



**JAN Accommodation & Compliance Series Webcast
“ADA and Beyond Compliance Considerations:
Medical Documentation” (January 11, 2024)
Q&A Responses**

The following questions were submitted by JAN webcast attendees on 01/11/2024. Answers to questions pertinent to the webcast topic are provided by JAN staff to assist employers and others in engaging in the ADA accommodation process. JAN is not a legal service and does not provide legal assistance or advice but can provide information and [resources](#) from the federal agency that enforces Title I of the Americans with Disabilities Act (ADA), the [Equal Employment Opportunity Commission](#) (EEOC). For legal guidance, please contact a qualified legal professional. For accommodation solutions, trusted accommodation process strategies, and practical guidance on the ADA, [contact JAN](#).

1. I have seen a disclosure statement on job applications requiring to state if the applicant has a disability. Is this allowed under ADA, EEOC? and it requires you to be past or present...

Job applicants cannot be required to disclose their disability status when applying for a job but may be invited to *voluntarily* self-identify as an individual with a disability. Covered federal contractor employers are required to invite applicants to voluntarily self-identify under [Section 503 of the Rehabilitation Act](#). Voluntary self-identification of disability is the act of checking a box on a [“Voluntary Self-Identification of Disability” form](#) during the application process, during onboarding at a new company, or at regular intervals when asked by an employer for affirmative action purposes. Completing the Voluntary Self-Identification of Disability form is voluntary and is generally not considered a request for accommodation.

2. What if an employee discloses a disability during the interview stage and wants to discuss needed job mods beforehand?

When an employer reasonably believes that an applicant will need an accommodation to perform the functions of the job, the employer may ask that applicant certain limited

questions. Specifically, the employer may ask whether the applicant needs reasonable accommodation and what type of reasonable accommodation would be needed to perform the functions of the job. The employer could ask these questions if:

- The employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability;
- The employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed to the employer; or
- An applicant has voluntarily disclosed to the employer that they need reasonable accommodation to perform the job.

Discussion in this type of situation is best focused on details about the type of accommodation needed rather than details about the health condition. For more information, read "[Employers' Practical Guide to Reasonable Accommodation During the Hiring Process.](#)"

3. If you don't require medical info to start an accommodation, can you request it after the fact?

In some cases, it is easier for employers to skip a formal assessment of whether a particular person has a disability as defined by the ADA, and just see if they can help the employee. There is no problem with an employer who chooses this approach, to focus on the accommodation for right now. If down the road the employer would like to go back and pursue whether that employee has a disability as defined by the ADA, it is okay to do so. Employers do not lose the right to determine whether an employee who has requested an accommodation has a disability just because the determination wasn't made initially.

4. Shouldn't employers consistently require provider information to avoid discriminatory practices?

The key is considering what is known or documented. Requiring all employees who request accommodations to provide documentation every time an accommodation is requested could be problematic under the ADA. Remember the "job-related and consistent with business necessity" standard that was discussed during the webcast. The ADA allows that, "When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations." (Read questions 6 and 8 in the EEOC

[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA\)](#)

5. Please comment on specifically why direct supervisor should not be contacting healthcare providers and requesting medical information. Thanks

Generally, the task of obtaining specific details regarding an employee's medical condition is best left to an HR professional or designated party responsible for making accommodation decisions. The ADA requires that medical documentation be kept confidential and shared only with those on a need-to-know basis. Among the limited exceptions to the ADA confidentiality requirements is that supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations, but not specific medical details. Supervisors generally will not need to know an employee's specific disability to implement an accommodation. For example, an individual with mental health condition may need accommodations such as schedule modification, additional breaks, and job restructuring. The supervisor probably does not need to know the employee's specific medical condition or limitations to implement these accommodations. In this case, the supervisor may only need to know the employee was approved to receive accommodations (i.e., HR approval) and what accommodations are needed. In rare situations, supervisors may need to know the specific disability so accommodations can be effectively implemented. (Resource: "[Confidentiality of Medical Information Under the ADA](#)")

6. Does this apply to full leave accommodations after FMLA/CFRA is exhausted?

When an employee's FMLA leave (for example) is about to expire and there is *good reason to believe* that additional leave will be needed, a best practice is to notify the employee of the upcoming leave expiration and request information regarding the employee's ability to return to work, including an anticipated date of return. As part of this process, the employee may be informed of the option to engage in a discussion about accommodations under the ADA to assist them in returning to work, or to request additional leave as an ADA accommodation.

Medical information that substantiates the existence of an ADA qualifying disability and need for accommodation may be requested when it is "job-related and consistent with business necessity." Again, we come back to the consideration of what is known or documented and whether currently available information is sufficient for ADA purposes. Sometimes the information provided to grant FMLA (or other) leave will be sufficient for ADA purposes. What may be necessary is information about the accommodation of

leave (e.g., duration of the leave, anticipated date of return, etc.) but not new information about the medical condition. Note: Different facts can change the answer to this type of question.

7. What if there are a ton of questions for the doctor and employer disagrees with multiple doctors?

Various facts can impact the response to this question. Are the questions necessary? Why does the employer disagree with the medical opinions? Is the information that was provided sufficient for ADA purposes? Are the multiple providers' opinions credible? If the information provided is found to be insufficient and the employee has had the opportunity to cure the insufficiency but has not, an employer may be able to require a medical examination with a health care provider of their choosing. According to the EEOC, "An employer should be cautious about relying solely on the opinion of its own health care professional that an employee poses a direct threat where that opinion is contradicted by documentation from the employee's own treating physician, who is knowledgeable about the employee's medical condition and job functions, and/or other objective evidence. In evaluating conflicting medical information, the employer may find it helpful to consider: (1) the area of expertise of each medical professional who has provided information; (2) the kind of information each person providing documentation has about the job's essential functions and the work environment in which they are performed; (3) whether a particular opinion is based on speculation or on current, objectively verifiable information about the risks associated with a particular condition; and, (4) whether the medical opinion is contradicted by information known to or observed by the employer (e.g., information about the employee's actual experience in the job in question or in previous similar jobs). (Read questions 10-12 in [Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA](#))

8. If a candidate asks for a RA supporting the application process, does the company have to say yes? Can an employer ask for medical documentation?

Under the ADA, covered employers must provide reasonable accommodations for qualified applicants and candidates with disabilities upon request, unless doing so would create an undue hardship. Whenever an individual requests an accommodation for the hiring process, the employer has the right to ask for reasonable medical documentation in the same way it is allowed to do so for employee accommodation requests. Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. General rule: Employers

cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate they have an ADA disability and needs the reasonable accommodation requested. Many employers prefer not to have a lot of medical information about an applicant to help avoid the possibility that it will affect their decision making. As a result, many employers opt to streamline this step. For more information, see "[Streamlining the Interactive Process When Accommodating Job Applicants](#)," "[Employers' Practical Guide to Reasonable Accommodation During the Hiring Process](#)," and "[Sample Medical Inquiry Form in Response to an Accommodation Request for the Hiring Process](#)."

9. If an employee provides insufficient documentation from a provider not specialized in that specific area, does the employer need to pay for the employee to see a specialty provider?

The EEOC says, "The ADA does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his/her treating physician (or other health care professional) to substantiate that s/he has an ADA disability and needs a reasonable accommodation. However, if an individual provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.(33) Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.(34) If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s)." (Read question 7 in [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#))

10. So a doctor cannot say 15% data entry is recommended? If the job is 75% data entry?

A health care provider can make a medical recommendation that an individual perform data entry tasks 15% of the time. This is their medical opinion of what the patient/employee can do based on a medical assessment. The employer may then engage in the accommodation process with the employee to explore accommodations

and determine whether a reasonable accommodation can be provided to enable the employee to perform the essential functions of the position.

11. What do you recommend when the duration of an accommodation request is not determined by a provider through documentation.

Consider requesting additional information if it is necessary. Employers may ask for information about the anticipated duration for the requested accommodation. This information may be obtained in various ways. For example, have a conversation with the employee, request a note from the health care provider, have an authorized conversation with the health care provider, etc. If the provider just doesn't know the duration of the need for the accommodation, maybe check in with the employee periodically and set a reasonable amount of time to check back with the provider. The duty to provide a needed reasonable accommodation exists even if the health care provider isn't sure of the duration.

12. If an employee's explanation for why a proposed accommodation is not effective is confusing/contradictory to other scenarios, is it appropriate to ask a medical provider for their professional opinion on what it is about this particular patient's specific medical situation that makes the proposed option ineffective?

Employers are not prohibited from seeking clarification/additional information regarding why a proposed accommodation would be ineffective. Sometimes a health care provider or other appropriate professional will have an opinion, but not always. The individual with the disability is often the best source of information regarding whether and why any particular accommodation will be effective or ineffective.

13. If an employee is asking for time off work for physical therapy because they cannot work it into their work schedule, can we ask for a copy of their physical therapy schedule?

First, consider whether the request is covered under a current policy that allows employees to take time off work. In this case, employees with disabilities should not need to jump through hoops to receive the time off. If the employee is asking for time off from work that is *not* covered under current policy, then consider what information is necessary to accommodate the request. It may be reasonable to get an approximation on how many days per week the employee needs to attend treatment, enabling the employer to make an informed decision, but asking for a detailed schedule may be unnecessary for ADA purposes. As a practice, employers may request that employees

attempt to schedule appointments outside of their work schedule, but it's not always possible. It's not clear that employers can *insist* that employees schedule appointments outside of their work schedule so while it's okay to ask employees to do so, employers might want to check with legal before requiring it, even if it's possible for the employee to do.

14. What if the doctor noted that the employee two days max a week? Can the employee extend his/her own time.

Assuming this is related to an ADA accommodation, if it's reasonable to extend the time then additional medical documentation may not be needed. But, under the ADA if the documentation doesn't support the requested accommodation an employer can probably ask for sufficient documentation to support the request.

15. EE with long covid has been receiving several accommodations, such as an office. How do I know if EE no longer needs the accommodation if it is recommended I do not request an update.

Consider having an open dialogue with the employee. Discussion may include questions like: Is the accommodation working? Is anything additional or different needed to support you in performing job duties, or meeting standards? Is there any change in your need for accommodation? In some situations, discussion may lead to a need to request updated medical information (e.g., employee indicates a change in medical condition or limitations), but this will be rare. (Resource: "[Monitoring Reasonable Accommodations](#)")

16. Is the problem *requiring* a standard form or just having one to facilitate the process? I find that not having a standard form can lead to a lot of unnecessary back and forth to obtain all of the information needed to assess the request

Because standardized forms may include medical questions beyond what's allowed for any given situation, you'll want to use caution *requiring* all employees who request accommodations to complete standard forms. Consider reviewing the form before asking that it be completed and cross out any questions that may be inappropriate in any given situation (e.g., information you already know). For more information see "[The Use of Sample Forms under the ADA.](#)"

17. When an individual is given a form by their employer to have the provider fill out and to then have the employee return to the employer, does the employer have an employee sign form saying they give permission for the provider to release to the employer? It seems like this would be helpful to protect employers should employees deny that they gave that access to employers in the future.

This type of authorization is not required *when the employee is tasked with obtaining the documentation on their own* (e.g., employee submits to provider, obtains information while attending appointment, etc.). The employee is directly obtaining the documentation from the health care provider. However, authorization of this nature is necessary for a health care provider to directly share a patient's personal health information with their employer. ([HIPAA Privacy Rule](#))

18. We talk on the role as the employer for collecting medical info by getting a release and sending a letter directly to the medical provider. Would you recommend putting that on the employee as a best practice instead?

The ADA does not micromanage the medical documentation process. To avoid releases and HIPAA rules, an employer could give the employee a list of questions and/or a customized form to complete with their health care provider and return in a timely manner. When documentation is necessary, the employee has the initial responsibility to obtain and provide documentation to substantiate the accommodation request. (Resources: "[A to Z: Medical Exams and Inquiries](#)" and "[HIPAA and Consent to Obtain Medical Information for ADA Purposes](#)")

19. We often get medical that a person's "functional limitation" is can't work due to flare ups and requires a lot of time off of work i.e. 2-3 days per week, etc. Could you comment or give advice for managing these?

Various facts can impact the answer to this type of situation. Under the ADA, an employer could ask for more details on the limitations to determine if it's possible to reasonably accommodate the employee at the worksite. According to the EEOC, in lieu of providing leave as an accommodation, an employer may provide a reasonable accommodation that requires an employee to remain on the job (e.g., reallocation of marginal functions or temporary transfer) as long as it does not interfere with the ability to address their medical needs. Read question 20 in [Reasonable Accommodation and Undue Hardship under the ADA](#).

20. What if we provide a deadline and close it if it's not met (and the employee never responds), but tell the employee they can reapply for accommodation once the documentation is received? Leaving it open indefinitely doesn't seem to help anyone either

If the deadline is not met (even after a reminder), consider issuing a notice that explains that sufficient medical information/completed paperwork was not received and is necessary to proceed with the accommodation process. Explain why the information is needed and what information is necessary. Consider extending the deadline for an appropriate number of days given the specific circumstances (e.g., individual has an appointment with his or her healthcare provider after the specified deadline). If an accommodation cannot be provided without the requested medical information because the disability is not known or obvious, it is possible to close or deny a request for accommodation due to failure to receive the necessary medical information. Notify the employee, in writing, why the request was closed or denied. The responsibility will fall back on the employee to provide the necessary information to move forward. If the accommodation is still needed, they will likely return to the accommodation process. (Resource: [“Avoiding “The Waiting Place” After Requesting Medical Information”](#))

21. You mention non-traditional providers like chiropractors. I think those providers require licensure in most states. You also mention acupuncturists, I think. I do not think that is always a licensed or certified practice in every state. I would have concerns about the clinical credibility of unlicensed or non-certified providers. What do y'all think?

Because the appropriate professional in any situation will depend on the medical condition and limitations it imposes, a non-traditional health care provider who is knowledgeable about and has expertise in an individual's medical condition and limitations can be an appropriate professional to provide documentation for ADA purposes. Licensure may factor into deciding whether any particular professional is qualified to treat the individual and provide the information. For example, if an employee has a back impairment and a chiropractor is recommending periodic breaks for stretches and rest, the chiropractor may be the appropriate professional to provide documentation. Chiropractors are trained to manage back impairments and their symptoms. In contrast, if a chiropractor is providing medical documentation for someone with a mental health condition, something a chiropractor is typically not trained to diagnosis or treat, the employer may have legitimate questions about the documentation. In this case, an employer may want to find out if the chiropractor is qualified to diagnose and treat mental health conditions (Resource: [“Who Can Provide Medical Documentation for ADA Purposes?”](#))

22. Does EEOC require employers to provide accommodation pending medical documentation from the employee? ... What should employers do while awaiting medical documentation?

According to the EEOC, “While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of “disability,”⁽²⁰⁾ a prerequisite for the individual to be entitled to a reasonable accommodation.” Employers may request sufficient documentation when the disability and/or need for accommodation is not known or obvious but are not required to request documentation to provide an accommodation. Read question 1 in [Reasonable Accommodation and Undue Hardship under the ADA](#).

In *most situations*, an employee should be permitted to continue working during the interactive process, perhaps with temporary accommodations in place until the process is complete. However, when there is a direct threat, the employee cannot safely perform job functions, the employee cannot perform essential functions until an accommodation is provided, or while an employer awaits medical documentation regarding whether an employee is able to continue performing job functions safely, *then* leave may need to be considered until sufficient documentation is available. (Resource: “[Accommodation and Compliance Series: Temporary or Trial Accommodations](#)”)

23. Is there a process to handle an accommodation request for employees working through a temporary agency?

See “[Practical Guidance on Contingent Workers and the ADA](#).”

24. If leave of absence is the proposed accommodation, is it reasonable for the employer to request updated progress/work status notes every 3 months to continue to engage in the interactive process?

This will depend on the facts of the situation and what is known about the health condition and leave duration. For example, if it is known that 6 months of leave is needed and the employer approved the leave as an accommodation, there may not be a reason that is “job-related and consistent with business necessity” to request new medical documentation/a work status note at the 3-month mark. (Resource: “[Recertifying the Ongoing Need for Accommodation](#)”)

25. In terms of asking for updated documentation, if the document states diagnosis and makes recommendations for how to support the employee but also includes a duration of for example, 6 months. If after providing temporary accommodations, is it fair to ask for updated documentation to help identify if the duration is now longer and/or no longer needed?

When the original medical documentation or request for accommodation indicates a duration related to the medical condition/limitations/need for accommodation, an employer may have a valid reason to request information about whether the accommodation is still needed, but not necessarily to re-establish the existence of the medical condition. (Resource: [“Recertifying the Ongoing Need for Accommodation”](#))

26. If the employee refuses to participate in the process or does not provide information after multiple requests, can the employer require the employee to meet the job essential functions of the job?

According to the EEOC, “If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation.” Employers are not required to disregard, change, or eliminate performance standards as reasonable accommodation and can expect that employees perform the essential duties of the position (with/without accommodation) to be considered qualified. ([Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#) and [Applying Performance and Conduct Standards to Employees with Disabilities](#))

27. What can be done if the authenticity of medical documentation provided directly from an employee (not obtained directly from a medical provider) is in question?

If necessary, consider contacting the health care provider directly to authenticate the information. If it is found not to be authentic, the information may not be sufficient. See the following excerpt from [Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA](#):

“Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.(58) Documentation also might be insufficient where, for example: (1) the health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it; (2) the information does not specify the functional limitations due to the

disability; or, (3) other factors indicate that the information provided is not credible or is fraudulent. If an employee provides insufficient documentation, an employer does not have to provide reasonable accommodation until sufficient documentation is provided.”

28. What are your recommendations, if any, to combined medical request forms. For example, a combined medical request form for ADA request and the new PWFA law request?

JAN cannot make a recommendation regarding the best approach but consider using some caution due to differing medical inquiry rules. The proposed regulations to implement the PWFA indicate that employers are more limited in requesting documentation to provide accommodations requested due to pregnancy and related medical conditions. This is a key difference between the PWFA and the ADA. Employers will sometimes be permitted to ask for medical documentation to support an accommodation request made under the PWFA but only when it is reasonable under the circumstances for the employer to determine whether to grant the accommodation.

The PWFA proposed regulations state, "Under the proposed rule, a covered entity may require documentation only if it is reasonable to do so under the circumstances for the covered entity to decide whether to grant the accommodation. The regulation provides several examples of when it would not be reasonable for the employer to require documentation..." Read section 1636.3(I), 1636.3(I)(1), and 1636.3(I)(2) in the (proposed) [Regulations To Implement the Pregnant Workers Fairness Act](#).

*When this answer was drafted, 01/26/2024, the PWFA regulations were not final. Check the Federal Register for final PWFA regulations.

29. Any recommendations for requests for ergonomic equipment such as standing desks, ergonomic chairs? Is it ok to request medical documentation for those types of requests?

Consider whether current policy covers the request. For example, if the ergonomic equipment is something any employee can request and be provided, an employer should not require an employee with a disability to jump through *unnecessary hoops* to provide medical information when employees without disabilities are not required to provide it. If an employee indicates that an ergonomic chair etc., is needed due to a medical condition, and this equipment is not ordinarily provided to all employees as a benefit of employment, the employer can ask the employee to provide medical documentation to support the request, when the disability or need for the equipment is not apparent.

While a request for equipment, such as an ergonomic chair, can be straightforward, there may be other factors for an employer to consider if experiencing an increase in accommodation requests. Questions to consider include: Would it be beneficial to have ergonomic assessments completed for all employees on a regular basis as a benefit of employment? Is it time to update office furniture and get rid of chairs that have been used for years? Is it necessary to treat all requests for ergonomic chairs as accommodation requests? Or can there be a policy around requests for chairs that offers updated equipment as a benefit of employment to all employees? Some employers find that taking proactive measures can not only help to prevent workplace injuries, but also streamline requests for equipment that might have otherwise gone through the general ADA process. Of course, what works for one employer may not for another. But keeping an open mind about changes that could be made in policies and procedures could be beneficial for both employees and those in charge of handling accommodation requests. (Resources: "[Best Practices for Addressing Requests for Ergonomic Chairs](#)" and "[Addressing Requests for Sit/Stand Workstations](#)")

30. What is the scope of what constitutes medical documentation? Is it any documentation addressing an employee's job limitations, work restrictions or accommodations under the ADA?

The resource "[Medical Inquiry in Response to an Accommodation Request](#)" discusses the scope of medical inquiries allowed in response to an accommodation request and provides a sample medical inquiry form that can be used as a starting point when an employee requests a reasonable accommodation.

According to the EEOC, "Documentation is sufficient if it: (1) describes the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities; and, (2) substantiates why the requested reasonable accommodation is needed." ([Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA](#))

31. Do you have any examples of pre-employment RA?

The following resources from AskJAN.org for [Employers](#) may be useful:

- [Employers' Practical Guide to Reasonable Accommodation During the Hiring Process](#)
- [Accommodation Scenarios for the Interviewing Process](#)

- [Employment Testing and the ADA](#)
- [Finding an Interpreter for an Interview](#)
- [Hiring Process Reasonable Accommodation Flowchart](#)
- [Incorporate Reasonable Accommodation Practices into your Onboarding Process](#)
- [Streamlining the Interactive Process When Accommodating Job Applicants](#)
- [Testing Accommodations](#)

32. How can we effectively address the topic of recertification when we have already provided the necessary documentation, but the employer insists on requesting it again?

These resources may help:

[“Dealing with Improper Requests for Medical Documentation from an Employer”](#)

[“Recertifying the Ongoing Need for Accommodation”](#)

33. Explain the social model of RA

The social model is based on how well someone fits into the environment, meaning disability is believed to be a result of a mismatch between the person and their environment and that the environment creates the barriers (e.g., physical and/or social), not the disability. Under the social model of disability, asking for what is needed to do one’s best work would involve explaining that the resources/change/accommodation etc., would make the work more accessible to them without focusing on the medical reason. Contrast this to the medical model which emphasizes that people are disabled by their impairments or differences. It focuses on formal diagnoses and treatment and proof of disability.

This topic was presented during the webcast because many employers require medical documentation as a prerequisite to providing accommodations. We have heard that some employers are moving away from requiring medical documentation and integrating disability inclusive practices (e.g., flexible work arrangements, telework) into policies and programs so there is no need to go through a formal accommodation process for employees to have what they need to be their best at work. Current EEOC guidance allows employers to request documentation if the disability or the need for accommodation is not known, but it is possible to have an accommodation process that accepts individuals’ assessments of their disabilities and defers to their accommodation preferences, when reasonable and not a hardship.

34. With the new PWFA, can you request medical documentation for postpartum medical conditions?

The proposed regulations to implement the PWFA indicate that employers are more limited in requesting documentation to provide accommodations requested due to pregnancy and related medical conditions. This is a key difference between the PWFA and the ADA. Employers will sometimes be permitted to ask for medical documentation to support an accommodation request made under the PWFA but only when it is reasonable under the circumstances for the employer to determine whether to grant the accommodation.

The PWFA proposed regulations state, "Under the proposed rule, a covered entity may require documentation only if it is reasonable to do so under the circumstances for the covered entity to decide whether to grant the accommodation. The regulation provides several examples of when it would not be reasonable for the employer to require documentation..." Read section 1636.3(l), 1636.3(l)(1), and 1636.3(l)(2) in the (proposed) [Regulations To Implement the Pregnant Workers Fairness Act](#).

The [PWFA proposed regulations](#) do include an example related to your question: "An employee who requests an accommodation to attend therapy appointments for postpartum depression has a medical condition related to pregnancy (postpartum depression) and is obtaining health care for the related medical condition."

***When this answer was drafted, 01/26/2024, the PWFA regulations were not final. Check the Federal Register for final PWFA regulations.**

35. Is there criteria on how long an employer should hold onto the medical documentation?

Generally, employment recordkeeping requirements vary based on the type of employer and the information obtained and stored. Disability-related information used for ADA purposes, such as written requests for accommodation, medical information obtained to substantiate an employee's disability, and other information gathered as part of the interactive process, must be kept in compliance with the recordkeeping regulations imposed on ADA-covered entities under [29 CFR Part 1602](#). These recordkeeping and reporting regulations are enforced by the federal Equal Employment Opportunity Commission (EEOC). 29 CFR Part 1602 states that all personnel and employment records made or used by private employers – including requests for reasonable accommodation – must be preserved for one year from the date of making the record or

the personnel action involved, whichever occurs later. (Resource: "[Recordkeeping Requirements and the ADA](#)")

36. If the employee is about to miss the deadline to submit documentation, does the extension require additional paperwork? How does that process work?

The ADA doesn't micromanage the medical documentation process so employers may decide whether and how to implement a documentation extension. Consider communicating with the employee shortly before the deadline (e.g., five days) to remind the employee that the deadline to provide the requested information is approaching. If the deadline is not met (even after a reminder), maybe issue a notice that explains that sufficient medical information/completed paperwork was not received and is necessary to proceed with the interactive process. Explain why and what information is necessary. Consider extending the deadline for an appropriate number of days given the specific circumstances (e.g., individual has an appointment with his or her healthcare provider after the specified deadline). (Resource: "[Avoiding "The Waiting Place" After Requesting Medical Information](#)")

37. You stated it is not a healthcare provider's role to recommend accommodations, but that seems to be the primary goal on the side of the healthcare professional. Should the documentation only include limitations and the employer is the one that decides necessary accommodations?

Health care providers can play a key role in the success of workplace accommodations by providing sufficient medical documentation in support of a patient's accommodation request. Their role is to consider the individual's specific abilities and limitations in regard to specific job demands and to provide information to support the accommodation process (e.g., document the disability, explain functional limitations, etc.). A medical professional may offer accommodation ideas they and their patient have discussed but they are not responsible for making employment decisions or deciding whether it is possible to make a reasonable accommodation for a person with a disability. That responsibility lies with the employer.

38. Do you have resources that help evaluate when an accommodation is becoming unreasonable and causing undue hardship?

These EEOC resources provide helpful information regarding undue hardship:

[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)

[Employer-Provided Leave and the Americans with Disabilities Act](#)

[Applying Performance and Conduct Standards to Employees with Disabilities](#)

39. Can an employer deny a job coach as a reasonable accommodation claiming it's a safety hazard in their facility even if the job coach is willing to become trained? Can the employer require medical documentation for someone who wants to have a job coach as a reasonable accommodation? ... We have a person that has requested a job coach be provided. The hiring facility is a government does not allow outside non government employees on site. is this allowed under the ADA to not allow a job coach on a job site

Ultimately, an employer may decide whether a job coach can be provided as a reasonable accommodation. Various facts could impact the situation. JAN can assist with this type of situation on an individual basis. These resources may be useful:

[“A to Z: Job Coaches”](#)

[“Job Coaches and Support People for Individuals with Intellectual Disabilities”](#)

Medical information that substantiates the existence of an ADA qualifying disability and need for accommodation may be requested when it is “job-related and consistent with business necessity.” (Resource: [“A to Z” Medical Exams and Inquiries](#))

40. Can we review accommodations periodically to ensure that they are effective for the employee and meeting the needs of the organization? We would not be asking for additional medicals or to reapply. ... When it comes to re-evaluating an accommodation, is it an okay practice to make certain accommodations temporary (i.e. remote work) to also verify an accommodation is still reasonable and does not cause undue hardship, given the changing business needs of the accommodating department?

Because changes occur, employers may need to periodically check on the ongoing effectiveness and reasonableness of accommodations. This is about monitoring accommodations. (Resource: [“Monitoring Reasonable Accommodations”](#))

41. Can you ever bring up what the employee does in their personal time in relation to the medical information? Example - employee frequently flies across country, but indicates cannot come into the office due to risk of COVID exposure, etc.

Under the ADA, it might be appropriate to ask an employee how they do things off the job if the goal is to explore potential accommodations that could work on the job as well. However, employers should be aware that privacy laws might restrict them from asking employees about their personal lives or using methods such as social media to gather information. Employers may want to check with their legal counsel.

42. I work for a medical provider and we provide letters of support for accommodation that follow EEOC guidance on medical documentation. However, employers still ask us to complete forms. How do we handle this

There is not a perfect solution but if the information provided via a support letter would be considered [sufficient by EEOC's standards](#), the medical provider could perhaps note the effort to meet this standard in their documentation and request that the employer accept this alternative form of medical documentation and information. Employers may still insist on receiving completed forms. When a medical provider does not complete these forms, this can sometimes prolong the accommodation process and/or prevent a qualified employee from receiving accommodation. This resource may help: "[Practical Guidance for Medical Professionals: Providing Sufficient Medical Documentation in Support of a Patient's Accommodation Request](#)."

43. Can you respond to a related question? What do you feel about an employer asking for intermittent FMLA update every 6 months, when it is a chronic condition & will never go away? It costs me \$ every time I get FMLA paperwork filled out. It is their policy if FMLA is used within the last 6 months.

The following US DOL Wage and Hour Division fact sheet offers information that may help: "[Fact Sheet #28G: Medical Certification under the Family and Medical Leave Act](#)." See also, "[Family and Medical Leave Act Employee Guide](#)." For more information, you may contact the U.S. Department of Labor (DOL), Wage and Hour Division (WHD) at 866-487-9243

44. How do we go about, we received documentation of verified medical condition, request they want is something the supervisor/program does not want to allow, alternative accommodations are being made to accommodate and meet limitations and restrictions, but the Employee is saying its not

enough and reiterating their original request. Can we ask for more clarification?

There isn't a specific way that employers are required to handle this type of situation, but it may be helpful to return to the accommodation process to gather information about why the employee believes the accommodations provided are ineffective. The employer can ask why the alternative accommodation isn't overcoming the employee's limitations and enabling them to perform the job duties. This information will help the employer better understand the situation. Seek information about how the accommodation the employee requested will be more effective. For more information, read question 9 (Is an employer required to provide the reasonable accommodation that the individual wants?) in [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#).

45. If there is a mandatory probationary and training process an employee must serve and has requested an ADA to remote work due to their medical diagnosis, is the employer required to accommodate if there is a work related barrier to report in person during that probationary timeframe?

Reasonable accommodations must be provided to qualified employees even when considered "probationary." To enable the employee to access the required training, the employer may need to provide accommodations, but it is up to the employer to determine what is reasonable—think feasible, possible to provide without causing undue hardship. If it is the employer's assessment that onsite training is necessary, then consider requesting information about whether the employee can attend the onsite training for the temporary period with *alternative effective accommodations*. JAN staff can discuss this situation with you and perhaps offer alternative solutions for consideration. [Contact JAN](#).

46. How do you suggest handling an employee's request for reassignment and also provided supportive med doc to that regard because of inability to perform within their work environment in conjunction with their medical disability. Reassignment is the accommodation of last resort - how do you suggest handling that? Thanks! ... Sometimes we receive documentation from an employee's medical provider stating that the employee cannot perform the essential functions with or without reasonable accommodation. At this point, it's our understanding that the employee cannot simply withdraw their accommodation request. Accordingly, we typically explore the reasonable accommodation of job reassignment at this stage, which can sometimes be

upsetting to the employee. What other suggestions do you have in this scenario?

According to the EEOC, this type of reasonable accommodation is to be provided to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, *or when both the employer and the employee voluntarily agree that reassignment is preferable to remaining in the current position with reasonable accommodation.* Read the REASSIGNMENT section in [Reasonable Accommodation and Undue Hardship Under the ADA](#).

Various facts could impact this type of situation. One consideration is to ensure that the health care provider has enough information to make an informed decision about whether the employee can perform the job duties w/wo accommodation. Are they knowledgeable about the job duties? Has the employer proposed possible accommodations for the health care provider's consideration? If it is believed the health care provider has made an informed decision, then reassignment is a likely next step in the accommodation process. The EEOC says, "The ADA specifically lists "reassignment to a vacant position" as a form of reasonable accommodation.⁽⁷⁶⁾ This type of reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.⁽⁷⁷⁾" ([Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#))

For more information, this resource may help: "[A to Z: Reassignment](#)." JAN staff can discuss this type of situation with you. [Contact JAN](#).