# Providing Reasonable Accommodations to Veterans with Disabilities

## [Introduction]

**TRACIE DeFREITAS:**

Hello, and thank you for joining us today for this JAN Accommodation and Compliance Series webcast titled "Providing Reasonable Accommodations to Veterans with Disabilities." My name is Tracie DeFreitas, and today I'll be your moderator.

This is the last JAN webcast for our 2022 series. We take a break in December, but the new JAN webcast series will begin in January 2023. We'll announce the new series lineup before end of November, so watch for JAN updates via email and social media.

Now to introduce today's speakers, my colleagues Melanie Whetzel and James Potts will be speaking today. Melanie is a JAN Principal Consultant and the cognitive/neurological team lead. Melanie specializes in learning disabilities, mental health conditions, intellectual developmental disabilities, autism spectrum disorders, and brain injuries. James is a Senior Consultant on the cognitive/neurological team, and he specializes in mental health conditions, substance use disorder, seizure disorder, brain injuries, and cancers. James is an Army veteran who served in Operation Iraqi Freedom. James and Melanie, thank you for offering this training today.

Also JAN would like to extend a happy veterans Day to those who have served our country, to those who continue to serve, and to our military families and caregivers. We're grateful for your service.

Before we get started with the training, I do need to mention some housekeeping items on the next slide.

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

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

Questions for the presenters may be submitted using the Q&A option. Melanie and James are looking forward to your questions. Please use that Q&A option, not the chat, to submit your questions, and all questions will be gathered into a queue and answered as time permits at the end.

The link to download the PowerPoint slides can be found in the webcast log-in email that you received earlier today. The link is also in the chat here, and it can be found at AskJAN.org at the training page as well. So look for this webcast title on that registration page, go directly to that page, and you can download the slides right there.

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

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

Finally at the end of the webcast, we'd like to know your feedback, so please complete the evaluation. If you're seeking a CEU, the approval code will be provided after the webcast evaluation is submitted. So now without further ado, I'd like to turn the webcast over to Melanie to get us started today.

**MELANIE WHETZEL:**

Okay. Thank you, Tracie. James and I are going to talk about a lot of the most popular issues, questions that we get, and we're going to do that through some real-life situation and solutions and just talk over some different options. And those are going to include making existing facilities accessible; job restructuring, part- time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; medical leave; work from home or telework; service animals; and then reassignment to a vacant position.

## [Disability Disclosure]

So let's just jump right in with our first example. Okay. So here we're going to talk about disability disclosure, and that's probably one of the biggest questions I think we get on our team. "How do I do that? When do I do that? Do I have to do it?" All those types of questions that we answer. And we can help walk -- It's always a personal decision when to do that and how to do it, but we can certainly walk through the positive, the negative aspects of that.

So let's get to our first example here. We have Sam who has PTSD and experiences nightmares that affect his sleep. As a result, he often has difficulty focusing on work, and he experiences mood swings which cause him to lose his temper. No disciplinary actions have been taken for his outbursts yet, but Sam doesn't want to take any chances. He decides to disclose his disability and ask for accommodations.

Okay, so under the ADA, there's no set time to ask for an accommodation. Some people want to do it right upfront from the very beginning. They say they want to be open and honest and bring their whole self to work, and that's fine. But that's not required. Generally speaking, you don't have to disclose until you need an accommodation, and that can be on your first day, it could be way on down the road. Some people want to wait until they're in a job to see what that entails to see what they might need if they need an accommodation. Some people never disclose. But we always recommend that the optimal time to do that would be before performance or conduct issues arise, or before they become too serious, because an employer doesn't have to excuse any performance or disciplinary actions, conduct issues before a disclosure is made. So you want to disclose and get on with that if there are issues on the job that you can relate to your disability.

So in this case, Sam called us here at JAN to ask for our recommendations, and that's what we would explain to him. Yes, go ahead and do that. And we always talk about medical documentation, you know, an employer can require medical documentation to substantiate that the person does have a disability and the need for the accommodation when the disability is not known or the need for the accommodation is not known. And a lot of the disabilities and medical conditions that we deal with in our team are certainly invisible, not seen. So the employers don't always have an idea that there is a disability present. And so we like to warn everybody, yes, you might be required to provide medical documentation and explain what that might mean. And I'm going to ask James to chime in here a little bit about the medical documentation under the ADA and how it differs from a veterans’ percentage rating.

**JAMES POTTS:**

Thanks, Melanie. Yeah, disclosure is a big deal. That's where it all kind of starts. You have to connect the need or a change to the disability or medical condition. For veterans, I get callers and they say, "Well, James, I'm 70% disabled veteran. I'm 100% disabled veteran, but my employer wants me to prove that." Do I really have to show the medical documentation, or is my rating letter enough? And most likely no, that rating letter is not going to be enough.

To meet the definition of disability, you have to have an impairment that significantly impacts or affects the major life activity. And how do you prove that? That's through sufficient medical documentation. Just having a letter that says 70% disabled is not really going to tell an employer much about limitations or how they can help you. Now, what I do tell veterans is, "Let's think about this practically." The government has determined that you are 70% disabled through a compensation and pension (C&P) exam. There's probably going to be documentation confirming that you have limitations and difficulties.

So I think most often, yeah, it may be little bit of leg work, but you can find an employer enough information to meet that need. But I definitely do have some veterans get upset they have to prove that need, and I will just have to point them to the guidance and what Melanie said, if the disability and need for accommodation are not obvious, be prepared. The overwhelming majority of employers do ask for some sort of proof.

And I just kind of want to, before we move on to our next slide, just tell everybody how we decided to go about this presentation. You know, what we did is we looked at the last few years' worth of veteran contacts, and we decided that, based on these cases, we were going to pull out examples that kind of related to the most frequent calls we got and the topics that we're getting and just to share that what we're seeing. About 75% of veterans who reach out to JAN, they indicate it's a mental health-related issue. The most common we're seeing is PTSD, depression, anxiety. Now 27% -- and you're going to see that that number doesn't equal up to 100%, because there's comorbidity. 27% of those callers indicate a physical impairment. Some are going to indicate more than one, both mental and physical. But the majority of our calls from veterans are mental health-related. Very minimal sensory, so we're thinking vision, hearing, respiratory, although I would guess that we're going to get more calls from veterans with respiratory issues because burn pits have become more and more -- I mean, it's hard to say popular, but mainstream in the news recently. So we're getting a lot of different calls.

And most of these calls, about one-fifth of veterans are asking about telework, telework-related issues. We get a bunch of leave questions, a lot of medical documentation which we started with. And then we go through the gamut. I think a lot of times it really comes from that "How does this all work? Where do I start? How do I request an accommodation?" So we're going to try to hit on all that stuff today. I will say when I talk to veterans, they're often really quick to the point. They understand their difficulties and their problems, and they're really more solution-oriented. My impression is whenever I'm talking to them, they just want to do their job well. And not in a bad way, but they kind of just want to do their job well and be left alone.

## [Difficulties with Supervisors]

So let's go ahead and go to our next slide.

Okay. Fred is having trouble getting along with his supervisor. So he went to HR asking for a new boss. However, Fred is in a unique situation. There's no one else with the skills, knowledge, expertise that is going to be able to provide Fred with the supervision required. The employer did explain this to Fred and said that the ability to change supervisors is not available, but they want to know more about these issues and just want to check what alternatives, what other things can we provide that will help in this situation.

So we're going to stick to the guidance to start. EEOC guidance is pretty clear. It seems to indicate that changing supervisors is not required as a reasonable accommodation. So I like to hear that this employer at least considered it. But even if there was another supervisor that could take this role, there's probably no obligation. However, we also love to hear that the employer understood that the conversation doesn't end. And you're going to hear that probably several times throughout me and Melanie talking.

So what next? What do you do? Well, are there any conduct issues that need addressed? Can it be worked out on that level? What about mediation? Can all parties sit down and talk about what each individual needs to move forward with a professional relationship? Or what about communication styles? What's the problem here? Is it face-to-face communication difficulty? Well, maybe you can communicate in writing. If you have the ability to read and re-read and edit your responses, you can ensure professional tone. And it kind of takes the word versus word out of it. "Hey, Fred, I told you that report needed to be due by 5:00 p.m." Well, you check your email log or your chat log, and you never mentioned that to me. So maybe it could be worked out that way. You're not going to get dinged in the background. You know you're doing things correctly.

And we go and say that, but sometimes individuals press. They say that the only effective solution is going to be a new supervisor. And JAN is going caution taking that rigid stance, especially whenever the guidance doesn't necessarily support that. It's really looking at supervisory methods, changing how the relationship is interacting versus just severing that relationship. So minimizing interactions if possible.

And we always say that, but, you know, if there's an easy solution and there's plenty of supervisors who could take this role, and everybody can make it work, nothing in the ADA or EEOC is going to prevent an employer from just making the most straightforward solution if it works for everybody. What do you think, Melanie? Any comments or points about supervisory issues? I know we hear that a lot.

**MELANIE WHETZEL:**

Yeah, we do hear it a lot. One example, another example came to my mind of a person who said that the supervisor was too aggressive, and when they looked into it, the supervisor just had this big boisterous personality and was loud and wasn't aggressive at all. So it's just those two styles kind of clashed. So it is really important to get down, kind of drill down to what those issues are so that the supervisors are aware, you know, "This may be my personality, but maybe I need to adjust it for this one certain employee. Maybe it would help to adjust it for other employees too. I don't know." But there's a lot of adjustment that can go on.

And also, if you are going to move an employee to another supervisor, it's really important to have that same information to drill down to find out what those issues are, because you don't want to put the employee with a new supervisor that might have those same types of characteristics or qualities. You know, you want to reassign that person to a supervisor where there's a chance they'll be most likely successful.

## [Job Restructuring]

**JAMES POTTS:**

So an employee, frustrated that their employer thought they should move as quickly as other employees who were younger and didn't have a disability. I just want to start by saying age in and of itself is not a disability under the ADA, however, this employee did mention that their disability was impacting them from moving efficiently or getting their tasks done, so the employer needs to engage in the interactive process, see if there's anything they can do to help. Kind of by the book -- or technically EEOC guidance, whatever kind of phrase you want to throw out there -- it starts with there's no obligation to lower a performance or productivity standard as an accommodation. An employer can, and there are certainly situations where temporarily reducing standards or allowing somebody to build back into full duty makes sense. But in general, requesting to do less work than your coworkers is going to violate the employer's right to apply universally applied -- or to enact universally applied performance and conduct standards. So sometimes that's a tough pitch, and an employer's going to deny it.

But again, another -- it doesn't end there. So what can be done? What can be done that's going to help enable this person to get their tasks done? One idea is job restructuring. That's removing or reallocating some duties that are marginal or less important, not really what you were hired to do, but still needs done. In this situation, they had to move between different parts of the clinic quickly, and marginal duty restructuring here would be, "Hey, we're going to group marginal duties in certain locations. So if we remove the amount of walking you have to go throughout the clinic, we're hoping that that's going to allow you to focus on essential job duties, and that's what this is all about.

Additional ideas could help may be to-do lists. "Hey, here's how you could organize going through tasks to make it more efficient." Reminders from the supervisor could help. Modifying your break schedule if fatigue is getting in the way. "Hey, I just can't move faster at the end of the day because I'm tired. I'm exhausted." Maybe take shorter but more frequent breaks if that would help you at the end of the day. What do you think, Melanie? Any thoughts on that one?

**MELANIE WHETZEL:**

Yeah, I think looking at how and when the tasks are done too. Can certain tasks be done in a medical clinic? It might depend on the patients. Can certain tasks that maybe are more difficult, that require more energy or more mental energy be done at times when the person has more energy. Also, could they work with an employee to see how another employee does the job really well? Maybe to see how that employee gets along. Maybe there's some tricks or some tips that that employee could offer the employee with disability that could help them improve their performance.

**JAMES POTTS:**

Yeah, I always like the idea of shadowing a coworker. Sometimes they just see things differently. Or they've been doing it so long, they know that if you, well, if you do this step first, it makes everything so much easier. So, yeah, I really like that idea.

Okay. Let's go to the next slide there.

## [Modifying Schedules]

All right. So we're going to talk about modifying schedules. And I think this is probably one of the biggest accommodation requests that we see on our team. And modifying a schedule can mean anything as long as it works for the employee and the employer. It has to work for both. That can mean working four 10-hour days instead of five 8-hour days. It could be meaning working Mondays, Tuesdays, have Wednesdays off for rest and recuperation and then working Thursdays and Fridays. It could be taking all your breaks, putting them together to have one big lunch break so you can exercise or take a nap. Or taking those breaks and dividing them up so you can have hourly breaks.

An employer doesn't have to allow more paid breaks for someone with a disability than they do for anyone else, But they can certainly look at modifying that schedule. Can they come in early? Can they stay late? Some people have difficulty because of medication or disabilities getting up moving in the mornings, and so maybe they can adjust that schedule so they can come in a little bit later and stay a little later.

So here we're going to talk about an employer that required all employees to work overtime. And Jake was an employee with PTSD, and he asked to be excused from the overtime because of fatigue and exacerbation of symptoms. Well, the employer did consider it. But they ended up denying it, Jake's request, stating that overtime is an essential function.

If an employer determines that overtime is an essential function, everybody does it or everybody is in a certain position has to do it, everybody knows they have to do it, that can be essential function. Now, I've seen cases where the employer says, "Okay, we're going to work on this. We're going to allow you not do as much overtime, but you're still going to be required to do overtime certain times when we need all hands on deck. In this case, in this picture, these guys are working in a snowstorm. That's going to be needed. But the important thing is even if the accommodation is denied, the process doesn't stop here. And James has said that couple of times.

I like to always point out that it's really important for the employer to have a full conversation with the employee and find out "We can't let you off the overtime. We can't do that. But let's talk about how we can proceed forward so that you can do the overtime without really damaging yourself, but so that we can count or your work." In this case, do you need ergonomic equipment to make it easier to shovel? If it's in an office job, ergonomic equipment can help. File cabinets, someone standing, you know, a mat to stand on to reduce fatigue, a lean/stand stool can help reduce fatigue if it's fatigue that's involved. Can we offer different types of breaks? A longer break where you can go inside and do what you need to do. Or more frequent smaller breaks so that you can be relieved from the job more frequently. Lots of different types of accommodations could work there. But the important thing is, I think, that the process doesn't stop. The employer continues to say, "Okay, here's what we require of you. Tell us how we can help you so you can get that done. So that we can all benefit here." James, do you have anything else?

**JAMES POTTS:**

I really like the process doesn't stop, just because it aligns with EEOC guidance that the accommodation process is ongoing. So an employer is at all phases of employment. And overtime can be tricky. Sometimes I've heard employers say, "Overtime is mandatory, but we'll provide an accommodation." But you're talking right now about accommodations for mental health, and they kind of only look at it for those physical kind of disabilities. I know we have to talk about "a disability is a disability," and if the limitations necessitate an accommodation, whether it's physical or mental, the employers still need to consider that. But all good points, Melanie.

**MELANIE WHETZEL:**

A lot of times there's medication involved which makes people drowsy, which makes them more fatigued. People sometimes don't sleep well. So there are some issues that can be physical along with mental health. And, again, it's always on a case-by-case basis, and that's why it's so important for the employer to have that conversation with the employee. I had an employer tell me one time, his Uncle Frank had the same thing, and his Uncle Frank didn't need that. Well that's for Uncle Frank, but if this employee needs a certain thing because of how their disability affects them in this type of job, then the employer needs to look at that and consider that. All right. Let's move on to the next example there.

## [Acquiring/Modifying Equipment]

**JAMES POTTS:**

All right. Back to me. So Eric has trouble with organization and time management, and this is impacting his ability to meet performance and productivity standards. So he has one of those jobs where he's on the computer all day, researching accounts, locating information across various databases, and then he's got to take all that information, insert it in the right formatting, run reports, all that kind of stuff. So he was struggling. Reached out. What could help?

JAN would recommend what about your current setup is potentially getting in your way? He had just one monitor. So all right, have you ever considered a dual monitor or larger monitor so you can have more information displayed at one time? For him, he never considered it before. He thought that would just be too taxing, too much information at once, and that would delay or slow his process. But we said give it a try. It's worth a try if you know what's currently worked -- what you're currently trying isn't working. I know when I started at JAN, I had never used dual monitors before, but now I don't think I could live without them. I'm always going between chats and our web systems and things like that, so it could be very helpful.

Additionally a lot of apps are becoming popular nowadays. Unfortunately, the one that he wanted was a monthly subscription, and his employer denied. I don't think I ever got a full understanding of why a monthly subscription would be an undue hardship, but the employer said they had valid reasons, but they were willing to keep looking. So both parties took some responsibility and looked for a similar app that was going to meet the same needs, but would either be a one-time purchase or free app. And there could be other things too. Simple things like timers and reminders. I know my Outlook has been dinging all day reminding me about this webinar. So things to help keep us on track. Anything about that one, Melanie?

**MELANIE WHETZEL:**

Yeah, I'd like to just offer some suggestions too for low-tech. It's not always high-tech. A lot of people can use high-tech, but sometimes that is not most effective for everyone. And so timers, a kitchen timer. You can have that timer on your phone. There are timers that you can get that will show elapsed time, so you set it for 20 minutes. Let's say he's got a big job, and it's just too much for him, so he wants to break it down into parts. This part's going to take me 20 minutes. I'm going to set my timer. And that timer works backwards and shows that time elapsing, so he can judge, "Okay, I've got this much time left. I'm halfway through, and I've got this much time left." For a lot of people that can really help them manage their time and work more effectively. For some people it doesn't work at all. It just adds more stress to them. So that's not a good thing. But a kitchen timer can be used.

You know, color-coding. I'm a big proponent of color-coding. Some people still use a wall calendar or paper planner, and they color-code it so they can look at that. You can glance at the wall for today or tomorrow, and you can see exactly what's going on tomorrow. What I'm doing tomorrow, what needs to be done and what's due by the colors. I still talk to people who do that, and it's very effective for them. So you can use color to set priorities. You can use green, yellow, and red. Red is urgent, something that needs to be done. That can be done with markers, it can be done with sticky notes, it could be done with folders or rubber bands or paper clips or whatever it is you're working on. A lot of those low-tech solutions are still helpful for people.

And, again, looking at when difficult tasks are done. Sometimes you have to do tasks at certain times, and sometimes it doesn't matter. So if you're really alert and have your mental acuity is really sharp in the morning, do those difficult tasks. For some people it's in the afternoon. And if there are tasks that you don't like as much or that are more difficult, do those when you have the most energy, because it's easier to do the ones you like or ones that are easier maybe when you're not feeling as sharp.

**JAMES POTTS:**

I agree. Next slide, please.

## [Modifying Policies, Tests, Materials]

Okay. An applicant with vertigo being required to take a pre-employment screening test for a position. The applicant was concerned, as prolonged computer usage causes their vertigo to flare up. I really like this example just because no one tried to overcomplicate it. The employer found no hardship providing a paper-and-pen version of the test. Slam dunk easy. We have these things come up time to time. I've had some where, specifically looking back over the past year, a veteran was requesting to take an online application to do it in an alternative way. Kind of unique there. It wasn't for disability-related reasons; it was because they didn't have access to Internet. So maybe not an employer's obligation since it wasn't disability-related, but JAN would say, "What about a library? Can you go and participate or take your online exam in a library or friend or family member, trying to still be able to meet your needs. Another one that could have or another solution that could have helped here was maybe somebody, the employer, reading the questions to the applicant and then filling in on the computer.

**MELANIE WHETZEL:**

That was going to be my suggestion there bringing that up. As long as the test is not a test that measures reading, if it's a test that measures knowledge, anybody can read and be really helpful for somebody. Sometimes people have anxiety in a testing situation, and they really just can't do their best. And so having a reader can sometimes help with that. It just brings down that requirement, anxiety a little bit. Somebody is going to read that to me, and all I have to do is listen. The reader doesn't define terms, doesn't rephrase anything, just reads it. And that can be very helpful for people who have reading difficulties or brain injuries, people with memory problems, or for people who have difficulty reading the screen or the effects of the screen.

**JAMES POTTS:**

Yeah, this one was about modifying policies, tests, and materials. Policies, you would think dress code policies. During COVID, we definitely heard a lot of mask policies, trying to "Do I have to wear mask? Can I wear a face shield alternatively?" Or "Hey, I have to wear specialty shoes because of a foot issue or something like that." So modifying policies, also like attendance policies could be in there, materials, I often think training materials. Like, "Hey, we're all going to be providing an oral training. Well, I need those materials handed out in writing." Something simple like that. Just providing information in an alternative way. So just a few additional ideas there. Melanie, I think we're back to you whenever you're ready.

**MELANIE WHETZEL:**

Okay. All right. Next slide, please.

## [Issues of Change]

We're going to talk about issues of change. And let's just talk about that. Change can be difficult for all of us, but it can be very upsetting to employees with disabilities. No one really likes change, I don't think. There is that saying that people are open to change as long as everything stays the same; right? We probably all feel that way when changes come on. It's like, "Oh, no." But, really, for someone with a disability, early communication about workplace changes is really important. The earliest that they can know that something's coming up, that's going to change, that's going to affect them, the better they can help adjust to that. I think talking about when things are going to change, how it's going to change, how it's going to affect them directly in their department can be really helpful.

Now, sometimes I've heard people ask for an accommodation to have changes in writing. Like so far ahead of time. And that's a really good idea, but that may not always be possible. Sometimes in a workplace, you know, things happen. Something is different, and we kind of have to go with the flow. But I think in most cases, if there's a big change coming that's going to affect employees, it's good for the employer to let them know soon as possible.

So in this example, we have Skye, who's an employee who had her own private workspace. is moving to a sea of cubicles once the employer moves offices to a smaller, more open office. We've seen a lot of this, people moving from a private office or a semiprivate office into just a big open space. There for a while employers were thinking that "Hey, this is really good. People can communicate better. You know, they can cooperate and work together better." And it doesn't work for everybody.

But this employee was concerned about how that would work. "I've had my own office, and I'm accustomed to working in a certain way." So she asked about that. "I really need to talk about how this is going to change. I need to alleviate some of the stress I that have just thinking about this change." And so they sat down, and they talked about it. And the employer did provide advance notice concerning the details of the move. And the really important thing was they allowed her to go in there, they went in there and looked at where she would best be seated before everybody else got in there.

Sometimes employers assign things -- and I don't know what the reasoning might be -- but in this case, they allowed her to pick what might be best for her, a location where she wasn't in the middle, so she didn't have people all the way around her. And they placed the others around her and that really worked for her. And then they set up weekly meetings to discuss any issues that might arise before the move and after the move and then allowed her flexibility in her scheduling to call support persons during the work day to help relieve that stress. James, do you have anything to add here?

**JAMES POTTS:**

That was good. This one kind of hits home. I talk to a lot of veterans who have issues with their physical relation to others. It was a really good idea that the employer let them pick to start with, but there's other situations like we were talking in our little meeting where what happens if all the positions are filled or the seats are filled and there's only two or three? Well, you still give them the option to pick, but now you're really trying to make the existing option work to the best that you can.

So what could you do? Maybe cubicle walls or something like that. I know putting mirrors in front of you so you can see behind you is something that we often pitch. That's not going to work for everybody. If you're looking at the mirror every 5 seconds, that's probably going to be impacting your ability to focus on your job. Even me, whenever me and my wife goes out to restaurants and things like that, we're pretty strategic with where we sit. In my office at JAN, my back is not towards the door. So certainly something that I'm sure my fellow veterans can relate to, and something that employers should consider when trying to determine the most appropriate places to put an individual, veteran or not, that have these kind of difficulties.

**MELANIE WHETZEL:**

Yeah, I'll just bring up an example. I still remember this. A guy, they had, like, 5-foot cubicle walls, and they reduced them so that people could see each other and talk and all. And he said, "This does not work for me, because all I see are heads walking by. Day in, day out, just heads. So we talked about just reorienting his office so he doesn't see those heads. Can you turn your desk around? And sometimes it's simple as that. Or putting up taller cubicle walls for one person. And sometimes people don't want to draw attention to themselves in that way. But like James said, there's are different options, and that's why it's important to have that conversation. What works for somebody might not work for this employee, and that's why it's important to find out what exactly's going on with this one employee.

Okay. Well, let's go to our next slide there.

## [Providing Services]

We're going to be talking about providing services. In this example, we have a veteran in a new student services position who has PTSD and a TBI. After disclosing his disability and requesting accommodations, his employer provided a cubicle close to an exit, which is what he asked for, where his back was against the wall, just like what James was talking about. This helped alleviate some anxiety, but he still had difficulty with memory and organization. And so his employer obtained a job coach through the VA to help the employee adjust to his new position. The job coach helped to develop a customized form for taking notes. Now you can call that a template. I sometimes call it advanced organizer. You can make up a form that has much information on it as possible. Maybe different forms for different types of meetings or different types of students or clients or whatever your meeting's about. So you can whip one out and then you are required to do the least amount of writing. And that can really be helpful for people.

The job coach helped organize a system to organize the employee's workspace. And I'll just say, I'm left-handed. I blame that, I blame a lot of things on being left-handed. But it really is important to look at how you do your work and how your office is set up. Because I've seen people -- and I was a teacher before I came to JAN, and I've seen students do some really awkward things just because of the way things are set up. And it's not thinking, "We can change this so you go across or you do things in steps or things you don't need you can put them away, because they can be distracting as well." And so how you organize your workspace can be very important.

The job coach also suggested email communication so that the employee would have written responses that he could go back to. And we talked about this one talking about supervisory methods. Some people are really good with getting verbal information. Some people really want verbal information followed up with written directions or emails so they can go back to that and look over. And they also added breaks to the employee's day to help reduce stress and fatigue. And I think we get a lot of questions on our team about job coaches and support people and what they do, how that works. James, would you like to talk about that a little bit?

**JAMES POTTS:**

Lots about job coaches, especially more recently. They can do a lot of different things, and it depends on the situation. Typically, they're more short-term. They're in there to observe, identify specific issues related to the disability, and make plans on how to improve that. I know a lot of times individuals asking for an extended period, 6 to 12 months, but I don't know what a job coach is going to be doing in the 6 to 12 months, because they're not there to perform the role for you. It's there to meet the disability-related need and put your best foot forward so you can take over these tasks independently, more efficiently, more effectively.

Job coaches can sometimes be a tricky pitch to an employer. We talked about shadowing a coworker. That could be somewhat of an alternative, not really hitting on the disability-related needs, but helping with ability to perform the job duties could be helpful or mentor, an internal mentor who already knows the job duties has been doing it for a while. Yes, again, they may not be able to pick up on your specific disability limitations, but they can still help with general organization tips or "Here's how we've been organizing things over the years," and again, what would make it easier moving forward. That's probably all I've got on that one. If you ever have questions about job coaching, you can always give us a call directly though.

**MELANIE WHETZEL:**

That's right. And I think a mentor can be really important support person and coworker. Because sometimes a new employee who's moved to a new position, maybe, can have a lot of questions about workplace issues, culture, procedures and all, and it can be really intimidating to keep going to your supervisor and asking questions. So if you can have a person kind of like appointed to be a mentor that you can go to with questions, just as long as it's not overtaxing that person and there's so many questions that they can't get their job done. But that can be something that can be really helpful and reduce stress in the workplace, just thinking, "Hey, I can go to her. I can go to him if I have questions, even if I don't have any today." It just reduces that anxiety and can be really helpful. All right. Thanks, James.

Now we're going to go to the next example on leave, which James is going to talk about.

## [Leave]

**JAMES POTTS:**

Thank you. So does an employer have to provide an accommodation if the employee is not having any performance issues? Specifically, we have Logan, who is a top sales performer, but he reached out to his boss asking for 30 days of leave. He disclosed he had an addiction problem and that it had significantly worsened since working from home from pandemic and needed time to seek treatment. The boss was confused, perplexed even. There was no signs of performance issues, and he was one of the best.

So they reached out to JAN with just a simple question: "Is this something we have to provide? There's no issues going on." And JAN's answer is going to be yes. We even have an article or pub written on "Accommodations Beyond Performance," and that's to help manage conditions.

Here let's think from it from the other perspective. If you deny leave, then performance could slip. He's obviously having struggles with his health, because he's reaching out. And would this employee want to stick around long-term if the employer's not willing to help whenever he has a health crisis? So those are things to consider. I think the long-term goal of an accommodation is to enable an individual to do their job, and that's what this is ultimately to do. It's to enable them to seek the treatment that they need, come back, and be that top sales performer.

I don't want to muddy the water too much, but we're assuming that this is alcohol. Alcohol is legal. And individual who meets the definition of disability for addiction or alcoholism is covered under the ADA So they are within their rights to request accommodations. If we do the hypothetical, if Logan had a substance use addiction and was currently using illegal drugs, even if they were otherwise qualified and would meet the definition, they would lose their ADA coverage because of their current illegal use of drugs. So tricky situation there.

And even then, when I'm talking to employers, I would have a practical solution or practical conversation with them. Do you really want to lose Logan? Do you want to lose what he brings to the table? He was dealing with all this, and you never knew. If he didn't disclose, you would have never known. This could be a situation for a last chance agreement. Hey, a last chance agreement is situations where employer would be within their rights to terminate an employee based on performance or conduct, but they give them that one last chance. And that's usually based on some sort of an agreement for treatment, a plan of recovery and to be able to return and do your job. So just kind of two different ways to look at that for this one. Yeah, leave seems to be a pretty good accommodation idea.

**MELANIE WHETZEL:**

And I just would like to say there, too, in other instances that we talk about with leave, I think it's a very misunderstood accommodation, like you said. I think employers sometimes think that if the accommodations are to help people work, and they are, and so they see leave as how does that help somebody work, because it's getting them off work? But what it does is allow that person time to heal, seek treatment, rest, recuperate so that they can get back to work. And I think that's very important.

And in some cases -- not in this example where we're talking about addiction -- but there are lots of examples too where the employer had no idea the employee had any kind of issues because their performance was so strong. And I think the employer was shocked, because they didn't know there was a disability involved.

But it is important to consider leave as an accommodation or other accommodations needed even if it doesn't impact performance, because you don't know. We don't know how much effort and energy and time someone may put into their work in the background to make it look like they have no issue. And their energy levels, they're just burnt out sometimes. Their energy level is low. They have no family work balance. And so they need that time off to kind of get back into balance or if they need some other accommodation.

But I think it's not always going to be judged by how it impacts your performance. That's mostly what we talk about. How does your disability impact your performance? What are those -- That's how we start the conversation with accommodations. But sometimes it's not going to be that, because it is the person puts so much time and energy into their work that it creates an issue that they need accommodations for.

Okay. Well, let's go to the next example there.

## [Telework]

This one is telework. Working from home, probably since the pandemic. We see more and more people working from home. And probably starting in April, May, June, I think, when a lot of employers were requiring people to go back. And we got lots of calls and emails and chats about "Can I remain at home and telework?" And for a lot of people, they found it was really effective to telework. When you telework, you can control your environment, most times, you can control your environment. There are people we found who did not successfully work from home. They needed more structure. There were things going on in their home that weren't good or they were isolated. But I think for a lot of people, they found it could really be effective.

And when we talk to employers and they're not really sure, we'll say let's do it on a temporary or a trial basis and see how it works. Well the pandemic was a perfect example of that time. You could look at that as this was a really extended trial period or an extended temporary period and determine how well did that work for the employee? And how well did it work for the employer?

So let's look at our example here. We have Denise. She's always hypervigilant and aware of her surroundings. While this may have been helpful during her military service, it can make completing her work difficult in a busy office space. Denise's performance had slipped in the last several months, and her boss reached out to see if anything was wrong.

And this is really important, too, for an employer to reach out when they see a conduct or performance issue as soon as possible to alert the employee, "Hey, we see this is going on. Hey, we want to help. Can we talk about this?" Because sometimes employees aren't aware that their performance or their conduct has been affected. And it's good for the employer to bring that point out, gets the employee talking about it, asking for accommodations. Maybe even disclosing if they haven't disclosed before.

And so Denise disclosed her PTSD and her struggle with concentration because of the noisy working environment. She requested a private office to minimize the distractions, but there were no vacant offices available at that time. And we hear that a lot. Employers don't have vacant offices, or their offices are just for higher-level employees, that lower-level employees aren't entitled to their own office space. So her employer offered to provide noise-canceling headsets to allow to her listen to music during her shift. And that was not effective for Denise. because she was not distracted by the noise, just by the noise, but by all the activity going on, things she can see as well. So the employer talked, and they worked out and figured out she can do all of her essential functions from home and offered to allow her to work from home where she could control her own environment. And again this could be done on a temporary basis.

Some employers will say we have no way of monitoring the employee and monitoring their productivity. We can talk about that. Like, unless you stood over somebody when they're in the office, how did you measure productivity when they're in the office? And used those same standards to measure when someone's at home? You can keep in contact with somebody. You can have meetings. You can have phone meetings. You can see what they're doing. You can do more emails. I would say I've heard of employers say, "Okay, if you're going to work from home, you're going to fill out a little sheet of what you do every 10 minutes." Probably not a good idea unless somebody's absolutely not working because that can create more anxiety and more work if you have to keep going to the sheet to fill out exactly what you're doing. We have found that telework can be highly effective accommodation for lots of different disabilities. James, do you have anything to add to that?

**JAMES POTTS:**

I like to talk to employers about your rights to discipline or hold them accountable is the same, whether they're in the office or they're at home. So it's all about getting the work done; right? If the individual is working at home, and they have a performance issue or they're just not getting things done, it's going to be the same process, but it may still be meeting their disability-related needs.

We have had a ton of telework calls over the last year or two. When possible, it does make a lot of sense. The individual has complete control over their environment. The employer really doesn't have to do whole lot of anything other than saying okay. Because the opposite of that is trying to mirror the benefits of working from home in the workplace. So is that a private office? Okay. Private office doesn't exist; what next? Privatizing a cube? That could work. That may not be the most effective, but it could limit visual distractions and auditory distractions. Maybe a hybrid solution. Work from home as much as you can and get the tasks in the office only when necessary. Or what about vacant conference rooms? The ability to be private as much as possible. So employers need to put their thinking caps on, and employees need to be aware there could be alternative solutions in the workplace, and you may want to be flexible.

We're ready for the next slide. This is going to be me.

## [Service Animals]

Service animals. A very short spiel about service animals before we do our example. Under titles II and III, there's a definition of service animal. A dog or an animal that's trained to a specific task related to a disability. Title II and Title III would talk about a handler and their service animal's rights to go to Walmart or a restaurant or a hotel.

But we're talking about Title I. Title I is the employment provisions of the ADA. There's no mention of animal whatsoever in Title I of the ADA. So no service animal, no service animal in training, no emotional support animal. Just no mention of it. So we really have to look at what is an accommodation? And an accommodation is a change in how things are usually done, and that change is necessitated by an individual with a disability-related limitation.

So most employers, whether it's written or unwritten, don't allow pets, animals in the workplace, so really a request to bring a service animal is a request to modify that sort of policy. An employer should look at the feasibility of a service animal or emotional support animal, if that's the request, in the workplace. It doesn't mean it's automatic like it's an automatic right to take your service dog to Walmart. But it still needs to be a conversation, and it should be based on undue hardship.

So here we have Terrence, and Terrence requested to work from home. And the reason why is it was going to minimize the stressors related to his commute. It would also minimize the impact that a loud office space has on him and his ability to concentrate and would also allow him to manage his emotions. Terrence's employer stated that their preference was for him to work in the physical workplace.

So what accommodation ideas could potentially get Terrence in the physical workplace? He said that he would want his service animal to accompany him. He would need a private workspace, and that would help him manage those distractions. Unfortunately, again, no empty office spaces. There's just nowhere to place you. However, there were options in quiet or less-crowded areas of the building, so not a perfect solution but trying to work with him, kind of. And they were also concerned about having a service animal in the workplace. Is this going to be a distraction? Is this going to be a disruption? We never had to deal with this stuff before. And I kind of look at these well, employer, you want the employee to be in the workplace, and they're giving you ideas. If you can make it work, what about a trial period? Can you have them in there in this quiet or private area and just see how it works out? If not, maybe both parties are going to just agree, "Hey, working from home meets all your needs, and it's just the easiest solution for all parties." What do you think, Melanie? We get so many service animal questions. I know we're kind of running close to time, so I could go off in 20 minutes, but.

**MELANIE WHETZEL:**

I'll just say I think one of the most important things is the training. A lot of people train their own animals at home. So their animal at home is different than animal in the workplace, depending on the workplace. Let's say a preschool teacher wanted to take an animal to a preschool with all those kids. That requires certain type of training that's different than an accountant that works in her own office or a landscaper that works outside. I think that training is important that's it's appropriate for each workplace where that person is going to be going to work. Employers have a lot of concerns -- and rightfully so -- about how that animal is going to behave in the workplace.

**JAMES POTTS:**

Which is another great reason to have a trial period. And sometimes I use the language or wording "demonstration," but that's not really correct. It's more like a meet-and-greet. You can't have a seizure alert dog give you a demonstration, because you can't force the handler to have a seizure on the spot. But you could meet-and-greet with it and say, "Hey, is this dog well-groomed? Is it seeking affection from others? Is it whining? Is it barking excessively? So you can kind of get a good idea with a fairly limited amount of time around an animal. Do we have a good first impression? So if the animal is perfect on the first day but two days down the line is starting to have accidents or tearing up computer equipment, then that could be addressed. And maybe the animal proved itself to be inappropriate throughout that trial period. It's a good faith effort for sure.

## [Reassignment]

**MELANIE WHETZEL:**

Absolutely. Well, let's go to our last example here on reassignment. Reassignment is normally considered the accommodation of last resort when all efforts to accommodate the employee in their current position have not been successful. It doesn't have to be. It can be done at any time when the employee and the employer agree. And how that works is the employee can be reassigned to an open position that they're qualified for. They don't have to be the most qualified. We go over this over and over again. They don't have to compete for a job. They have to be qualified. So the employer looks at "Do we have open positions that this person is qualified for?"

So our example here is an RN with 20 years of experience in a veterans hospital. Was having great difficulty working in an emergency and critical care unit due to an increase in symptoms when dealing with trauma. And so he asked to be reassigned as an accommodation out of the trauma unit.

And this is an ideal example. I had people say, "Can you give us some that don't work?" Yeah, we can talk about ones that don't work. But what I like about this one is HR worked with him. They did research into the position that he was qualified for that were open. They came up with three. So they ranked those in the order of which he was most qualified for, which ones he thought he might prefer. And then they could look at all three of those and let him have a good choice where he best fit in.

Because that's what you want. You want to provide a reassignment that's as close as possible in status, pay if possible. It may not always be possible. Sometimes the reason someone needs a reassignment is because they can no longer do those tasks, their skill level is not where it needs to be for that level of a job. But it's good to look for that. So you can find sometimes there's only one job. Sometimes there are no jobs to reassign someone to. But it's really great if there's cooperation between HR and the employee to look at what's available. and to talk about that. Look at the qualifications and what the employee's preferences might be. James, do you have anything to add to that?

**JAMES POTTS:**

I think that was good. It doesn't have to be the last-resort option. A lot of times an employer and employee can look objectively at a situation and say there's just no realistic solutions here. We both know that a new position is available, vacant. Let's just go through with it. I know a lot of -- I can't say a lot, but I've certainly talked to federal employers who seem to have very strict policies about exhausting all accommodation ideas in the current position. And certainly, the goal is to accommodate in the current role, but I would say you don't have to get hung up on that. Which is really just echoing you, Melanie. I thought that was good.

**MELANIE WHETZEL:**

Okay.

## [Conclusion]

**TRACIE DeFREITAS:**

All right. Melanie and James, you've done an amazing job hitting all of the really important topics. In fact, we don't have time for questions because you did such a great job thoroughly addressing everything. Some of the questions were sort of a followup to lots of the things you mentioned, So you're right on target with hitting those issues.

So unfortunately, I think we are going to have to close out for the day. Thank you for joining us for this JAN webcast on "Providing Reasonable Accommodation to Veterans with Disabilities." Melanie and James, as always, you shared some great accommodation and ADA information that I think will be of great value to our attendees, so thanks for providing the training today.

Once again, we take a break from the JAN webcast series in December, but the new JAN webcast series will begin in January 2023. We'll announce the new webcast lineup end of November, so watch for JAN updates via email and social media. The new series will be available on the JAN training page at AskJAN.org.

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

Thank you to Alternative Communication Services for providing sign language interpreting and captioning services for this webcast.

And, finally, that's all the time we have. If you require additional information on today's topic or have accommodations and ADA questions, Please do contact us. Go to AskJAN.org for full details. This concludes today's JAN training.