whichever statute provides greater rights to the employee.

There are some great resources related to ADA leave and FMLA leave. You can see EEOC's "Employer-Provided Leave and the ADA," a great go-to that explains leave as an accommodation, and then JAN offers through our A-to-Z section of our site, under the topic of "Leave," a lot of useful resources on that topic, and then of course the Department of Labor offers great FMLA resources as well. So there's so many tools at your fingertip to help sort through a lot of leave issues.

Now in this example, exploring leave makes sense given the symptoms shared by the employee, but what about exploring other options to enable the employee to be present? This can be done where it's possible to identify effective solutions. Still, you want to search for an accommodation solution if the employee has maybe only identified the problem, not proposed particular accommodations. Sometimes employees don't know what exactly they need, but it's important to engage in that process and try to come up with solutions.

It is important to consider employee preference when you're providing reasonable accommodations, and if an employee does have a proposed solution, but let's say it's ruled out maybe because it would create an undue hardship for the employer, then it is important to search for and offer an alternative effective accommodation if it's available absent undue hardship. So do think about accommodations. Even though leave might seem like the likely option, you can look for other solutions.

Using Robin's example again, perhaps accommodations can be explored related to pain management. Living with chronic pain can lead to loss of appetite, depression, and exhaustion. The pain associated with chronic pain, it can be overwhelming.

So some ideas for addressing pain related to symptoms, I've offered a lot of ideas on the slide, just to pull out a few: Making sure the person has access to an Employee Assistance Program, an EAP, for coping with pain. Maybe providing parking close to the worksite so that it's a little bit easier to get into and traverse and walk around into the worksite. Reducing or eliminating physical exertion and workplace stress to help eliminate some of those pain triggers or maybe scheduling periodic rest breaks. It can also be implementing ergonomic workstation design that might help with some issues with pain and sitting for long periods of time. So lots of options to consider. It is something you definitely want to explore, because, you know, you just never know. There could be other ways to accommodate beyond the leave option.

### [Interstitial Cystitis (IC)]

All right. Let's take a look at another situation: interstitial cystitis or IC. Here Alex has bladder symptoms from IC that have worsened due to prolonged sitting. His healthcare provider recommended behavioral therapy that requires a protocol of using the restroom every two hours. Physical therapy was also recommended for tight and tender pelvic muscles associated with IC.

What can Alex do? Well, request ADA accommodations related to the workstation in order to address the difficulty with sitting, because we know that's flaring his medical condition, and regarding scheduling break times, so it may be important in order for him to stay on that clock of using the restroom to go ahead and schedule those break times. He can also talk to the employer about leave and attendance accommodations in order to access physical therapy.

What can the employer do? Well, there are a variety of accommodations that could maybe be considered. Providing an adjustable sit/stand desk to limit the sitting for long periods of time, maybe offering break reminder software that prompts Alex to stand or maybe to go use the restroom, allowing a modified or flexible break schedule so that they can go by that clock and use the restroom as needed. Having a workstation that is closer to the restroom will help with time, maybe allowing work from home so that these challenges can be addressed in the home environment or offering a flexible schedule and leave so Alex can access that treatment, that physical therapy.

### [Premenstrual Dysphoric Disorder (PMDD)]

Alright, next situation, premenstrual dysphoric disorder, or PMDD. Here Jess was written up after violating the employer's code of conduct related to prohibiting insubordination and inappropriate behavior between coworkers. They were having difficulty getting along with coworkers and yelled at their supervisor. Jess explained they had been feeling significant tension and irritability and depression and anxiety due to PMDD.

So what can Jess do? Well, it's important to explain that the symptoms of their medical condition affect their behavior and mood, and in turn meeting the conduct rule related to interacting with others. They should accept any warranted disciplinary action because the conduct rule was violated but then also request to explore reasonable accommodations to meet the standard in the future.

What can the employer do? It's important to determine whether the conduct rule is considered job-related and consistent with business necessity. If so, apply the rule but explore whether reasonable accommodations will enable the employee to follow it. You know, in some cases, even if an employee indicates that a disability is causing a conduct problem, the employer may be able to apply its usual policies. Employers can apply conduct policies to all employees, including employees with disabilities, when those policies are job-related and consistent with business necessity.

Keep in mind, according to the EEOC, certain conduct policies will always meet that standard. For example, prohibiting violence or threats of violence, stealing, prohibiting insubordination and inappropriate behavior between coworkers. These will always meet that standard. In general, an employer must make a case-by-case determination when deciding whether to enforce a conduct rule if an employee with a disability can't comply with the rule because of the disability. That decision is going to come down to looking at the conduct at issue and whether it truly is a problem based on the employee's job and how the conduct impacts others in the work environment. Keep in mind that if there is an accommodation that would enable an employee with a disability to comply with the conduct rule, the employer must consider providing the accommodation unless doing so would pose undue hardship.

So there's a lot to think of when it comes to addressing conduct issues. JAN does offer some information about dealing with conduct issues in the workplace through our A to Z section by topic of "conduct," and then we also offer an interesting article called "My Disability Made Me Do It! When It Does and Doesn't Matter." So that sets up some interesting information to pay attention to when you're maybe faced with these types of situations.

All right. So there may also be solutions to help Jess with addressing these types of situations related to conduct and interacting. One might be -- One issue to address might be emotional regulation. So for example there may be some modifications to help Jess kind of address how they respond to certain situations. So maybe reducing stress, anger, impulsivity triggers, and these triggers vary according to the situation and the individual person and what their needs are. It could be providing structured breaks as a physical outlet or maybe allowing a job or a life coach to come on the premises to teach the employee techniques for managing impulsivity.

Offering uninterrupted work time for tasks that require significant concentration so that they can stay focused and not get, you know, overwhelmed by things that are going on, accessing the employee assistance program for coping with stress, and maybe even adjusting supervisory methods.

So let's talk about that for a second. So what if Jess requested to change their supervisor as an accommodation? I mentioned earlier that they yelled at their supervisor, and they maybe were having difficulty getting along. So what if that was the request, because they are having difficulty interacting?

Well according to the EEOC, an employer doesn't have to provide an employee with a new supervisor as a reasonable accommodation, but nothing in the ADA prohibits an employer from doing this. Although an employer isn't required to change supervisors, the ADA does require that supervisory methods be altered as a form of accommodation. So for example, an employer can request to -- maybe the employee would want to request that the employer communicate with them in a way that's comfortable, that's more comfortable. So maybe via email instead of face-to-face communication, where that's reasonable. And they can maybe also request clear expectations of their responsibilities and the consequences for not meeting those responsibilities or standards.

Supervisors, they can implement management techniques that support an inclusive workplace culture. These same techniques can be ways of effectively accommodating employees who may have difficulty communicating with supervisors or who need alternative methods of supervision. Successful management techniques may include a variety of techniques. I'll just mention a few like offering positive praise and reinforcement or providing day-to-day guidance and feedback or even giving written job instructions via email so that information is quite clear and it's documented. So, there can be lots of things that can be done just might make it a little bit easier to communicate more effectively. I think it's important too to develop strategies to deal with conflict when conflicts do arise between the individual and supervisor, so I think in some ways it's about preparing for those types of situations.

### [PMDD #2]

Alright, let's look at another situation related to PMDD. Ally has severe anxiety and difficulty with time management, focus, and memory, and this happens the week before and during menstruation. Working at home during the pandemic has enabled her to address these symptoms of PMDD. She also obtained an emotional support animal during the pandemic. Now everyone is returning to the workplace, and Ally requests to continue working at home. This is probably a familiar situation for a lot of our employers out there.

So what can Ally do? Well, explain why or how working at home addresses the symptoms and limitations of PMDD. It will be useful to note that the productivity and performance requirements were met while previously working at home in order to establish that this is an effective way of working for Ally.

What can the employer do? Well, one suggestion, consider the mandatory telework due to the pandemic as a trial period that demonstrated that Ally can satisfactorily perform all of the essential job duties, and if necessary it is possible to engage in a flexible or cooperative interactive process if alternative effective accommodations need to be explored.

So certainly take a look at telework as the preference to figure out if it's something that is still reasonable and whether the essential job duties can be performed moving forward. If that's possible, implement it. Continue to allow that. But if for some reason you find that that's not going to be reasonable, maybe the essential functions have changed now that people are back at the worksite, and if that's the case, we may need to relook at the job.

If alternative effective accommodations need to be explored, you may want to consider some middle-of-the-road options. So for example, maybe a hybrid work arrangement so some of the time could be spent working at home and some of the time working on site. So, you know, there can be a lot to explore around these telework type situations.

Now if we are thinking of other alternative effective solutions and exploring those, maybe accommodations related to managing anxiety could be explored. And these might include ideas like identifying and reducing those triggers, if they're known. Sometimes it is not known what those triggers are, so it may not be possible to do that.

Contacting a support person when anxiety is triggered, so if the person has someone that they can rely on to offer support to them, maybe allowing that to happen throughout the day.

It could be allowing access for a support animal. Now we know in this case Ally has her support animal at home, and so that makes it convenient, but if you're going to bring Ally back into the work environment, it may be necessary to consider allowing access for that support animal as a form of accommodation. So don't forget that as a possible option.

There can be other options like flexible scheduling, modified breaks, and, you know, even allowing access to a support person as well. So various options to consider, and remember each person's case by case in what their needs are.

There are also some solutions that may help with memory-related limitations. These may include providing written instructions and checklists, maybe using a voice recorder to take notes, whether that be in meetings or in just daily activities to help the individual stay on task. It could be using a flowchart to indicate steps in a task, so the person doesn't have to get tripped up in following a certain regimen of performing certain tasks. Maybe using notebooks and planners or sticky notes to record information or as reminders of certain dates and tasks as well. So again, lots of options to consider around memory-related accommodations, too. These are just some examples.

Now, I mentioned earlier that -- how important it is for employers to cultivate a workplace culture that encourages employees to talk about challenges regarding all areas of their health, including mental health. The issue of mental health in the workplace, it's an important and a timely one. We all benefit from flexible, supportive workplaces that promote good mental health. Whether it is setting a leadership tone for a supportive culture, being a source of support for colleagues or being open and honest about what you need to perform your best, we all benefit from a mental health-friendly workplace.

To promote workplace well-being, the U.S. Department of Labor's Campaign for Disability Employment, the CDE, they recently launched its latest public education campaign built around a public service announcement called "Mental Health at Work: What Can I Do?" The timely PSA features a CEO, a manager, a coworker, and a person who identifies as having a mental health condition, and all of them discuss what they can do to promote workplace well-being, from setting that tone for an inclusive workplace to providing and requesting assistance and accommodations, to being a source of support to peers and colleagues. This is a resource that is available to anyone who would like to use it to really promote workplace well-being. And you can learn more and access the PSA and its related tools if you go to WhatCanYouDoCampaign.org, so I definitely encourage you to take advantage of that free resource to help promote well-being in the work environment.

Another useful tool is the Mental Health Toolkit provided by our sister project, the Employer Assistance and Resource Network on Disability Inclusion, or EARN. Proven strategies for building a mentally healthy workplace include educating workers on mental health issues and substance use disorders and taking action to foster a supportive workplace culture, including encouraging workers to seek help if they need it. EARN has segmented these leading practices into four pillars that they are calling "The Four A's." So that's awareness, accommodations, assistance, and access. So another really great tool you can take advantage of to promote mentally healthy workplaces, and so I encourage you to do that. For more information visit AskEARN -- that's A-S-K E-A-R-N -- dot org. Okay.

### [Fertility]

Now our next situation is about fertility. Hannah has endometriosis and has had difficulty conceiving as a result. She will receive in vitro fertilization or IVF treatments. To improve the chances of fertilization, Hannah's healthcare provider recommends that she avoid work stress. This is something that I'm sure that a lot of employers hear about. I feel like there's been more of a rise in this area, so it is something that is important to think about. I'm not going to get into the particulars around ADA coverage, but it is important to think about maybe there are some ways to address reducing stress that might help.

So some solutions for addressing stress might include the employer being flexible on the times that employees should be working so that they can maybe work when they are the most productive, or providing additional breaks to de-escalate when things start to get real stressful at work if that's needed. Maybe reallocating marginal duties that cause undue stress, if that is possible.

So, one way to address stressful tasks, if they are marginal, it's okay to restructure the job to remove those tasks as long as you are not removing essential job duties, because that isn't required. Allowing a support animal in the work environment, if that is something that the individual needs, and of course accessing EAP, the EAP program for coping with stress might also be helpful. JAN offers some resources around dealing with stress in the workplace. We have two articles actually, a part one and a part two, that talk about various issues around managing workplace stress. So of course, those are resources that can help in a lot of different types of impairment-related situations, so a useful tool for everyone.

### [Pregnancy]

Okay. Now a pregnancy example. Kristin is experiencing complications in the third trimester of pregnancy. She is restricted from lifting more than 10 pounds and must take frequent breaks to sit down. Kristin is wary of telling the employer she needs accommodations. The employer has light duty work, but she believes the employer may not offer it because she doesn't have a work-related injury. This sounds like a familiar situation, I think. It is one that I think happens pretty frequently.

So what can Kristin do in this instance? Approach the employer with solutions so they recognize that she wants to continue working. I think it's really important as an individual with a disability to, when it's possible, approach the employer with accommodation ideas or solutions for how you can make the situation work. In this case, we are talking about pregnancy. And for that reason it may be about just trying to figure out, you know, what can be done so that the person can continue working for the short-term duration of those limitations and restrictions. In this case, maybe it is requesting a modified duty assignment for that short-term duration. You know, I think when we are looking at pregnancy-related situations, I'd like to remind employers that we are not looking at a long-term situation. We are looking at somebody needing adjustments, modifications, for a short-term period, and sometimes it's possible to make short-term adjustments without it creating too much of a hardship on the employer.

What can the employer do? If modified duty is provided to other similarly situated employees, they should consider whether it's possible to provide temporary modified duty. If not, then of course you can explore alternative, effective solutions. Let's talk about that a little bit more. Of course, employees who are pregnant can be expected to perform essential job duties with or without accommodation, but modified duty may need to be considered when it is available and reasonable.

Employers aren't expected to create a modified duty position in order to accommodate an employee with pregnancy-related limitations, but of course they may do so, and sometimes employers find that there is a way to do that that works for everybody. According to the EEOC, it may violate the PDA if a light duty policy imposes significant burdens on pregnant employees by denying accommodations that can't be supported by sufficient justification. So meaning that you don't want to just deny accommodations to workers who are pregnant when you're making adjustments for others that are similar to what that individual needs. For more information, you can take a look at the lighty duty section -- I believe it's question 10 -- in the EEOC's enforcement guidance on pregnancy discrimination and related issues. So there it talks a little bit more about this particular type of situation.

Now, when we are thinking about modified duty, you might also be thinking about job restructuring. Job restructuring is a way of accommodating limitations in performing marginal and essential duties. If an employee seeks to be excused from a marginal job duty, then the employer should determine if they can eliminate that duty or swap it with another worker's marginal duty if there is something else the person can perform, But if an employee seeks to be excused from a duty but it's considered an essential function, the employer is certainly not responsible or required, I should say, for eliminating the duty as a form of accommodation, whether that be under the ADA or the PDA. But do determine if the employee can be accommodated to perform the duty.

So the ultimate goal when someone has limitations in performing duties is to make an adjustment to enable them to perform that duty rather than just eliminating it or disregarding it. If it is not possible to provide an accommodation to enable the person to perform the duty, then it may be possible to look to reassignment to a vacant position as a form of accommodation. Typically as a last resort, but that is something that employers should certainly consider. I do want to encourage employers to consider providing short-term solutions as part of the accommodation process, whether it's in a pregnancy-related situation or any situation involving somebody who has limitations.

Now this could be in cases where we are talking about short-term impairments or situations where perhaps you are not sure whether an accommodation will be effective and, you just want to give it a try. So short-term or trial accommodations can be a great way to figure out whether an accommodation will be effective in enabling the person to continue working, or it might even return someone to work sooner than anticipated. It also shows good faith. So you hear JAN consultants talk all the time about providing trial or temporary accommodations. It's just really a good practice. JAN does offer a document, a form that you can use to document these types of accommodations.

Now many pregnancy-related situations involve lifting and standing limitations. Some of the accommodation solutions related to these types of limitations can include reallocating lifting duties, if they are marginal, again. Providing assistance moving objects or people to reduce the weight, so maybe it's just a matter of having somebody else help. It'll break down that weight a little bit, so that might help.

It can be organizing items in a way that reduces the need to move items. Sometimes we think we have to lift that whole box with everything in it, but maybe that's not necessary. Maybe some of those items can be pulled out to reduce the weight.It can also just be helpful to place frequently used tools and supplies at or near waist height so you don't need to lift them.

Maybe it's separating items into smaller groups or using equipment like a compact material handling device that can help the person lift and move or push and pull items. Lift carts could do that too, so using some sort of cart to move or raise items might be helpful. So lots of options around lifting, I think. Sometimes we just think you have to lift it and that's it, but it's really about moving the item, and there can be various ways to get that done.

Okay, to address fatigue and also maybe standing limitations. Of course you have job restructuring, if that's possible, again marginal, essential functions, moving things around. Taking periodic rest breaks to address fatigue or get off your feet, maybe reducing the work schedule so if somebody's really having difficulty because of extreme fatigue, maybe they need to work a reduced work schedule for a period of time. Allowing the person to sit down to take breaks, if the job does require a lot of standing. You could also address that issue by providing a stool. Maybe you don't have the person fully sitting on the stool, so maybe consider equipment like a stand/lean stool. This is a small stool where someone can just kind of sit back and take some of that pressure off their feet. It could also be other types of equipment like an adjustable workstation to address the need to maybe change from sitting and standing positions or anti-fatigue matting, if someone has to stand for long periods of time. So there -- And again, lots of options around fatigue and standing limitations.

### [Uterine Fibroids]

Okay, next situation, uterine fibroids. So Chelsea has uterine fibroids that cause heavy menstrual bleeding and pain. She needs frequent breaks to take care of personal health-related needs when experiencing these symptoms but is concerned about the time away from performing tasks and coworkers noticing frequent use of the restroom. So let's take a look at this.

What can Chelsea do? It may be helpful to be open when she is struggling and to advocate for herself at work by prioritizing self-care and asking for what she needs to do her best work or requesting accommodations. So Chelsea may not realize it, but it may be helpful to have that accommodation conversation with the employer.

From the employer's standpoint, some things to really kind of think about: Don't require the employee to request to use the restroom. You know, if this person needs to go take care of personal needs, has to do this more frequently, you don't want them in that position to constantly be having to ask to do that. And a lot of times that's not an issue, but in some situations it is. So really kind of pay attention to whether that is necessary. Also, don't draw attention to the employee when they are late or they must leave early.

If Chelsea needs to deal with an issue related to bleeding and perhaps, you know, has to change into different clothing or has some other issues that need to be addressed, you want to give that person the time they need to go take care of that. And maybe establish a discreet way of documenting breaks that might be needed to take care of those personal needs.

Something else to think about is maybe eliminating requesting medical details about the issues. So kind of be mindful about asking for in-depth medical documentation, because the employee might be reluctant to share some of those details they see very personal and private. And also offer privacy to address the personal needs, you know, making sure that person has a place they can go to address the personal needs around hygiene and taking care of themselves. So whether that is a restroom or, you know, a private office space they have that has a lock so they can take care of needs, lots of different things to consider.

### [Menopause]

All right. Our last scenario is around menopause. Here we have Selena, who is experiencing symptoms of menopause that are making it difficult to function effectively at work, including extreme hot flashes, mood swings, and difficulty concentrating. She's considering leaving the job, because she doesn't know what she can do to improve the situation.

So, the most commonly reported difficulties that women who are in menopause report at work including poor concentration, tiredness, poor memory, depression, or lowered confidence. There's also some problematic hot flashes at work can also create a difficulty with feeling like employees want to stay at work. And some people feel unable to disclose their menopausal status fearing that they may be stigmatized for being menopausal.

So what can Selena do in this case? Well, maybe educate the employer about her symptoms and ask what can be done to support her while she's going through this life transition.

What could the employer do? Well, maybe provide a workspace where temperature can be adjusted and/or provide a fan. Hot flashes come on quickly. They can really be very difficult to manage, and they are unpredictable. You can also go from a situation of feeling very hot and sweaty to then also being very cold, so it is important to make sure that the person has the ability to kind of adjust the temperature in their work environment to the extent possible, and it may go from one extreme to the other.

Something else to consider might be allowing meetings to be attended remotely, so instead of having to be in an environment where you are around a large group of people and suddenly being in that situation where you're having a hot flash, it may be helpful to be able to do that in the privacy of your home or to be able to do it in a way that where you are reacting to that situation that might not seem so awkward or uncomfortable. Telework is a good solution, of course. So that allows that person to address their symptoms and limitations around the hot flashes or changes in menstruation that could also lead to heavy bleeding. That would be helpful to be able to be at home and to address those issues.

Also, when it comes to concentration, maybe allowing the employee to work when they're most attentive and productive. There can be a lot of accommodations around staying focused and concentration, so let's take a look at some of the solutions to address this limitation. Maybe reducing distractions in the work environment, so anything that can be done to help take away some of those distractions. Offering space enclosures or private offices for those people who might be back in the work environment. Having an open cubicle area, for example, can be difficult. So if it's possible to either create an enclosure or offer a space that's away from others, that might be helpful. Using environmental sound machines or headset or earbuds to listen to music might be helpful to kind of drown out some of those distractions and keep focused. Increasing natural lighting or providing full-spectrum lighting can help as well. Of course, removing any clutter around the work environment might be useful.

Planning for uninterrupted work time is something I do talk to people a lot about, because, you know, there's so much that goes on in the course of the day where we are constantly going from one task to the other, and so it can be difficult to stay focused and concentrate. If it's possible to plan a part of the day where there's uninterrupted work time, meaning that the person has the leeway to not respond to emails during that time, not to take phone calls, or not to address personal interactions at that time, it just might allow that person to stay more focused and do what they need to do in the given time that they have available. Maybe dividing larger assignments into smaller tasks and steps could also be helpful, so doing a little bit of the work at a time, maybe taking a break, coming back and getting focused once again.

A great -- one of my favorite, actually -- accommodation resources that we offer at JAN was developed by my colleague Melanie, and it is called "Effective Accommodation Practices: Executive Functioning Deficits." It is a really fantastic accommodation resource that addresses various executive functioning deficits and offers some really great accommodation information. So, another good JAN tool to pay attention to.

## [Conclusion]

Okay, I want to finish up today with the important message that of course accommodations are not one-size-fits-all. Impairments and limitations as well as accommodation needs, they're different based on the individual. So here where I've talked about a lot of different reproductive health conditions, you know, do know that whereas there are a lot of common symptoms and limitations associated with these various conditions, everyone is unique, everyone is different in their ability to address their specific symptoms and limitations, and this is true with all types of medical conditions and disabilities.

So it is always important to make individualized assessments when someone comes and requests accommodations. You've got to be aware of any assumptions in determining what an individual can or cannot do or what accommodation is needed. So don't just assume that because someone tells you they have a particular impairment that you know exactly what they're going through. You know, don't necessarily equate their situation to maybe a family member who has a similar condition, because everyone is going to be different. So be really careful about your assumptions and, you know, deciding what people can and cannot do based on those experiences too. So, with that, just make sure you are treating everyone on a case-by-case basis and engaging in that interactive process with a sort of approach of "Okay, let's take a look at the situation one by one and figure out what we can do and what the specific work history is of the individual, what their current ability is to perform certain functions, how accommodations are going to enable them to perform those functions, because that's really the goal in any situation. So again, accommodations are not one-size-fits-all, so just always keep that in mind.

## [Q&A]

All right. We have covered a lot today. It looks like I do have a few minutes. I may be able to take a look at some of the questions that have come in, so if you can bear with me I can go ahead and take a look at some of those. Let's see. It's a little bit more difficult to do when you're on your own, but certainly I can give it a quick look. All right.

So there's a question related to PDA, so the Pregnancy Discrimination Act, and whether the PDA protects job positions and benefits in the same manner as FMLA. Okay, good question.

So let me talk about that, because I didn't get into many details around PDA, ADA, FMLA, and some of those complexities. Remember PDA, it is a law, it does require adjustments, modifications like accommodations for workers who are pregnant. Now keep in mind that, in those instances, we are talking about ordinary, average pregnancies where there aren't pregnancy-related complications or impairments. That's -- The PDA is always going to come in when somebody is pregnant, provided the employer's a covered employer. And with that there aren't any specific accommodation requirements, so, for example, if you're looking at leave, for example, that is something that can be provided under PDA. So if somebody needs time off, if you're going to do that, certainly I would say you probably want to treat them similarly as you would someone who is receiving leave as a form of accommodation under ADA or who is taking leave under FMLA. So, whereas the PDA doesn't specify exactly what must be done in terms of job protection or benefits when it comes to a leave-related situation, because it is not a leave law, I would say that's it's important to probably treat people in a similar manner as you would under FMLA. FMLA, of course, requires that you protect the position for that 12-week period and also to maintain health insurance benefits during that period of FMLA leave.

When we look at ADA, just to kind of throw that in there, there's literally just one small portion in the reasonable accommodation guidance that references what employers should consider when it comes to keeping benefits in place, health insurance benefits in place, for ADA. So remember, it still should be job-protected leave. What EEOC says is that the employer should provide benefits in a similar manner as they would for others in a similar protected leave status, basically. So we would say, from a practical standpoint, it makes sense to go ahead and make sure that you're providing those protections, keeping the benefits intact as long as you're able to do that.

Okay, let's see here. There's a question related to the differences between an ESA, or an emotional support animal, and a service animal and the obligations under ADA. I think probably the highest-level point to make here is that the ADA doesn't make a distinction for title I employment purposes between a service animal or an emotional support animal, so that means that for employment purposes, title I of the law, an employer may need to consider allowing access to either type of animal provided it is needed for a disability-related reason. So what I would say is to encourage you to not get too bogged down looking at the difference between the two animals. With an emotional support animal, they're there to provide support, companionship, to address maybe stress- or anxiety-related issues. Service animals are generally trained to perform a specific function for the individual, which is different than an emotional service animal, but keep in mind that both types of animals can be of great benefit to individuals with disabilities who need them. So it is important to consider that.

JAN offers actually a good bit of information around service and emotional support animals, so I encourage you to go to our A to Z section of the AskJAN.org site. Go ahead and search by topic under service animal, and there you'll find some great Q&As on the service animal topic, and also that will link you to some practical information about emotional support animals in the work environment as well. So that is really good, there.

Okay, there's a reference to the example of Ally, and what if her supervision -- supervisor felt she wasn't effectively working remotely during the pandemic?

That's a good issue too, and what I would encourage employers to think about there is address what those issues were. So, you know, were those performance issues addressed along the way? Did we figure out whether or not those issues had anything to do with her disability, her medical condition, or is it just that Ally wasn't a good performer? You can look at all of that, absolutely, in figuring out whether the telework can continue. What I discourage you from doing is don't automatically deny the telework request just on that basis. So, dig a little deeper, have the full conversation, figure out why those performance issues existed, whether there's anything that can be done to improve that performance, and maybe still give it a try. So come back to that and kind of figure things out.

## [Wrap-Up]

Alright, with that, that is about all I can cover, but what I will do is take a look at the remainder of those questions, and I may be able to follow up with everyone after with the follow-up email that comes after the webcast is fully captioned and recorded and available to everyone.

So with that, I would like to thank everyone for attending JAN's "Accommodation and Compliance Considerations: Reproductive Health Conditions." We do encourage you to register for the next JAN webcast, which is related to "Personal Use or Reasonable Accommodation: What's What?" on June 9th, so certainly go to AskJAN.org to register for that event.

We hope you'll share your feedback about today's webcast by completing the evaluation, Please keep the JAN webcast window open when the webcast ends, and that evaluation will pop up in a new window. If you're seeking the CEU approval code, it'll be available after that's completed. Just click on "View your certificate of completion."

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And then finally, if you have any questions about these topics or more, please do give us a call or visit us on the web, use our email, use the live chat feature at AskJAN.org, lots of ways to get in touch with us. So to everyone, I hope this information was helpful. Once again, thank you for attending this JAN Accommodation and Compliance webcast series event, and this concludes today's training.