# Ask JAN! Expert Q&A

## [Introduction]

**TRACIE DeFREITAS:**

Welcome, everyone, and thank you for joining us for the JAN Accommodation and Compliance Series Webcast titled "Ask JAN! Expert Q&A." My name is Tracie DeFreitas. Before we begin we have some housekeeping items to cover.

First, if you experience technical difficulties during this training, please use the question-and-answer option at the bottom of your screen to submit a question. You can contact JAN at 800-526-7234 or use the live chat at AskJAN.org. We also offer an FAQ that may answer some of your questions at the link provided here. This FAQ is linked in the email that you received with the event log-in information and on the webcast registration page.

Next, questions for the presenters may be submitted during the event by using the Q&A option located at the bottom of your screen. Questions will be gathered into a queue and answered during the Q&A period at the end of the webcast. PowerPoint slides can be accessed using the link included in the webcast chat or download them from the webcast event section on the JAN training page at AskJAN.org. That's A-S-K J-A-N dot O-R-G.

To access captioning, use the closed caption option at the bottom of the webcast window. A copy of the captioning transcript will be available with the archived webcast. This presentation is being recorded and will eventually be available on the AskJAN.org website.

And finally, at the end of the presentation an evaluation will automatically pop up on your screen in another window. Keep the JAN webcast window open when the webcast ends. We appreciate your feedback. So if you would please complete the evaluation.

The CEU approval code will be provided after the evaluation is completed.

Now let's get started with this Ask JAN Expert Q&A session. We'll start with information we've prepared based on our questions that we've received before this webcast, but our experts will field ADA and accommodation questions on the spot later.

I'm excited to be joined by JAN's lead consultants today. I've had the privilege of working with these colleagues for many years, and it's my pleasure to introduce Melanie Whetzel, JAN's mental health condition expert and lead consultant on the cognitive/neurological team; Teresa Goddard, our AT expert and lead on the sensory team; and finally Lisa Mathess, lead on the motor team and a fellow ADA specialist. Thank you all for joining today.

As a start, let's address some ADA and accommodation questions that fall into three categories. So back to the basics, return-to-work, and, of course, future of work issues.

A small disclaimer, JAN is not a legal service, of course, and we don't provide legal guidance. The information that we're sharing here today is based on formal ADA guidance provided by the Equal Employment Opportunity Commission, EEOC, and also JAN's 38 years of experience as a leader providing practical ADA guidance and accommodation solutions. Participants, please use the Q&A option located at the bottom of your screen to submit questions any time during the discussion.

So let's get started.

## [Back to Basics]

Does everyone remember when job accommodation and ADA questions didn't include the phrase "because of COVID"? Flashing back to that time, some questions, they were a little different back then but still complex and trending with the times, of course. Tested accommodation practices and ADA interactive process strategies are informing the decisions that we're making today. So let's take a step back to the basics starting with some topics related to engaging in the interactive process.

Now when recognizing when ADA is triggered, it's important. It's central to ADA compliance. And so here is a question we've received. An employee provided a note from their healthcare provider that says telework is recommended because the employee is considered high risk for severe illness from COVID due to a medical condition. So this person wanted to know when is the ADA interactive process triggered?

You have to remember the basics. When the employee requests a work-related change for a reason related to their own medical condition, this is an ADA accommodation request. There is no mention of ADA or accommodation, but there is that nexus between a medical impairment causing a problem and a work-related barrier. Next, the employer may need to gather some information about the disability and the need for accommodation in order to figure out if the ADA applies.

So now we need to consider some questions we have received related to medical inquiries with situation two. Gathering information in step two in the interactive process, and it involves sticking to the basic ADA rules related to medical inquiries.

Melanie, you're our cognitive/neurological team expert. So you address a lot of questions about individuals with mental health conditions. We know it's not always clear how much medical information will be helpful to provide accommodations, and employers really need to know how much information is enough or too much sometimes.

Here is the situation for you. An employee asks for reassignment to another position that won't cause as much stress. The medical documentation submitted states that the

employee should be moved to a stress-free position. The employer doesn't know where to start. What does this mean? How would you advise the employer in this situation?

**MELANIE WHETZEL:**

It's a really good question, because what does it mean? I'm not sure what that means. It's really vague. There is no medical condition listed. You know, everyone experiences stress. I think probably most jobs are stressful. What stresses me is not going to stress you or the next person necessarily. And so I think it's a really good idea for the employer to get some more medical information that would clarify what the medical condition is, what are some of the limitations besides stress, and maybe some accommodation ideas. I think that probably the best thing to do is to have a full conversation with the employee and talk about specific ideas for stress. What is it specifically that's stressing you in this position?

You know, ADA guidance would say that the employer would want to accommodate the person or try to accommodate them fully in a position they're in before they try reassignment if they don't know what's causing stress in the job, how can they put them in another job? You don't know what's going to be stressful in the next job and then it could be another job and another job. So well we try to talk to employers and individuals when they call too is what is it specifically that's causing the stress? The employer really needs to know that so that they can look at reducing that stress or eliminating that stress.

**TRACIE DeFREITAS:**

Ok. That's really helpful. Do note that JAN does offer more information on this type of topic at AskJAN.org. if you go to the A to Z by topic, you'll see some information on medical exams and inquiries, and we have a lot of resources at the bottom of that page that you might find helpful.

All right. Let's go to the next slide. Here's another situation, number three. An employee submits medical documentation to his supervisor a week after being written up during a performance review. The medical documentation states the employee has difficulty with concentration and memory, but it doesn't offer suggestions for accommodations, and the employee didn't suggest anything on their own during the performance meeting. Melanie, still looking at you for some guidance on this one. How can an employer determine effective accommodations when the medical information only lists limitations, and the employee hasn't really asked for anything specific.

**MELANIE WHETZEL:**

That's another good question. I will say there are probably three things that the employer can go back to the doctor and get some clarifying information about what might be helpful. They might include some information about the problematic job tasks. When we talk about accommodations with people, we talk about what's most difficult in a job that's a disability related? You know, what are you having the most difficulty doing? That's where we usually start. And so I would say, you know, if there is a performance review, they're going to have some issues with performance and they can start right there. You know, you say this person has difficulty with concentration and memory. Can you help us with accommodation ideas that will help with these job tasks? You can also have that full conversation with the employee. Talk again about what do you need?

You know, some employees I think need to be prompted and into that discussion, a lot of employees know exactly what they need, and some don't have any idea what they need. And so I think having that full conversation, though, and talk about let's say the employee is having trouble writing reports and getting them done on time. Okay, let's talk about that. How do we help you? You know, if you have concentration and memory issues, what do we do to get those reports done on time? Would a template help? You know, do you need more quiet space? Or privacy. You know, what is it that would help you do those?

And then I think the third option would be to contact JAN. That's what we do all day long. We talk to employers. We talk to individuals. Both people can call and get ideas, and sometimes I think it's easier for the employee to call and talk to someone at JAN. It's a little less stress, I think, than talking to their supervisor about it. And they might tell us some things about the job or some things about the difficulties that they don't want to talk about to their employer, and maybe we can help them probe and find some good ideas that would help them.

**TRACIE DeFREITAS:**

Excellent guidance, Melanie And you're really making that point. You know, that interactive process is interactive. Work together. So I think that's just great guidance. Thank you.

So next let's still keep with back to basics but moving to a complex issue on the next slide. Workplace accessibility, namely parking. While work location has kind of changed for many workers due to the pandemic, workplace accessibility issues -- they still exist. We have some questions related to parking requirements and access to facilities. So Lisa, it's your turn.

Let's say an employee requests accessible parking, but the employer believes the parking lot meets ADA guidelines for the number of spaces. The employer thinks they can deny the request. What do you think?

**LISA MATHESS:**

Okay, when an employer contacts JAN just wanting to deny a request, I'm going to encourage all employers to be like, okay, if we are going to deny this , let's look at other alternative options. You don't just want to shut down an interactive process. But back to your question about the parking lot. So an employer-controlled parking lot, really you are looking at bare minimum guidelines which are the ADA accessibility guidelines. And that's a base level of physical accessibility. A bare minimum in most cases. So on top of that bare minimum standard, under Title I, the employment realm, employees and employers may have to engage in that interactive process to see what a specific employee truly needs to gain access to that parking lot and gain access to that building. That may be more than what that ADA accessibility guidelines says. So it's really going to be that unique case-by-case determination.

So let's assume that that parking lot is compliant with the accessibility guidelines, but the employee with the disability can't walk the distance from the accessible parking space to the work site entrance. The employer would need to consider accommodations absent hardship. So sometimes employees may not even need a true accessible spot. They might just need a reserve parking spot that's closer to their workstation that's within their walking restriction.

So common accommodations for parking stuff and closer parking spaces is either moving the parking spot closer to where they are going to gain access to that building or moving the workstation closer to the door that's closer to the parking lot. And oftentimes that's that side door that we use for deliveries. It might not be the typical employee entrance, but it's close to the parking lot, and that might be something that's conducive for an employee with a disability. And then removing the barrier of parking completely. That's whenever we're looking at telework or reassignment to a different location. All of those things can be considered whenever we are looking at parking issues.

**TRACIE DeFREITAS:**

Good stuff, but I think it's important, you know. You are making that point. It's really case by case you might have to go above and beyond what a standard says you need to do to ensure an individual employee has access to the work environment. Good tips there. Also parking issues are kind of tricky. So for more on this topic, you can see AskJAN.org, the A to Z by topic of parking for some commonly asked questions to help you work through those issues.

Lisa, let's look at another workplace access question. We have an employee who says that front door is too heavy to open, but it meets, again, the ADA guidelines. Are we still compliant with ADA? What do you think?

**LISA MATHESS:**

Okay, so that door, that push-pull force, that may be conducive to that accessibility guidelines. Again, that's the base level. But let's say you have an employee that comes – had a stroke or left side paralysis or just body weakness. So they still can't use their push-pull force -- to open that door that is compliant. You are going to have to look at -- (garbled audio)

Can you hear me?

**TRACIE DeFREITAS:**

We hear a little bit of an echo. So --

**LISA MATHESS:**

Okay. Yeah. Under Title I -- I'm going to hope this works itself out -- an employer does need to assess the situation to explore alternative accommodation ideas. And whether that's to replace the door in its entirety, there is assistive technologies out there that could be a retrofit to the existing door to lighten that load, automatic door openers. So we can definitely explore some tech options to not only be compliant with the accessibility guideline access, but also be functional and effective for that individual that happens to have some weakness limitations. So if you want to talk specific tech stuff, don't hesitate to reach out to JAN consultants.

**TRACIE DeFREITAS:**

More good information. Thanks for clearing up that compliance issue. And sounds like the gremlin has taken care of itself (laughing).

All right. Let's move on to the next situation. Teresa, you are up with the next situation, number five. So let's talk about good old-fashioned equipment- and technology-related accommodation requests. Headset woes are common workplace problems, especially for employees who are hard of hearing. It isn't as easy as it used to be to kind of simply let employees try different headsets to find out what works best. This is an opportunity to explore options that are best suited to meet an employee's needs rather than just good enough to get by; right? So in some cases the best listening solution may not even resemble a traditional headset.

Here is a question for the JAN sensory team. I have an employee who uses hearing aids and doesn't like their telephone headset. What headset should I get for this employee? What guidance can you offer about exploring equipment or technology as an accommodation.

**TERESA GODDARD:**

Oh boy, Tracie, I could talk about this all day, but I will try to restrain myself (laughter).

So we actually get this question all the time. Employers are like, they don't like their headset. We tried three different headsets, and they don't like any of them. Let me tell you this: If you have an employee who is using hearing aids, they probably shouldn't be using a headset at all. The best solution for them is probably going to depend on the type of hearing aids that they use. So what you really need to do if you want to make the best possible listening situation happen for this individual is find out what kind of hearing aids they use. What's the brand? What's the model number? If the person has the option to contact their audiologist, and the audiologist is knowledgeable about connecting to a workplace phone system -- that's a lot of "ifs." If all of that falls into place, listen to what the audiologist has to say.

But you know what I hear all the time? I hear all the time that either people have moved across the country and they don't have a new audiologist yet, or their audiologist was great at setting up the hearing aids but doesn't really understand this phone problem. They're like, "Just use your iPhone!" "These hearing aids are designed to work great with iPhones." Well that would be great if I was allowed to have my iPhone at work; right?

Reaching out to the audiologist is a great first step, but it doesn't always work out. What you can do is find out the brand and the model and go to the website of the company that makes the hearing aids, and you're going to be able to see the features of that hearing aid -- if it has Bluetooth connectivity, if it has a telecoil that you can use with a neck loop. And you can usually even contact somebody at that company to find out what's the best way to connect this particular kind of hearing aid to an office phone?

Now will you occasionally get situations where somebody has hearing aids that don't have those features? Yeah. That can happen. And sometimes, yes, you do wind up sort of carefully perching a headset on somebody's head trying to get the sweet spot, if you will, where they can hear as well as they possibly can without getting a lot of feedback. But it's not ideal. Nine times out of ten you're going to be looking for some type of accessory or a neck loop to use with the hearing aid, but you really have to know what kind of hearing aid you are dealing with in order to make it all work.

So that's the short version.

**TRACIE DeFREITAS:**

That's a lot of technical stuff there. It's probably a good reason to contact JAN for more information.

But, Teresa, you know I have a followup question. Does JAN recommend equipment or services?

**TERESA GODDARD:**

I knew you were going to ask that, Tracie.

No, JAN doesn't recommend or endorse specific products or services. What we do is try to put you in contact with options so that you can decide on your own what's the best option to pursue for your employee or for yourself. If anybody is having an issue out there with their headset, or they would just like to hear on the phone a little bit better, you can always give JAN a call. I'd be happy to chat any time.

**TRACIE DeFREITAS:**

All right. Wonderful. Thanks so much.

Ok. Let's move on to the next situation. Actually, next category.

## [Return to Work]

So we're talking a lot these days about return-to-work plans. Many employers planned a phased return-to-work to start in September, but with the surge of COVID infection rates many return-to-work plans have stalled. With new dates falling in November or even January of 2022, for that matter, return-to-work issues, they vary, and we know you have questions about these topics. So please feel free to use the Q&A to send in your questions, and we will get to those here soon. But let's consider some we've already received and on some topics you're probably thinking about.

Melanie, you're back on.

Telework, it can be a highly effective accommodation for a lot of people with cognitive and neurological impairments, and it proved to be effective during the pandemic. Some employers really want employees back to work, though. We've been hearing variations of this kind of situation.

So situation six here. An employee with panic disorder asked to continue teleworking after her employer ends mandatory telework related to the pandemic, and they called all employees back to work. The employer tells the employee she will need to come into the office the same as everyone else until the interactive process is complete. Is that the best approach?

**MELANIE WHETZEL:**

Well, I'm going to say no. I don't think it is in this case. Couple of reasons. There is a modified workplace policy under the ADA that says an employer can make a modification or a change in a policy for someone with a disability that they don't make for others. It could be to allow someone to remain at home when they're calling everybody back. Even if it's on a temporary basis.

You know, that return to work, we've had so many questions. It's not a "one size fits all." There are a lot of different factors that go into that that not everybody is ready to come back at the same time due to disabilities. I would say too what would be important to consider this employee -- was their teleworking performance good? And if it was good, then why not let that continue? You know, change is not easy for most of us, and for people with disabilities it can be really difficult. And if somebody has a panic disorder, and maybe they have been working from home, and they've got it managed, and then a quick sudden change could uproot that management and cause issues, and I don't think any employer wants to do that. If the employee can continue to work and be productive, that would be much more beneficial to both of them. The employee starts having panic attacks, you know, that could affect her performance, it could affect her attendance, when really, you know, she might be able to stay at home. Then they can consider on a temporary basis. Let's do this until we get the accommodation process finished, and let's see what happens. You know, and if there were any kind of a performance issue, they are saying, well, you know, that should have been addressed along the way and not right now. But even if there is any kind of an issue with performance, that can be addressed at the same time that they allow her to stay at home and work.

**TRACIE DeFREITAS:**

That sounds like a good plan. That way she can continue to work, and they can work through that process and see how things go. All right. Thanks, Melanie. I'm going to move on to the next situation here.

Teresa, you're back up.

Many employers are encouraging employees to return to on-site work, of course. However, some employees don't yet feel that it's safe to return. The sensory team also fields questions on immune system issues. So this includes medical issues that can impact the effectiveness of vaccines.

So let's explore the situation. An employer says that an employee who had a heart transplant wants to keep teleworking, but they had two shots already, and the employer thinks that this person should be able to return to work, and they want to know why the employee needs to stay home. Thoughts on this kind of situation?

(no audio)

I think you are muted still, Teresa.

**TERESA GODDARD:**

Thank you. Better?

I'm so glad that you brought this up, Tracie. This is such a timely issue, and it is something that we are hearing about, and as you know organ transplantation is an issue that's very close to my heart. A lot of people with transplants are getting questions about this from their employers. When will you be ready? You've had two shots.

It happens that almost everyone who has an organ transplant who has been through the procedure and has received a solid organ transplant has to take a lifelong regimen of immunosuppressive therapy. This often involves heavy doses of steroids that can cause a lot of other problems like increasing someone's risk for diabetes, but the research that we're seeing shows that many organ transplant recipients don't develop antibodies against SARS-CoV-2, the virus that causes COVID, at the same rate or in the same way as other people who have received a complete authorized COVID-19 vaccine regimen. So this means somebody could have their two shots of an mRNA vaccine, but they're not producing as many antibodies as the average person who had those same two vaccines. Because of that, the FDA is allowing people who have had solid organ transplants and had two shots of an mRNA vaccine to go ahead and get a third in the hopes that's going to increase the level of antibodies that they are able to produce so that they're better protected. That's the logic behind somebody who might need a third shot. Some people are able to get the third shot very easily, and some have been having some issues with trying to get that third shot scheduled, but there are really good reasons why a person who has a solid organ transplant and has only had two shots might not be safe to return yet. And the truth is, we don't even know for sure how well these third shots are going to work. There is ongoing research with kidney transplant recipients at Johns Hopkins, and we'll just have to see how that research turns out before we know if a third shot is really even going to work well.

I hope that helps.

**TRACIE DeFREITAS:**

It does, absolutely. I think it's a good reason to make sure we are thinking about accommodations case by case. Take a look at the situation. Understand the facts of the situation. For employers who are trying to figure out how to go through or process telework accommodation requests, JAN has put together a new resource of practical approach to telework as a reasonable accommodation during the pandemic. It's something that can be used all the time, not just in the middle of the pandemic, but you really want to take a look at everything case by case and think about it from a practical standpoint as well. Is it something that is going to enable someone to keep working? Thanks so much, Teresa. It's something we are hearing a lot about right now.

Let's move to situation eight. Lisa, you are back in the hot seat.

This next topic touches on something that we are also receiving a lot of questions about, and that's processing vaccine exemption accommodation requests related to a medical condition. We did get a lot of these questions come in. Many employees returning to on-site work are required to be fully vaccinated. Employers are looking for help gathering information to review these requests, and employers are asking if there is an ADA form of some kind to request medical information for this specific purpose. Can you help us out with that?

**LISA MATHESS:**

Of course. The Q&A lit up when we went to this vaccination slide, so buckle up.

So as far as the form goes, there is not a standard or a required form for requesting any medical documentation per ADA, not only the vaccine exemption. So there are templates that employers can use to create their own and kind of examples that are out there. So there's a template made available by the Safer Federal Workforce task force to develop a form to be provided to employees who are seeking an exemption for vaccination requirements due to a medical reason. This is just an example. It's not a required form. And I do think it's important to mention that any medical information that we are getting on these forms for these exemptions, that should be treated like any other confidential medical record. It should be in a separate place from the employee's personnel files. So we do want to handle these confidential records with care as we always have. COVID and vaccinations make that no different.

**TRACIE DeFREITAS:**

Very helpful. And we -- JAN does have this particular resource linked. If you go to AskJAN.org and access our COVID page right off the home page, you will find this template and many other relevant resources that might be helpful if you are having to process these types of requests. So thanks, Lisa. We appreciate it.

Ok. Let's move to the last category, and then we will work our way into sort of the live Q&A session.

## Future of Work

So we're finishing up with this last category of future of work, because it's what a lot of people are thinking about right now. Emerging trends like hybrid and remote work and a focus on workplace wellbeing, these are now "future of work" issues because of the pandemic. So maybe these were things that were up and coming but were really brought to the forefront now. The future of work, it really is hybrid, and it's about facilitating an environment where employees with disabilities can thrive and feel valued. We've received questions related to these topics to address today, and I'm sure we will have more to address here soon. So let's take a look at a few situations around this "future of work" topic.

Lisa, back on. Leading the motor team, you frequently advise on workstation equipment issues. Here is a situation.

Some employees who are working hybrid are asking for the same workstation equipment at home that they were provided at the workplace as an accommodation. Is it this required when employees with disabilities are working a hybrid schedule? What do you think?

**LISA MATHESS:**

Oh, equipment.

So equipment issues for teleworking employees pre-COVID, it was hairy, it was complex, and it was never formally addressed by the EEOC. So now that we are looking at this new hybrid telework workforce, what employers have to furnish as far as equipment goes, it can be complex, and it should be handled again by that case-by-case determination. Meaning that employer should engage in that interactive process if the ADA is triggered. And there is an EEOC guidance that specifically says for pandemic situations -- It's in the pandemic preparedness guidance from EEOC -- and they specifically do say that during a pandemic if an individual with a disability meets that same reasonable accommodation at a telework site that was previously provided in the workplace, an employer should furnish that absent undue hardship, of course. So if such a request is made, an employer and employee should discuss what the employee needs and why and whether the same or a different accommodation could suffice in that home setting.

So an employee, we might already have equipment or furniture at home that could be conducive and meeting our disability-related limitations at home so we might not have to completely recreate our office workstations at home, but we might need to get creative, think outside of the box, call JAN for, you know, DIY options or product ideas to meet those disability-related limitations that have stemmed from working at home.

So really just kind of opening up that dialogue and see what they need to be successful to be continuing to perform and be efficient as an employee. I think that's what's most important.

**TRACIE DeFREITAS:**

Ok. That's really helpful. And it is a complex issue, and I think that you provided some sound advice on that, so hopefully people will have what they need in both places if it is reasonable.

Ok. Let's keep moving on here.

Teresa, remote meetings and trainings, they seem to be here to stay. And we definitely think these are going to be sort of the -- this is a way we will working in the future as we are now. So some employers say this mode, it's been a timesaver for the organization, so they are keeping this practice in place indefinitely. Some workers even prefer them. But it can be challenging to make them accessible to all staff. So in this situation employers often ask if automated captioning is a good option for making virtual meetings accessible. Can we offer some insight on this topic?

**TERESA GODDARD:**

I would love to.

So is automated captioning a good option for making virtual meetings accessible? We get this question all the time at the JAN -- Job Accommodation Network on the sensory team, and the truth is it depends on the meeting, and it depends on the person. There are certainly times when automated caption can be a good-enough option. And sometimes it's a really great backup option, too. But you have to consider both the content of the meeting and the needs of the individual who is receiving those captions as an accommodation when you are selecting the best option for your meeting. It's popular to use automated captioning, because it's convenient. You don't have to worry about a lot of scheduling. The cost is low compared with other types of human-assisted options. But automated captioning could be less effective than remote CART or Video Remote Interpreting in situations where there is something complex that you are talking about or there is a lot of technical jargon. Also people's accents and dialects can really impact how effective and accurate that transcription is. If there are equipment issues or background noise like what we experienced today, automated captioning doesn't have the human intelligence to stop and course-correct and to filter out unwanted noise. It's getting better all the time. It's just not up to the same level yet. But a human captioner who you can brief in advance about the subject matter and the key words, who is familiar with the speakers, that's well worth the investment in time and money to get your best captioning results. And also, remember that a video remote interpreter is likely to be more effective than either automated captioning or CART if you have participants who primarily use American Sign Language or ASL.

So one thing that we've seen is a combined approach where an employer might offer both CART and interpreting. And I've also seen automated captioning offered as, like, a backup option. So they will have automated captions running all the time but also have a video remote interpreter present. And the advantage of that is that if there is some kind of hiccup or glitch and the interpreter loses their feed of the meeting, then people can still kind of get by until the person is able to get back online and start interpreting again. So -- great backup option, sometimes a good-enough option, but sometimes you really have to dig a little deeper and look for something a little bit more accurate.

**TRACIE DeFREITAS:**

Okay. Really helpful that. It takes some time to figure these sorts of things out, and sometimes it's trial and error and who knows.

**TERESA GODDARD:**

Sometimes it's great.

**TRACIE DeFREITAS:**

So if people have questions about it, they can definitely call and talk to you. All right. Let's move to the next situation real quickly.

So let's look at number 11. An employee has lupus and is also experiencing symptoms of Long COVID including fatigue, body aches, and brain fog. This is something that we are starting to hear more about. With this question that came in, a previous request for telework was denied because the employer didn't think that telework could work. But now the employee is requesting it again and, Lisa, what can you tell us about the effect of mandatory telework on the reasonableness of continuing telework as an accommodation.

**LISA MATHESS:**

Yeah, so a lot of our jobs are kind of proving that they are more conducive to telework than we originally thought. You know, our jobs included. So this 18 months, I think it's a good demonstration, trial period for employees to really show their employer, "Hey, the essential functions are doable from home, I'm still performing up to par, the essential functions are getting done, and I am being able to take care of my disability." We were kind of forced into the telework home and, you know, kind of adjusted there at the beginning, but now people are thriving and being better employees from the remote setting.

So EEOC has said, you know, again that case-by-case determination -- I feel like a broken record -- but not all jobs are going to be doable from home. So really assessing the specific job role, seeing are the essential functions doable from home? Can you perform them? Do you have the needed equipment? Because not all jobs are going to be doable from home. So again, that case-by-case determining if someone is able to continue telework past this mandatory COVID telework period. And I think a lot of us are able to stay at home and really kind of flourish, and employers are seeing the benefits of us working from home. So assuming that all requirements for such reasonable accommodation requests are satisfied, the temporary telework experience could be relevant in considering this renewed request for accommodation. So again, with all accommodation requests, that interactive process, that flexible cooperative interactive process moving forward to see can we continue the telework arrangement?

**TRACIE DeFREITAS:**

Ok. Very good. Lisa mentioned EEOC and some guidance they offer that EEOC has been updating the What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws. It's been an excellent resource throughout the pandemic. Certainly a resource to pay attention to as you are starting to field more of these requests.

All right. I think we're heading into our last situation, and, Melanie, I'm bringing you back on board, and we will finish up with this final "future of work" topic, and then we'll hit your live questions.

Here is the situation, number 12. An employee who has high anxiety and a mood disorder exacerbated by the pandemic requested to bring her support dog to work to help her cope with the daily stress that affects concentration and causes her to act erratically at times. You know, we get a lot of service and emotional support animal questions, and I suspect that this may increase in the future as people are called back to work. Should an employer consider allowing an emotional support into the workplace in a situation like this? What are your thoughts?

**MELANIE WHETZEL:**

Yes. I think they should. I think they should go through the process as an accommodation request the same as they would if someone was asking for telework, or flexible schedule, or specialized computer equipment, anything like that. They can ask the questions and say how will the telework help you do your job? How is the flexible scheduling going to work? How is the dog really going to help? A lot of questions employers have is does the dog have to be certified? Can we ask for certification of training? The answer to that is no, because a lot of dogs aren't certified. And trained -- a lot of people train their own dogs, and that may be effective, and it may not be. There are certifications online that you can pay for and get, and it doesn't mean anything. So the best thing to do is think about, you know, can we do it on a trial basis? We are big proponents here at JAN on providing accommodations on a temporary or trial accommodation. Set a time frame. You know, if a dog is not trained, you're probably going to be able to -- from some of the stories we've heard, you can tell in 15 or 20 minutes if that dog is going to be disruptive or not. You can allow several weeks maybe to see. If the dog has been trained properly, you know, it will come into workplace, and you won't know it's there, and it could make a difference for this employee and others. It can calm anxiety. If it's going to help her not act erratically, then I think it's definitely worth a try. You can put that in a -- a written form, like a contract that we will do this temporarily or on a trial basis, and we're going to see what happens, and as long as the dog is not disruptive and we see it works, then we will consider on a more long-term basis.

**TRACIE DeFREITAS:**

That's really sound advice. And I think that's something for everyone to kind of remember the idea that temporary or trial accommodations can be very beneficial. It doesn't lock the employer in to a situation that they are not sure is going to work. It gives everyone a chance to figure out what's going to be effective. It's certainly something we talk a lot about, and in this particular situation it really could be a way of ensuring that that animal can be in that work environment and certainly support that employee. So very good. Very good advice there. JAN does offer some practical information related to allowing emotional support and service animals in the work environment. We have included a resource here related to sort of a practical approach to addressing these kinds of situations.

Thanks so much, Melanie.

## [Live Q&A]

Ok. It's time for some live questions. So I'm going to take a look at what's come in here. Bear with me just a moment. I've been seeing that Q&A light up, and so I know we have some good questions in here. Let's see what we have going on.

Okay. Melanie, here is one for you. If an employee is saying they have a panic disorder, but the medical documentation doesn't address the inquiry on the restrictions and only says the employee has a serious health condition. So maybe the documentation isn't stating specifically what the impairment is. Does the employer have to accommodate with telework without having actual restrictions or functional limitations information about that type of -- whatever impairment is involved?

**MELANIE WHETZEL:**

That's a good question. And, you know, some areas you can ask for that information what the exact impairment -- or the exact diagnosis is. I think it's good information to try or it's a good recommendation to try to get as much information as possible. That may be possible with just having that conversation with the employee. Like Lisa, I don't want to sound like a broken record, but, you know, that full conversation with the employee can be really helpful. Have you seen evidence of panic attacks, or have you seen evidence that employee is struggling? You know, can you do the telework on a trial basis to see how it's going to work? You know a lot of times when people aren't home -- I'm not saying telework is the answer, but for a lot of people with mental health conditions the ability to work from home can be very helpful, because they can manage their own environment, and it can really reduce a lot of things that, you know, make their conditions worse. So I would say, you know, you could go back to the doctor and get some more information. You could have that full conversation with the employee.

**TRACIE DeFREITAS:**

Okay. Very helpful.

And here is another one out there. For persons who are not able to tolerate mask-wearing in the workplace, what would be considered a reasonable accommodation, and what would be a special accommodation in terms of a person's need for supplied air? Any thoughts on mask-wearing and accommodations and some difficulties with doing that in the work environment? We certainly had that question a lot for many months now.

**TERESA GODDARD:**

You know, on the sensory team we have been getting a lot of questions from people who want to continue teleworking because they can't tolerate masks well or perhaps can only tolerate them for short periods. Other employers are considering on-site solutions like offering a more private work space where the person could perhaps get some relief from their mask, retreat to that private work space and take it off for a little while. There have been some questions about people who use oxygen and wear a mask, and often people are able to wear their nasal cannula under a mask, but there have been some reported issues with some of the oxygen concentrators that people use to get oxygen when they are away from home and how well the filters on those actually work. So a lot of people are trying telework or working more privately. You can also look for alternate masks. There's a ton of different ones on the market.

**TRACIE DeFREITAS:**

Okay. Very helpful. And we do certainly offer more information related to masking and accommodations and limitations. So certainly check out the COVID page at AskJAN.org for more on that.

Here is sort of an ADA general "definition of disability" type question. When is a broken arm or leg considered a disability? So probably something that's more of a temporary impairment.

Who wants to tackle that one? Lisa, I'm kind of looking at you.

**LISA MATHESS:**

Yes, of course. (laughter)

I mean, JAN can't say whether any medical condition or disability, if it meets the definition of a disability, but with a broken leg or broken arm, there used to be language if it was less than six months, it's not an ADA disability. However, since the Amendments Act, that language has been removed. So temporary impairments, as long as they're substantially limiting, then that can rise to the level of an ADA disability. If there is a reason a broken leg is not healing appropriately because the person has the underlying physical impairment that makes healing of broken bones problematic, that may rise to the level of an ADA disability. Not everyone that has a broken leg is going to have an ADA disability, but there may be some cases that certain individuals, because of underlying factors, those may rise to the level of an ADA disability. Like I tell all employers all day long, that definition of disability is so, so very broad, not to split hairs on the definition of disability. I think it's a good faith effort to assume kind of assume coverage and focus all of your time and energy on is the accommodation reasonable, and does it pose a hardship or not? Because it is just such a broad definition.

**TRACIE DeFREITAS:**

Okay, very good.

There is a mention here about us not really talking a whole lot about the need to perform the essential duties of the job and the idea that an accommodation needs to enable that, and so I'm going to kind of field this real quickly and just make mention that certainly in any situation providing an accommodation is about enabling that person to perform the essential job duties. If an individual is in a situation where they are unable to perform the essential job duties, the accommodation isn't going to allow for that, telework is a good example. We get that a lot. You know, maybe all of the essential functions aren't able to be performed at home, then 100% telework may not be a reasonable accommodation. And employers are not expected to remove essential job duties. So look at whether or not they can all be performed with that accommodation of telework. If not, then maybe there is a middle road-type scenario there where some of the functions can be performed at home so they can be at home part of the time, but they might need to be onsite in other cases to perform certain duties. Ultimately at the end of the day it is about being able to perform those essential job duties, so let's just keep that in mind, of course.

Question related to providing accommodations. So after an employee makes a formal request with documentation, is there is a time frame that an employer has to respond to or provide accommodations under the ADA?

**LISA MATHESS:**

There is not. There is not a specific time frame. EEOC has said unnecessary delays could be problematic and could be an ADA violation. So you really want to do your due diligence, keep that process moving, keep the employee informed. If there is kind of a holding time because you ordered equipment, and we know there is shipping delays. Communicate that with the employee so they don't feel like you have taken their request and ignored it completely. There is not a hard, fast time frame for furnishing accommodations, but we do encourage all employers to do that as quickly as possible.

**TRACIE DeFREITAS:**

Ok. Very good.

Melanie, this one is for you. If an employee has PTSD, and it's triggered by the personality of one supervisor and not of another who is -- who happens to be on a different team, is it reasonable to request a supervisor change if all job tasks are still completed? This is one we hear a lot about. What's your take on that one?

**MELANIE WHETZEL:**

We do hear a lot about that. And EEOC guidance says that an employer does not have to change a supervisor as an accommodation. It can certainly go above and beyond the ADA, but it's not required to do that, but rather they can look at what is the supervisory method that needs to be changed? Could they change the way that the two interact and make it more suitable for the two to work together? And if there really is a strong personality conflict and it can't be worked out, you know, there is nothing that says they can't change that person to another supervisor. You know, we get requests for -- "I never want to talk to my supervisor," and I don't know if that's going to be reasonable, but there are instances where you can have a lot more communication, especially when people are working remotely, by email and not have face-to- face. Maybe I don't want to see my supervisor face-to-face. Can I leave my camera off? Can I just get on a meeting and just hear, not see, people. So there are lots of different ways that you can look at reducing that instance of the personality clash. Sometimes it's not as big of a deal as the employer might think.

One example I can think of is the employee said that the supervisor just yelled at her all the time. When they talked to the supervisor they found it wasn't the case, he had this loud booming voice, that he talked to everyone that way, and she took that to mean that he was yelling at her. So they just kind of worked that out, and she was -- they were able to remain working together.

**TRACIE DeFREITAS:**

That's really helpful.

We are getting a lot of questions around religious and medical exemptions related to vaccination, mandatory vaccination. Obviously this is something we are hearing a lot about right now. One of the questions here specifically referenced federal employers. And so I just want to draw everyone's attention again to that Safer Federal Workforce task force, because they have put out some excellent information that's relevant to the federal workforce. So for questions related to medical exemptions and religious exemptions in the vaccine for the federal government, that would be a great go-to. So please do take a look at that so you can kind of figure out where you are needing to go in terms of being a federal government employer.

Ok. Let's see what else we have here.

So question to allowing dogs in the workplace. What if you have a situation where someone has allergies, and the dog can't be in that environment or around that person who has allergies, I should say. Let me rephrase that. Any thoughts on having to deal with two different types of accommodation needs?

**MELANIE WHETZEL:**

I would say you would look at both as accommodation needs, and you can get documentation from both people, the person with the allergies as well, and you look at is it possible to accommodate both? You don't want to just accommodate one and not the other one or the one who gets the request in first. You want to look at both of those. There are lots of different options. We have a publication on our website about that. I mean, you can look at products that can help, different locations. Can one person telework? Can they be placed far apart, not necessarily isolated, but isolated, different paths of travel? Can the dog be left behind if it was a meeting where both of them would have to attend? You know, lots of different options like that.

**TRACIE DeFREITAS:**

Ok. Very good.

I think -- let's see here. Throw another one out here related to COVID and vaccination, of course. Question about what sort of documentation or proof might someone be able to provide in order to get a medical exemption for vaccination because of a disability, because not I'm able to receive the vaccine? What sort of information might an individual provide related to that?

**LISA MATHESS:**

Vaccine exemption, that will be handled just like any other ADA accommodation request. If the need and disability is not obvious, then we are entitled to limited medical documentation. One piece of that is to establish does this person have an ADA disability? Do they have that underlying physical or mental impairment that is the reason that they can't get that COVID vaccine? So you are entitled to limited information and supporting documentation to kind of see what's going on? Why can't they get the vaccine? If they ever can, it might be a temporary issue where -- they can't get the vaccine right now, give us three months to get through this treatment, and then they can get vaccinated. So information like that could be helpful to let an employer make an informed accommodation decision. Ultimately an employer is entitled to supporting documentation for that exemption.

**TRACIE DeFREITAS:**

Ok. Very good. Ok, so we have about five minutes left so maybe just one or two more questions, and let's see.

This one is a general question, not specific to COVID or anything like that. When the medical information from the doctor is vague, can we rely on the employee to provide information to fill in the gaps, or do we need to ask for additional information -- I think that's a really good question. So is it ever okay to just talk to the individual? Let them fill in the gaps? This person provided an example of asking for voice recognition software because they can't use a laptop right now. So just general thoughts, and anyone, of course, jump in here on that.

**LISA MATHESS:**

We love when employers talk to employees directly. We encourage that. And, Melanie and Teresa, feel free to chime in. Oftentimes if an employer opens that conversation with an individual of what do you need? An employee will say exactly what they need. If they had software in a previous job, and they know specifically what they want, they can tell you that and kind of expedite that process. So we're not waiting on a healthcare provider to weigh in. You know, employee is the best source of information. They are the ones dealing with it. I definitely encourage talking to that employee directly.

**TERESA GODDARD:**

Absolutely. Relying on someone's lived experience can get you to a solution way faster. I think Melanie had something to say.

**MELANIE WHETZEL:**

Yeah, I was just going to say that the doctor's role is to documentation the disability and limitation, but they may not know the best ideas for the accommodations. I think it's good to check with them if there are questions, but I agree with Lisa. I say this so much, but I think that full conversation with the employee -- and sometimes the employee is hesitant to give suggestions, and then once prompted by the employer I think that can turn into a really good conversation.

**TRACIE DeFREITAS:**

I'm going to throw one more out.

So let's say somebody requests accommodations, and they might not -- may not ordinarily qualify for accommodations. So let's say it's something that maybe wouldn't meet the definition of disability under the ADA. What's your guidance if that's not the case but we have somebody who is having some limitations in performing job duties? Should an employer consider providing accommodations?

**TERESA GODDARD:**

If it's something quick and easy, why not?

**MELANIE WHETZEL:**

That's what I was going to say. You know, we hear from employers that if it's quick and inexpensive, we want all of our employees to be happy and comfortable. If it's something that is more involved or going to be expensive, then we're going to request medical documentation to make sure that they have a disability. But I think employers really think about, "What makes the employee comfortable, and how can they best do their job?" And if it's something quick and easy and not expensive, absolutely. Look at providing that for people.

**TRACIE DeFREITAS:**

Yeah. I think that brings us back to sort of the practical approach to just ensuring that people can do their jobs, and if there is something easy that can be made, and it's going to help everyone be successful, then why not? Certainly consider it. JAN has been around a long time. We've been around before private employers even had to provide accommodations, so we have been talking accommodation for many, many years now.

## [Conclusion]

All right. Well I think that we only have two minutes left, and I have a little bit of wrap-up to do, so I am going to pause right here and mention quickly just a little bit about NDEAM. So, just to remind everyone that it is October, and it's National Disability Employment Awareness Month or NDEAM. The 2021 NDEAM theme is "America's Recovery: Powered by Inclusion," and this reflects the importance of ensuring that people with disabilities have full access to employment and community involvement during the national recovery from the COVID-19 pandemic. To access the NDEAM poster provided by the Office of Disability Employment Policy, you can visit DOL.gov/agency/ODEP. We encourage everyone to certainly celebrate the month with us and access that poster.

Unfortunately, that's, of course, all the time that we have today. So to my expert colleagues and good friends, Melanie, Teresa, and Lisa, thank you for sharing your time and your expertise today. Your guidance is certainly going to help these participants today and as it has helped so many JAN customers. Thank you so much. I think it's going to help everyone realize that they've got this, whatever it is. For additional information on the topics discussed today, please do contact JAN. Go to AskJAN.org, call us toll-free, or contact us using live chat or email. Also, please follow us on Facebook and Twitter for tips and resources and JAN updates you may find very interesting.

Thank you to ACS for providing captioning for this JAN training, and finally don't close the JAN webcast browser before completing the evaluation. The CEU approval code will be provided after completing the evaluation.

And please be sure to register for the November JAN webcast, "Return-to-work after COVID-19: Focus on Mental Health and Cognitive Limitations." Melanie will be one of the presenters along with our colleague James. Please do register for that event. We hope to see you then.

Thanks, everyone, for attending today. This concludes our webcast.