# Supports and Services: Accommodations with a Heartbeat

## [Introduction]

**TRACIE DeFREITAS:**

Welcome, everyone! Thanks for joining us today for this JAN Accommodation and Compliance Series webcast, "Supports and Services: Accommodations with a Heartbeat." My name is Tracie DeFreitas. I'm the Director of Training, Services, and Outreach for JAN and will mostly be our moderator today.

This JAN training centers around accommodations with a heartbeat. Today we're going to cover the ins and outs of implementing supports and services as job accommodations. Heartbeat accommodations involve support provided by a human or an animal and often includes solutions like a service animal, a job coach, an interpreter, but can also be accommodations like an emotional support animal, a mentor, a support person or personal assistance services.

We're going to learn a lot today from some of my favorite colleagues: Lisa Mathess, Lead Consultant and ADA Specialist, and she's a lead on JAN's motor team; and James Potts, Senior Consultant on JAN's Cognitive/Neurological team. Thank you both for sharing your expertise with us today. We appreciate it.

But first, let's get started with the necessary housekeeping items.

First, if you experience technical difficulties during the webcast, please use the question-and-answer pod located at the bottom of your screen to connect with our tech team. You may also contact JAN at 800-526-7234 or use the Live Chat at AskJAN.org.

We do offer an FAQ that might answer some of your questions. See the log-in email that you received today for the FAQ link. You can also find it on the AskJAN.org webcast registration page.

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

The link to download the PowerPoint slides for this webcast can be found in the log-in email that you received today. The link is also posted in the chat and can be found at AskJAN.org on the web page related to training -- -- the webcast -- the webcast page on the registration page -- so if you go there you can find the link to the PowerPoint.

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

And this presentation is, of course, being recorded and will eventually be available on the AskJAN.org site and our YouTube channel.

And finally, at the end of the webcast, we would like to know your feedback, so please do complete the evaluation.

If you're seeking a CEU for the training, the approval code will be provided after the webcast evaluation is completed.

So I mentioned earlier that we're going to cover the ins and outs of implementing supports and services as job accommodations. Our talking points today will center around possible job accommodation solutions that involve humans or animals, living, breathing accommodations with a heartbeat, basically. This includes service and emotional support animals, job coaches, support persons and mentors, personal assistance services, and sign language interpreters, as well. Of course, there are other accommodation solutions of this nature, but today we'll be focusing on these specific accommodations.

With each topic, we'll ask for your questions, and you're welcome to use that Q&A option at any time to submit but we'll, of course, prompt you as well. And we'll address some questions during the Q&A breaks and then at the end of the presentation, time permitting.

And now I'm going to turn the training over to Lisa to get us started with service animals. Lisa?

## [Service Animals]

**LISA MATHESS:**

All right, thanks, Tracie, So looking at service animals, our first heartbeat accommodation. So we don't have any formal guidelines or guidance for service animals in that employment realm, that Title I of the Americans with Disabilities Act. So what this means for individuals who use service animals or emotional support animals, they should ask their employer whether it's okay to bring the animal to work, rather than just making the assumption it's okay.

What this means for employers is that they can approach these types of requests as you would any other accommodation request. We never want to have people with disabilities jump through additional hoops, so if you're one of those worksites that let animals on-site, let colleagues bring their pets, then we should permit those service animals and those emotional support animals as well. But if you're an employer that has a no-animal policy, then we might be modifying that policy to accommodate a person with a disability.

And as always, I do want to mention that JAN can only weigh in on ADA federal obligations, but we do want to be mindful of those state laws that may offer employees greater protections when it comes to service animals.

All right. The next slide, we're going to be looking at service animals in the workplace, and what is a traditional service animal these days?

We get questions about emotional support animals; service animals that alert people to high stress levels, low blood sugar, seizures; and we also have service animals to address post-traumatic stress disorder triggers. There's also service animals that help with balance and mobility issues, and there's animals that can retrieve objects if you happen to be in a wheelchair for example. And then for the deaf and hard of hearing folks, we often see service animals that detect and alert those folks of sounds in their surroundings. So that could be a fire alarm, or it could be a timer if you're, like, a research assistant in a lab. So there's a variety of service animals for a variety of settings and needs.

Okay, so looking at slide 7, what do we see when it comes to service animals in general? The access rights under Title I of the ADA, again, that employment realm, I'm going to put a pin in that until the next slide, so let's jump to the bullet No. 2, supporting the accommodation with medical information.

So like I mentioned, there's no specific guidelines in the ADA for processing a request for a service animal in the workplace, so it's really not clear what information employers can ask in relation to the service animal. So as far as medical documentation goes, under the ADA, employers do have a right to request reasonable documentation that an accommodation is needed because of an employee's disability.

Documentation about that employee's disability and those functional limitations, most times that does come from a treating healthcare provider or primary care physician. But what about that documentation related to the service animal? In some cases, the doctor wasn't even involved in the acquisition or training of these service animals, so they really don't have much input when it comes to the animal itself. So, in that case, documentation about the service animal may need to come from another source, for example it could come from whomever trained the service animal. So here the goal of the employer is to really understand what the service animal is needed for, and what it does for the person.

The employer also has the right to require that the service animal be trained to act appropriately in a workplace and be capable of functioning in that work environment specifically. An employee who trains their own service animal could be asked to document or demonstrate that the service animal is in fact appropriately trained and will not cause a disruption to the workplace.

Okay, so sticking with the supporting information. We often get calls about employers wanting certification or formal training paperwork, and those things don't automatically mean that the animal is safer or it's truly certified or it's truly trained. A lot of times those are just paperwork measures. So this is where JAN Consultants are going to recommend a temporary or a trial accommodation for the service animal to show that the dog is in fact appropriately behaved in that work environment and doesn't cause that disruption. We do have a resource on the JAN web page about providing tips and tricks for those temporary accommodations. I think it's important to document that it is in fact temporary. And we do have resources that we can link later in the presentation.

Looking at coworker interaction. Employers are often worried that there's going to be a colleague or a coworker who's allergic to your service animal, or perhaps someone has a phobia or a fear of dogs. So they often want to notify those colleagues before the service animal arrives on-site. So coworkers may need to be educated about the interaction and appropriateness of interacting with service animals, so they're not interfering with the service animal that truly is there to work.

But, at the same time, ADA does have strict medical confidentiality rules that restrict employers from disclosing information to coworkers about an employee's disability and accommodations. So it might not be better business practice to tell coworkers that an employee is going to be using a service animal, explicitly. If the employee, themselves, wants to disclose and explain, "Yes, this is a service animal. This is needed because of my disability," you can certainly allow them the floor to do that. And that's fine. But you don't want to be disclosing all that personal information on behalf of the employee unnecessarily.

All right. So, next slide, what qualifies as a service animal? Like, I mentioned, we're dealing with Title I, the employment realm, which could include state and local government entities. There's not a formal definition for a service animal under Title I, so there's always confusion, because Title II and Title III, the public access, public sector, there is a formal guideline and definition of what constitutes a service animal. They define service animals as dogs that are trained to do work or perform a task for a person with a disability. The definition specifically states that emotional support animals, which provide comfort just by being with the person, those are specifically excluded from Title II and III. So while Title II and III has that formal definition, Title I doesn't, so that definition is not going to apply to the employment realm, So since there's not a definition under Title I of what constitutes a service animal, and there's no exclusion to emotional support animals, there's a very strong argument that allowing an employee to use emotional support animal or a service animal could be a reasonable accommodation that an employer must consider.

All right, are we opening up the floor to questions at this point?

**TRACIE DeFREITAS:**

Yep, we certainly can! So if you have any questions right now around the topic of service animals, you can certainly go ahead and start sending those in. We'll try to get to a few of them, and if not we'll certainly wait until the end. If you come in a little late with those, no problem at all. In the meantime, let's see -- I think I do have a question here for you, Lisa.

**LISA MATHESS:**

I was going to say, service animals are a hot button under ADA so it would be shocking if there weren't any questions. Right? Well, I'm going to start with this one.

**LISA MATHESS:**

They're holding out for the emotional support sector.

**TRACIE DeFREITAS:**

How about this one: Can employers opt to provide other accommodations instead of allowing an employee to use a service animal in the workplace?

**LISA MATHESS:**

Yeah, and we get that question a lot. And long of the short -- yes. Under ADA we know that an employer can choose among effective options, the key word being "effective." Service animals can open up kind of a can of worms, because while an employer shouldn't dictate or control an employee's medical treatment, these service animals are often a piece of our medical treatment as employees. So it definitely brings up other tricky issues if you're going to opt for an alternative accommodation, because that service animal might be helping with personal medical issues, they might be providing support that other types of accommodations can't provide, such as the sense of security, independence, and confidence.

So we know under the ADA that, while we can choose among effective options, it makes business sense to give employees their preferred accommodation. We all like to pick out what we get at work, we all like to pick out our accommodations, so it just makes sense, and if I were talking to an individual that wants to request their service animal in the workplace, I would tell them make the argument of why the service animal is kind of the premier accommodation. What it does for you that's effective, that option B, C, and D wouldn't be effective in meeting those disability-related needs.

And whenever we're kind of assessing if an accommodation -- if a service animal can be a reasonable accommodation, I can't emphasize that trial period. Let's try it for 30, 60, 90 days and see if it works for both the employer and the individual with a disability.

**TRACIE DeFREITAS:**

That's real helpful. As you might expect, they have come pouring in. So, let me just throw a couple at you, and then we'll go ahead and move on to the next segment. Here's one: How do you address other employees who have a fear of or allergies to dogs? What about those types of situations?

**LISA MATHESS:**

Yeah, this was definitely another common one. and really, us as employers, we're now going to open up dual-accommodation interactive processes. We're going to try to accommodate the person with the dog and see what we can do, while also engaging with the person that now has allergies because of the dog and see what they need. And a lot of times, common solutions are restricting paths of travel, so they're not using the same hallway and entry paths to the office. Getting air purifiers, private office, perhaps a modified schedule so there's not a bunch of overlap of the service dog and the person with the allergies, and we do have a resource on the JAN page about accommodating allergies in the workplace specific to service dogs, but really just engaging with both parties about what they need.

**TRACIE DeFREITAS:**

Okay, very good. I'll throw one more out there, and then we'll leave some others for the end of the presentation, but how do you prep employees for the presence of a service animal without disclosing that the individual's in need of one?

**LISA MATHESS:**

I would just do kind of general statements of "Hey, this could be expected at the work site. We're not to engage or communicate with it because the dog is working." I think not bringing up, "Oh, you know, Lisa has MS, and that's why she has the dog onsite." That's an unnecessary disclosure. So keeping it very fact-specific, very general, I think is probably better business practice. Do you have anything to add to that, James? You deal with a lot of service animal stuff.

**JAMES POTTS:**

No, I thought that was good. You gave a lot of really good information about service animal stuff. I mean, it doesn't even have to be working; it could be "There's a dog on the premises, leave it alone." An employer has the right to kind of dictate the conduct in the workplace. And then I would take it back to what you said, really engage the employee about what they want. Maybe they have a preference. Maybe it would cause a little less side-eye or uncomfortable with it if they have the opportunity to let their coworkers know and kind of have that disclosure on their own. So either of those could be appropriate. But you definitely are right about confidentiality. You don't want to disclose that they have a medical condition or need for accommodation.

**LISA MATHESS:**

Yeah, as long as there's no coercion by the employer, individuals with disabilities can educate the staff as much as they want and they're willing to. You don't want to kind of bully them into that disclosure, But a lot of individuals, you know, take pride, and that's part of their personality, and so I think opening up the stage and letting them know they can have that time to educate their colleagues, I think that can create a more inclusive and diverse workplace for everybody.

**TRACIE DeFREITAS:**

All right, good discussion. We have lots more, but we'll go ahead and jump into the next topic, because a lot of the questions are coming in are related to the next topic. So I think, James, we're going to turn it over to you now; right?

## [Emotional Support Animals]

**JAMES POTTS:**

Yep, I think so. All right. Thanks again, Lisa, you had a lot of good points there. Some of this I'm probably going to reiterate, say it slightly different, but hopefully will hit some points home. Just to start off, what is an emotional support animal? Is it a type of service animal? Is it a pet? Is it something in between? Well, we just found out. It's not a service animal. A service animal is individually trained to do a specific job or task and that job or task, and that job or task is to help mitigate a disability-related issue. An emotional support animal, it's more instinctual, it's more because of the relationship you that have with your animal that it is benefiting you.

Now I will say there is kind of a component with emotional support animal, or at least that label. typically you have to have a mental health impairment to want to label your dog or pet an emotional support animal. Usually you're giving it that label because you want to take it places with you, either to work or public access. But in general, the big difference between an emotional support animal is training. They are not trained to do disability-related tasks, but they still have benefits to an individual with a disability who may be struggling with anxiety or depression or phobia.

Go to the next slide for me, please.

And that's what we're talking about here: What do they do? Comfort and companionship, help to alleviate some anxiety and depression. You know, I think about an individual who may be in a depressive state, and you know you have those thoughts, "What's the meaning of it all?" Or, you know, "What's the point of this kind of stuff?" And then you have your dog, maybe that emotional support that comes and lays their chest or head on your chest, and that could help. You know, it also takes to facilitating mindfulness, when you're thinking about all the bad things in the past or all the potential bad things that could happen in the future, you know, looking at your dog can give you a moment to pause, think about some of the positive things in life. Redirect you to the here and now, stuff, you know, things that can improve or, you know, those kinds of -- "stuff left to live for" kinds of thoughts.

Let's go to the next slide, please.

So let's talk about some common issues. Lisa hit on this really well, but I'm going to go over just a hair more. So Title I -- No mention of animal in Title I. Not service animal, not emotional support animal. Therapy, comfort, nothing. So, Titles II and Titles III is very clear; emotional support animals do not have ADA protections. If you go to a Walmart or the hotel and you say, "Hey, I want to bring my emotional support animal in," and they ask you two questions, and you answer them incorrectly, they would be within their rights to deny access.

When we're talking about employment settings, and we're talking about what is an accommodation, an accommodation is a change to how things are usually done. And like Lisa said, whether it's formal, written or unwritten, most employers just generally don't allow animals in the workplace. So allowing a dog, whether it be an emotional support dog or a service animal, is usually a change in how things are typically done.

And then what else? Well that change has to be necessitated by a medical condition, a disability. There has to be a reason. So the employer still is going to be within their rights to make sure that this employee has an ADA-covered disability. It's not Joe bringing in their pet because they like hanging out with their dog. It's still an employee with a disability, and that support, that animal, is going to offer a disability-related service. It's going to help them in the workplace, either do their job, manage their condition, equal employment opportunity benefits, something along those lines. So it's just not clear-cut.

We always look at it more from the, you know, it can be an accommodation, is it doable for the workplace? And that's the big one. We've already mentioned the big difference between emotional support and a service animal is training. Think an employer may have thoughts that if this isn't a fully trained animal, is it going to be appropriate for the workplace? It can start with a conversation. Like, ask the employee questions. “Why do you think your animal is going to be okay in the workplace?” Maybe they have really good answers, you know. "I took my dog to Petco for obedience training during a puppy, and then we hired a local trainer for advanced obedience, and then we take it to Lowe's every day and other employers or other businesses who allow animals, so it's always getting used to new sights and scents and sounds." Those are pretty good answers. I mean, maybe it is going to be okay in the workplace.

And sometimes I used to say things like ask for a demonstration, but that's not really the best terminology. Because if, you know, you have a seizure alert dog, you can't force somebody to have a seizure to see if the dog is going to do its job. So maybe a better idea is a meet-and-greet. Like, "Hey, let's discuss your animal. Why don't you bring it in for a meeting? Let's see if it's well-groomed. Let's see if it is out seeking affection." I mean, if it comes in and it goes and starts having accidents or tearing up equipment or barking, I mean, the employer's probably going to have a good idea that it's just not acceptable for the workplace.

And even then if you allow an animal for a trial period, and let's say it's good over a period of time, maybe two, three weeks but then it starts acting out. You're not stuck. Things can change. If the animal proves itself ineffective or inappropriate, the business can make an appropriate decision. But the goal is that the animal proves itself to be good. It's doing what it needs to do. It's under control of the handler at all times. You're not even going to know it's there, so if there's no issue, why would you deny it moving forward?

Let's go to the next slide.

Can emotional support animals be denied at work? Yes, any accommodation can potentially be denied if it creates an undue hardship or burden on the business.

What's an undue hardship? Financial difficulty, a significant disruption on business operations. So there are situations where, even if you have a valid need for your emotional support animal, an employer may be within their rights to deny it. I mean, easy example: If you are a cook, and you work in a kitchen area that is always around food prep, and it's small area, where only -- a dog can't fit behind you, an employer may say, "There's health codes. You can't have an animal in food prep. We wouldn't let a customer bring in their service animal to the kitchen, so we're not going to allow you to have yours." Doesn't automatically mean shut down an animal in all situations. Maybe there could be a crate right outside of the food prep area that could help. So there still needs to be conversations but really, point blank, there are going to be situations an employer's within their rights to deny a request, but it needs to be valid, and it's not just, "Well, we don't want a dog in the workplace," or, "Suzy or what happens if we hire somebody ten years down the line that has an allergy?" We'll deal with that ten years down the line.

Next slide, please.

So just a quick example here. An employee with PTSD that had to regularly inspect landfills, that inspection site caused PTSD symptoms, so they ask to bring their emotional support animal to work. The employer was concerned mostly just because of what I mentioned. Is it a fully trained dog? Is it going to be appropriate for this work setting?

Now, my mind jumped immediately to safety, you know, a landfill. Does this employee have to have any sort of safety gear or things like that? Can the animal be in safety equipment, is that even the situation? But here, it wasn't. They do outside inspections related to buildings, so really, this individual only had to do this task once every couple of months. they didn't interact with anybody at the landfill, and it was outdoors. So in this situation, doesn't really matter if that animal was fully trained. It's not going to be interacting or having a disruption to the workplace. It still may be something an employer wants to consider.

Now my mind would also take me to if you only have to do this task once every two months, maybe you could switch with an inspector and not have to do that. But the employer would still have an obligation to at least consider allowing the animal for this duty.

Next slide.

So, pretty quick about emotional support animals: Like I said, Lisa really hit that one out of the park, but if we have questions or what do you think, Tracie? Should we move along? We're about halfway through it already.

**TRACIE DeFREITAS:**

Let me throw at least one question at you, and then we'll definitely move along,

So we have -- There's a couple here around medical documentation, so I thought I kind of would combine this topic. What medical documentation can an employer ask for if an employee wants to bring in an emotional support animal into the workplace?

**JAMES POTTS:**

Sure. They can ask for the exact same documentation they ask any other accommodation request. They're entitled to know you that have an ADA-covered disability. EEOC guidance says that's like the nature, severity, duration of your impairment. So they're allowed to know you have a reason to be requesting the emotional support animal. And then it's going to be, like, identifying your functional limitations, so it's kind of that nexus of why the animal is going to be helping you in the workplace. But it's just like if you were going to ask for an ergonomic chair. The employer would be within their rights to know that you have a back impairment and that the ergonomic chair is going to meet your disability-related limitations. An animal throws wrench in there because it's kind of another component of determining undue hardship, which is appropriate for the workplace. But the medical documentation, what the employer is entitled to know, doesn't matter what their accommodation request is. It's just that "sufficient documentation" component. I don't know, Lisa, you're the ADA expert there. Got anything to add?

**LISA MATHESS:**

No, absolutely. I think employers, they panic when it's an emotional support animal, and a service animal in general but, yeah, you're exactly right. If the need for a disability -- need for accommodation, that disability is not known or obvious, then we can ask for limited documentation. The hiccup here is that, like I said, those doctors aren't often involved in the acquisition of service animals or emotional support animals. But that's where the meet-and-greet and that temporary accommodation come into play, to kind of show to the employer and prove to the employer this is a reasonable accommodation. It's not going to cause a disruption. And it's going to make me a better employee, so kind of make that argument and connect that nexus of why it's needed.

**TRACIE DeFREITAS:**

All right, good information. Let's go ahead and jump to the next topic.

## [Job Coach]

**JAMES POTTS:**

Okay. So I'm going to be going over this next bunch of slides too. We're going to be talking about some people-related accommodations, specifically job coaches, support people, and mentors.

Let's go to the next slide.

Job coaches are becoming more and more and more popular. Get lots of requests related to job coach and what do they do? Or what are they? They are a person who helps, and they specialize in assisting individuals learn and accurately carry out the tasks of a job. They're only there typically to help people with disabilities, but it's one-on-one, tailored training.

And I think a big part about being a job coach is being adaptable. You know, every disability, even if there's generalizations or similar limitations and difficulties, we're all unique and we all have different personalities, so a job coach really needs to kind of be able to observe a situation, see how their client learns best, what their specific difficulties are, and then really fine-tune and kind of pinpoint those areas.

So, they can be there through, you know, the very beginning of the process, like whenever they get hired. Maybe they've been there for a period of time and disability conditions have gotten worse or it's a later-onset disability. Somebody maybe had a TBI later in life. But the job coach would come in, for a period of time, and assist with learning the job.

They can also help with building relationships. I know sometimes they can act as a buffer between the employer and the employee, at least at first, you know, let the employee learn the job and base their performance with those supports in place versus, you know, oh, they're struggling right at the beginning, and potentially kind of muddying your view of them or something along those lines.

It can also help facilitate relationships with coworkers. I mean, maybe it's just, "Let's go and say hi to everybody," or, you know, making sure that those coworkers understand, like, "Hey, you know, I'm going to be here for a little while. Maybe we can be a part of the lunch or something along those lines."

Next slide, please.

Who determines the appropriate job coach? I'm going to say this multiple times -- Ultimately, the employer. The employer is going to determine or provide the solution. But it should be a collaboration. I mean, I'm always going to say, "Talk to the employee." The employee, No. 1, maybe they have already had a job coach in the past, somebody that they work well with. Maybe they're part of vocational rehabilitation services and can give a referral to their employer to talk to somebody. I just think that it's probably a good idea to get their input on who can potentially help them.

Most of the time, whenever I have somebody from HR call me and ask, like, "What the heck is a job coach about?" They don't know where to find them. So what would JAN do? JAN is going to point them towards organizations such as their state's vocational rehabilitation offices; hopefully they would know of local resources. Maybe we would pitch the idea, like, "Hey, if you have a local college or university, reach out to their psych department. Maybe they know somebody like former students or something that can help with job coaching." But in general, ultimately, the employer decides.

It should be collaborative, and the main thing is it has to be effective. You don't want to assign a job coach that's just not going to meet the needs of the individual, and that's why a lot of times the employee themselves may have the best idea.

And second bullet point, how long will the job coach be needed? It depends; it varies. Sometimes it could be for short duration, you know, maybe a month. They could be getting in there, learning the ins and outs of the jobs, coming up with strategies, helping them communicate accommodation ideas to their employer and then moving on.

Before I worked at JAN, I worked with a couple guys who had intellectual and development disabilities, and they had a job coach as part of supported employment. So, they both worked two hours a week at a local fast-food restaurant, and their job coach would pick them up, take them, sit there for two hours, and take them back home. They're going to need that level of support forever, so a job coach could be permanent for them.

But in most situations it's not forever. There's an end in sight. It just really -- there's no hard time frame. It needs to be effective for the individual but not cause that impact on business operations. So if an employer is paying for the job coach, maybe there does come a point in time where that's just too expensive, or maybe they've had the job coach in place for six months and no performance improvement. They may start to question, "Is that job coach effective? Is this the best fit? "Are you qualified for this position, even with accommodations?"

Situations involving confidentiality are kind of unique. We get a lot of people like mental health counselors, social workers that are doing notes, need help with a job coach, and employers get, you know, hung up that "Hey, the job coach could have access to our clients' information. Isn't that HIPAA violation?" and stuff like that. I've never found a perfect solution for this. Some talking points, maybe, you know, what's your existing company policy on confidentiality? Like, what do your employees do that you're comfortable with them obtaining and sorting through this information? Like, did they have to watch a video? Did they have to sign a paper saying they took a test and they agree or they abide by the confidentiality agreements? Maybe the job coach can do something similar. Maybe they can enter into a confidentiality agreement.

And I've also seen -- whenever we were prepping for this training, going through old examples. And one employer decided that they would feel more comfortable if they actually hired the job coach for a period of time. Like, put them on their books, because they would feel like it's more -- I don't know, I guess they felt more comfortable that they would be bound by confidentiality if they were technically an employee. So those are ways that you can talk through it. I always think, you know, Melanie always throws out the KFC secret ingredients or the secret spices or stuff like that. There could be situations where a job coach may not be privy to business secrets, but you may want to think critically about that, employers.

Next slide, please.

Who's the -- who actually performs the job duties? That is going to be the individual. The job coach is not there to perform the essential functions of the position. And let's talk about that through an example.

Next slide, please.

So a newly hired school janitor with an intellectual disability was having trouble learning a new job and staying on task. For him he was just a social guy, got along with the students, they were talkative to him, so they would just impact his ability to get the job done. The issue was is the principal had observed the job coach doing some of the tasks, such as, like, filling paper towel rolls and doing some sweeping, so they had a meeting to discuss this. And it's a problem. The job coach is not there to clean the bathroom. The job coach is there to teach the employee how to effectively learn the ins and outs of cleaning the bathroom or helping them provide to-do lists or maybe doing picture templates so they can say, "Hey, after you clean the bathroom, check this resource. If it looks the same, then you know you did it correctly. You can move on to your next task." But they're not there to do the work for them.

I had another situation where it was a coffee shop, and they only hire people with disabilities. And they have volunteers who would come in to help act as job coaches. But, when the individuals with disabilities would struggle, the volunteers would actually just step in and start doing the work like making the coffee or punching in the -- the orders and things along those lines. And that's not your role. Your role would be to help the individual stay on task or to help mitigate their anxiety or to point them towards their to-do list. My idea there was, is, "Hey! Can you take a picture of the screen? Of, you know, how they are -- what they're looking at?" And then you could point to the correct button to use, while they actually punched it in on the existing system, hopefully there could be some -- you know, memorization. And it's still, that's the individual doing their job.

Like I said with my guys who worked at the fast-food place, maybe they would need support long-term. But, again, normally the hope is that that job coach will transition out eventually.

Next slide, please.

## [Support Person]

Support person. So who can be a support person? So really anybody -- family member, friend, coworker, anybody can provide that support if they are meeting the disability-related needs of the employee. So what shouldn't they do? You know, they shouldn't overtake the meeting. They are not there to answer on behalf of the employee. They are there to help manage the disability issue.

So, like, let's say an individual has memory impairments, they could help take notes. An individual has panic attacks, maybe they could help with pointing to questions that they have talked about before the meeting to say, "Hey, we want to make sure you get this point across," but they shouldn't be stepping in, they shouldn't be aggressive towards the employer. A lot of times, it is having that source of support that you can just talk about it afterwards. So maybe after the meeting is all over, you go and iron it out with your support people, and then you compose a rebuttal or something along those lines.

Next slide, please.

Just kind of taking all that stuff a step further, you know, some common issues, mama bear instincts, I get this. You know, you have a child who's an adult but has an intellectual disability or social impairment. And they're coming home crying, telling you that everybody's mean to them. I get it, you know. As a parent, I would be upset. I would want to go and advocate for my child. But you got to be careful, you know, you're not there to play the mama bear at this point. You're there to help facilitate a conversation, and it's hopefully to improve the working situation. So if you go in there guns blazing, and you start tearing people down or getting aggressive, and the meeting stops, it's not going to benefit everybody.

I try to tell people, you know, like, try to stay calm, easier said than done. You know, if you have something that you want to get across, maybe you want to write that down so you can write it up professionally and come back, whenever emotions are a bit more tempered. And know yourself. Like, if you know you're going to go into a meeting and can't control yourself, you may need to say, "I'm not the best support person." Because you want to set that family member or that friend or whoever up for success, so you kind of got to know your own self too. And, again, they are there to meet the disability-related needs of the employee.

Who picks the support person? Ultimately, the employer. But even more consideration needs to be given to the employee in this situation. An employer just can't say -- if I asked for a support person to go to a meeting at JAN, and they said "Sure, we'll let Lisa be with you," I don't know how Lisa would know how to help me manage my disability-related limitations. They don't know me, or they don't know how I'm suffering with those things. So I would say for this one, the individual really needs to kind of have somebody in mind.

I've seen situations where an employee asks for a support person, but they want the employer to provide it. I'm just not really sure where to go with that. Like, you can't force a coworker to sit in on an accommodation meeting or a disciplinary meeting, as an accommodation. And I think if you start, like, "Hey, you really want us to hire you an advocate for you or something like that," that's not really the employer's obligation.

Next slide, please. We're getting close.

## [Mentor]

Mentor. Mentor is a little less well-understood. You know, it should be experienced or trusted. Experienced and trusted by who? You know, if the employer is providing it, a lot of employers do have policies or systems built in like, "Hey, new hires. We're going to assign here somebody who's been here for 10 years, that has experience, and is going to help you just get your feet wet." So what could they do in that situation? Again, relationship-building, maybe it's "Hey, new guy. You know, James is kind of grumpy before 9:30, before his first cup of coffee, so you may want to start sending questions around 10 there." Or, "Yeah, Lisa's been here for ten years. Sometimes she can be a little bit direct, but super awesome, and will answer any question for you." You know, it's just those kinds of things that you're not going to know as a new hire. Somebody with a disability who's already stressed and anxious about building relationships, a mentor could be a positive help in that situation.

They can also help kind of understand or build accommodations in place. They know what the employer already provides, like some employers are doing more universal accommodations. Like, I see people saying, like, "Hey, what can we just offer automatically and then have employees, like, select out of?" So when they don't need a solution.

Let's go to the next slide.

Who selects the mentor? Again, ultimately the employer. If an employee is trying to bring an outside mentor, I would just be careful. What are they going to do for you? I mean, I think that's going to be more of a support person role. I had somebody who was telling me their mentor had been in the field for 20 years, and they keep telling them that what the employer is doing is wrong. Like, they're just not doing things correctly. I don't think that information is going to be super helpful, taking back to the employer and telling them, "Well, yeah, my buddy -- my mentor is saying you're just doing things wrong," like, that's not really helping trying to work the system that already exists, but they could have tips and tricks, and they could be helpful.

I think an internal mentor's typically better. And another positive is you don't have to hire outside. You're not going and looking for a job coach; this person already is employed there. Maybe they could assist more quickly.

What would they do? Again, it kind of depends. Maybe it's, like, a weekly meeting. Maybe it's really structured. Sometimes it's just having a direct line for support. Like, this is the person that you can call or text or email at any time, and they're here to answer questions. You know, if they're already hired there, they probably have their own responsibilities and job role, too, so maybe it is just whenever you need help. But it can still be a, you know, just a benefit to know that that person is there.

Making sure they're effective. You know, any accommodation, if it's not effective, you've just got to let your employer know, you've got to say, "Hey, this what we tried. It's not meeting my needs. Here's my ideas of something that could improve it." With a mentor, maybe you get assigned somebody and you just clash. That happens, too. But you talk somebody who's not assigned to a mentoree or mentee -- whatever that word is -- at lunch every day, and you have a good relationship. You can always tell your employer, "You assigned me to this person. We're just not quite clicking, but I think this other person would help me, this other employee who also is a mentor, they just don't have anybody assigned to them."

Okay, so I feel like I've talked a lot. Taken up a bunch of time. So questions or kicking it back to Lisa, whatever you-all want to do.

**TRACIE DeFREITAS:**

I think in the interest of time we'll keep moving forwards so that we can leave a few minutes at the end, so, Lisa, you're up.

## [Personal Attendant Services]

**LISA MATHESS:**

All right. Let's get into personal attendant services. And as I get into this section, you're going to see a lot of it's going to mirror what James said. Employer consideration, where to find these types of services, a lot of those organizations are going to be the same for finding a personal attendant, finding a job coach. So you'll kind of see some similarities among the types of services.

But focusing on personal attendant services, in short these are those services that a third-party individual does for a person with a disability, for those tasks that exist both on and off the job. The quintessential examples of that is the toileting, the grooming the dietary -- eating, typically those are the big three for personal attendant services and what they're there to do.

Okay. Looking at Slide 27. In general, like I said, personal assistant services or attendant services -- we kind of see that language interchanged -- is a form of assistance used by people with disabilities to perform tasks that the person would perform for themselves if they didn't have a disability and that is not otherwise required as an accommodation. Including, but not limited to, assistance with removing and putting on clothing, eating, using the restroom. And this could also extend to pushing a mobility device or a wheelchair, taking a wheelchair to and from someone's car. Those barriers exist both on and off the job. It's not unique to the workplace.

According to the EEOC, the enforcement agency, a personal attendant service is not the same as services that help employees perform job-related tasks, such as sign language interpreters for employees who are deaf or readers for people who are blind or have learning disabilities. I would probably call those more of a work-related aide or work-related assistant, so try to differentiate between personal attendant and work-related attendants.

Okay. Next slide.

Is a personal attendant service required as an accommodation under the ADA? Generally, a personal attendant service is not included in a form of an accommodation, because the limitations prompting the need for a personal attendant, those exist on and off the job; thus, they remain personal need services. So the accommodation boils down to an employer permitting an individual with a disability to bring their personal attendant onsite. The accommodation is really permission granted to be on property within the workplace. We all need to eat lunch and go to the restroom during the workday, so people with disabilities should be no different, even if they need assistance from this third party to gain access to those things. So typically, unless it's for work-related travel, a personal attendant is not a form of an accommodation under ADA.

There is a caveat to this, because, under 501 of the Rehabilitation Act -- under their affirmative action program, not even their accommodation program -- The federal agencies are required, under affirmative action, to furnish a personal attendant service for federal employees that have what they call "targeted disabilities." There are a lot of EEOC guidances on that federal sector furnishing the personal attendant under the affirmative action. So it's just kind of something to think about if you are a federal agency, but, under ADA, personal attendant typically not required unless you're on work-related travel.

Liability. Liability questions, that is outside ADA and outside JAN. We do recommend you seek legal, but where this comes up, whenever you're providing accommodations, is whenever we have coworkers with good intentions. They want to help out an employee with a disability. Well, now that employer is concerned, "What if this coworker gets hurt while they're maneuvering an employee with a disability in and out of a wheelchair? If they're helping them get in and out of the restroom? What if they throw out their back? Are we liable for that injury?" You want to check with legal for any liability issues. If your legal team tells you, "You're not liable. This is a minor task," of course it makes good sense, good business practice to let that coworker aid their colleague. But if it's extensive and it's disruptive and there could result in liability and injury, then you can dictate how coworkers spend their time at work and kind of put parameters around that.

But if it's a small task like putting on a coat, I think that would show a good-faith effort to the workforce. Like James mentioned with job coach and the confidentiality issues, we can probably have our personal attendant services go through similar screening procedures as we would whenever we're onboarding staff, so whether that's watching videos, signing something to kind of ensure the sensitivity and the confidentiality and safety of the information that we have within our worksite.

Okay. So looking at a situation we now have a lead surveyor who travels often for work. Their Parkinson's disease has progressed where they would benefit from a personal attendant. Usually this is done by their spouse, but now there's going to be extra travel expenses that would be incurred, and the spouse can't afford to make that work-related trip.

So, looking at slide 30, what -- who's going to pay? Who's going to pick that personal attendant? So, like I said, typically for personal needs in the workplace, an employee's going to be responsible for paying and furnishing their own personal attendant service, except when on work-related travel. So typically, an employee has an informal personal attendant like a friend or family member or a spouse that -- or they have contracted with a third-party agency, such as vocational rehab or center for independent living, to hire this personal attendant to escort them to their work site. But when an employee with a disability travels for work and incurs additional personal attendant services, beyond their usual expenses, then there's a good argument that that work-related travel and those additional travel expenses are going to become part of that employer-related responsibility to accommodate. Because otherwise, they wouldn't have had that additional cost incurred. So now it is becoming a work-related barrier because of that travel.

And just like the support people and the mentors and the job coaches that James went over, who's going to choose that personal attendant? Typically the employer is in charge of ultimately choosing the accommodation, but, of course, we know that EEOC has said whenever there's multiple options that could be effective, we should give primary consideration to the person that the employee, themselves, prefers, or has requested specifically to be their attendant.

So thinking about our example with that lead surveyor who had to travel. The employer did offer to pay the employee's spousal travel expenses rather than hire a whole new personal attendant, as it was hard to find a personal attendant at all the locations that surveyor had to travel to. And the employee preferred to have their spouse serve as their personal attendant. So like I said, we really do try to give employees their preferred accommodation, especially for these kind of sensitive, personal tasks that a personal attendant aids with.

Okay. Tracie, should I assume we're going to truck along to sign language interpreters?

**TRACIE DeFREITAS:**

Yes, please. Thank you.

**LISA MATHESS:**

All right. Okay. Staying in line with providing services, we know that we might have to provide services, and a common type of service is a sign language interpreter. Of course they're used by people who communicate with sign language, American Sign Language in the US, but there are specialized versions of interpreters used by the deaf and hard of hearing community and perhaps the deafblind community where they use tactile interpreters or cued-speech interpreters. So you want to be mindful of what type of interpreter you're hiring as an accommodation and ensuring it's effective for the person with a disability.

This can be a type of an accommodation during the interview and application stage, on the job, or for work-related trainings, depending on that person's need and what's reasonable for the employer, without posing an undue hardship.

Okay, slide 33. Like I said, a sign language interpreter is there to facilitate communication, whether that's with supervisors, team members, other staff, or members of the public. A qualified interpreter is one who can both receptively and expressively interpret accurately, effectively, and impartially, using any necessary specialized vocabulary.

Okay, next slide.

So who is responsible for providing the interpreter? As with everything in this slideshow, it's typically the employer's responsibility to hire and pay for interpretive services for work-related communication. If you need help finding interpreters, there is a Registry of Interpreters for the Deaf linked on the JAN website.

All right. Now we have a government agency who contracted with a private company to provide training. The employee who is deaf needed to attend the training, and there was a contract that the private trainer would provide interpreting services.

And this is a unique situation we see a lot, especially for off-site trainings, because now the private company that's holding the training, Title III, public access, is also bound by ADA. But so is the employer, the government agency, to provide their employees with reasonable accommodation. So often you'll see this dual duty to accommodate, and neither one should evade their accommodation obligations. And that's why we think it's important to specify in employment contracts, and training contracts who is going to furnish reasonable accommodations for the attendees. Because under ADA there's probably a shared obligation, but you don't want either party dropping the ball, more or less. And here, the -- Eventually, the agency did end up providing the interpreter for the employee, but then were later going to sue the private company for reimbursement, because in that contract private trainers said they would furnish an accommodation, but they didn't.

All right. So now we have a person who is deaf who is hired to work in an office setting. They hired an interpreter during that initial training and for the meetings, but the employee indicated, "Hey, I would like to be able to communicate with my colleagues socially, and I'm wanting a full-time interpreter." So, in some situations, a full-time interpreter could be reasonable in some settings but perhaps not all settings, and as we know and have said, employers can explore effective options.

So looking on slide 37, what other options could an employer consider? So there is other ways to communicate, from simple pen and paper to more sophisticated technology, so the individual's preferred means of communication should be taken into consideration. But here, for this solution, since they couldn't pay for a full-time interpreter, but they did feel like it was important to maintain that communication even in social settings, because we want equal access. If I'm able to go to James's office and kind of talk about his weekend, a person that happens to be deaf should also be given that opportunity to kind of, you know, team-building and just that off-the-cuff conversation, so the employer purchased and installed alternative communication devices that allowed for two-way typing, such as the Interpretype or the UbiDuo, so both parties could effectively communicate.

All right. We are near the conclusion of this, but I'm sure Tracie will squeeze out a couple of questions out of James and I.

## [Q&A]

**TRACIE DeFREITAS:**

You're absolutely right. [laughter] Some quick ones. We have, I would say, about just a few minutes, so, James, question for you.

Can you maybe provide some examples of disabilities, medical conditions where someone might need or ask for a job coach?

**JAMES POTTS:**

Sure. ADHD, hear it all the time, executive functioning coaches. Learning disabilities, intellectual disabilities, individuals with autism. Any of those could potentially need a job coach or a job coach could be beneficial. That's probably what I hear the most frequently, though.

**TRACIE DeFREITAS:**

Okay, that's helpful. So here's an idea. Someone asked, "Can a support person or a job coach be on an individual's cell phone?" Is that a way to employ or bring on board a support person?

**JAMES POTTS:**

Virtual. So some job coaches are offering virtual services. We don't endorse any product or vendor, but LifeSherpa is one that we did a little tech check, and they kind of checked in with us to show us how their project worked or their product worked. So, yeah, virtually, it can still be effective, maybe.

Sometimes I talk to people about a modified break schedule. A modified break schedule is only going to help depending on what you do during that break, so it could be contacting your support person to talk, whether that's on a Zoom or just calling them or whatever. I think we've all learned from the pandemic that things can potentially be done in a different way. So, communicating, whether they're side by side or over Zoom or on a phone call, I think it could be effective.

**TRACIE DeFREITAS:**

Okay, that sounds good. Lisa, quick question for you.

Would an employer be responsible for providing an interpreter during an interview?

**LISA MATHESS:**

Yeah. Typically an interview, that's how you want to elicit qualifications, education from that applicant. So it makes sense to hire an interpreter for the interview, absent undue hardship, of course. So, perhaps, you can contract, like today we have a virtual interpreter. That could maintain that effective communication. But as long as it meets the needs of that applicant -- but, yeah, under ADA, I do think an interpreter for an interview makes the most sense.

**TRACIE DeFREITAS:**

Okay, I'm going to throw one more out there, and then we will close -- close this presentation today.

But we can generalize this a little bit, but the question was does an employee need to ask for a mentor? So if we kind of look this generally about asking for accommodations, what would you say?

**JAMES POTTS:**

If you want the mentor because of your disability, you've got to ask for a accommodation. If you want a mentor just because you feel it would help, then it's kind of up to you whether or not you want to ask for that sort of assistance or whether or not they can provide it, but an employer is not obligated to provide a change unless you make that request. They're not obligated under the ADA, unless you connect that change to a disability.

## [Conclusion]

**TRACIE DeFREITAS:**

All right. That's perfect. All right, well, that is about all the time we have for the Q&A today. Great discussion, James and Lisa, appreciate it. Thanks for sharing your insight today. Hopefully everyone attending learned something new about accommodations involving supports and services. If you do require additional information, though, please do contact JAN. Go to AskJAN.org for contact details.

Everyone who joined us today, we thank you for attending this "Accommodations with a Heartbeat" JAN webcast. We hope you enjoyed it.

Don't forget to register for the next JAN webcast. There JAN, EARN, and representatives from the Disability Management Employer Coalition Long COVID think tank will present "What You Should Know About the Impact of Long COVID in the Workplace" on Thursday, March 9, at 2. Go to the JAN training page at AskJAN.org to get started and registered for that.

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Lastly, thank you to Alternative Communication Services for providing sign language interpreting and captioning services, for this webcast. Everyone, enjoy the rest of your day, and this concludes today's webcast.