# The Way I See It: Accommodation Process Perspectives from Different Points of View

## [Introduction]

**TRACIE DeFREITAS:**

Hello everyone. Thanks for joining us for this JAN Accommodation and Compliance Series webcast titled "The Way I See It: Accommodation Process Perspectives from Different Points of View." My name is Tracie DeFreitas. I'm the Director of Training and Outreach for the Job Accommodation Network.

This JAN webcast will be a little different from the past JAN webcasts. It will be a little less formal, more of a dialogue among JAN colleagues. Joining me today to discuss the various employer and employee accommodation process points of view are Lisa Mathess, JAN Principal Consultant and ADA Specialist; Matthew McCord, JAN Senior Consultant on the motor team; and JAN consultant Lore Lee, whose expertise spans across JAN's specialty teams. Thank you, all, for collaborating on this webcast today. I think it's going to be really interesting.

Before we begin, let's review the housekeeping items. If you do experience technical difficulties during the webcast, the webcast series FAQ might answer some of your questions. The link to the FAQ is included in the log-in email that you received today or go to the webcast series page at AskJAN.org. You may also use the question-and-answer option located at the bottom of the screen to connect with our webcast tech team.

Now we have a lot discuss today and might not have time to address questions, but attendees are welcome to submit their questions at any time using the Q&A option during the discussion. We do encourage you to contact the JAN service any time for answers to your ADA and accommodation questions, so go to AskJAN.org for contact information.

A link to the PowerPoint slides is included in the log-in email that you received today. It's also posted in the chat. Or go to this webcast event from the training page at AskJAN.org.

The closed captioning option is located at the bottom of the webcast window, or you can view captions in a separate browser using the link shared in the webcast chat. There will be multiple speakers today, and you — your screen should be set so that you only have the speaker view, so hopefully that's helpful, but do know that you have control on your end to modify that as well.

This webcast is being recorded and will be available later this month at AskJAN.org.

And finally, if you're seeking an HR CEU, the HRCI approval code will be available after you complete the webcast evaluation.

And one last note before we begin our discussion, JAN wishes everyone a happy NDEAM. Observed each October, National Disability Employment Awareness Month, or NDEAM, celebrates the contributions of America's workers with disabilities and showcases supportive inclusive employment policies and practices that benefit employers and employees. "Advancing Access and Equity" is the theme for NDEAM this year, and that theme demonstrates the importance of ensuring that all people have equal opportunity to contribute their skills and their talents. So if you want to learn more about NDEAM and be included in the celebration for this month, you can go to DOL.gov/NDEAM, so there you'll find some more information.

## [Interactive Accommodation Process]

All right, so let's get this conversation started. Lisa, Matt, Lore, get ready.

Today we're discussing accommodation process perspectives from different points of view or POVs. A POV is a particular attitude or a way of considering a matter, a position, or a perspective from which something is considered or evaluated. Our objective today is to explore various points of view under the umbrella of the accommodation process.

Now, of course, we know that accommodation process points of view, they're unique to each individual and their role in that process. Whether you're an employer representative responsible for processing accommodation requests under the Americans with Disabilities Act or an individual making an accommodation request, perspectives of the process or the outcome will often be different. Our points of view are often formed by the information available to us, which commonly centers around communication. So this webcast presents various interactive accommodation process scenarios, analyzes common misperceptions, and offers insight to helpfully enable employers and employees to recognize and consider different points of view to achieve successful employment outcomes. Now we'll talk about the way we see it from a JAN perspective. Of course, some of you might have different points of view.

The following scenarios to be discussed involve various stages of the accommodation process, which, simply put, is a process for collaboratively identifying accommodation solutions. The process generally involves recognizing or making an accommodation request, gathering or providing information, and exploring, choosing, implementing, and monitoring accommodations. For a sample process, you can see JAN's interactive process using our A to Z By Topics pages at AskJAN.org; the link is also available in the chat. Throughout the presentation today, we will include some links to JAN and other relevant resources. We'll send those links to attendees as follow-up to this webcast.

### [POV — Performance Issue or Request Ignored]

All right, team, let's start the first scenario on the next slide. Here we go.

So, Sam experiences severe migraines triggered by workplace noise and overhead fluorescent lighting. Sam asked their manager whether they could wear noise-canceling earbuds and turn off the lights above their workstation. The manager said they needed to check with human resources, but after three weeks Sam did not receive follow-up from the manager, and no changes were made. Sam continued to experience migraines, which impacted their attendance and performance. Kind of seems to me that Sam requested accommodations, but the employer didn't follow through.

Team, what's your perspective on Sam's point of view in this situation? Who would like to get us started?

**LISA MATHESS:**

I'll start us. So we know, from the employer perspective, under ADA there's not a set time frame that we must respond to these accommodation requests, but good-faith effort and better business practice tells us we should respond to these requests as quickly as possible. Get people what they need so performance doesn't suffer, so medical conditions aren't exacerbated. So we want to act on these requests as quickly as possible.

Lore, do you have any employee insight, or what are you thinking?

**LORE LEE:**

Well, and I would say this does appear to be a relatively simple request, and so even though there isn't that time frame, this would be one that I would expect could potentially be resolved more quickly. But it's possible the employer isn't ignoring the request but is simply busy. There could be a myriad reasons why, you know, they're not responding to this. It could have fallen through the cracks; there could be a lot of red tape. And so I'm thinking Sam may want to check in. After a reasonable amount of time — which I think three weeks is probably a reasonable amount of time — but Sam may want to check in, possibly even after one week if they haven't heard anything, two weeks, to check in and see, "What's the status of this request?"

**TRACIE DeFREITAS:**

Do you think the employer could have handled it differently? What could they have maybe done to change Sam's point of view on this perspective?

**MATTHEW McCORD:**

Well, I think first of all, probably the best thing that I would suggest is why not allow a temporary accommodation here? So that way Sam isn't languishing while experiencing the migraines and not able to get any help. Obviously, we can provide a temporary accommodation to hold them over while we finish things on the back end.

**LISA MATHESS:**

Yeah. If it's simple enough, why can't we let Sam turn off those lights in the meantime if it's not a disturbance to others? Can we let Sam telework until HR makes a more formal accommodation plan? Get him out of the environment that's clearly exacerbating his issues. Let him telework for three weeks to keep him working, We know that's the whole point of ADA, to keep individuals, if they can, at work. So implementing those temporary accommodations, I think's a win-win for both parties.

**TRACIE DeFREITAS:**

I think that makes a lot of sense. And it could ultimately change the outcome for Sam; right? Because here Sam's experiencing some performance issues. The employer might be only focused on that, not realizing that those accommodations are really going to make a difference for Sam.

**LISA MATHESS:**

Yeah, yeah. We don't have to lower the performance expectations, but accommodations might bring those people up to meet those standards, and that's the goal here.

**LORE LEE:**

And the employer may want to just take into account, yeah, they don't have to ignore those performance issues, but take into account that hey, this accommodation was requested, it has been three weeks, and so maybe don't move forward with poor performance evaluation or disciplinary action right away.

**LISA MATHESS:**

Yeah, yeah. You could always put that on pause until we get those accommodations implemented, and then have a better picture and more realistic — Is there a performance issue? Or was it just a lack of accommodation?

**TRACIE DeFREITAS:**

Absolutely. I believe we have some resources that might be helpful in this type of situation. So for the employee, for example, there is an employee accommodation inquiry letter that JAN offers to help or assist the individual with maybe writing a letter to the employer to just kind of do that check-in that Lore mentioned. So that's a resource that's available, and we'll go ahead and get that in the chat, of course. And then of course there's also information about recognizing an accommodation request. Maybe this manager recognized it as an accommodation request, they said they'd follow through on it, but maybe they need a little more assistance with trying to figure out things like this, so that might be helpful too.

All right. Anything else anyone else would like to add on this topic? No? All right. Let's move to the next one, then. Okay.

### [POV — How Can I Help or Reluctant to Disclose]

So this next scenario falls under that "gathering information" step of the process that I mentioned earlier, that interactive process.

So here Lea became distressed when coworkers asked questions she felt pressured to answer. She often reacted in an irritable and unprofessional way. After a disciplinary meeting with her supervisor, Lea disclosed that she has a disability exacerbated by the stress caused by interacting with peers but would not provide any additional information when the employer asked whether anything could be done to help. Lea wanted to keep her personal health information private.

Lore and Lisa, here we have two possible perspectives. We've got that employer perspective being — or that point of view being that they've asked Lea how they can help. But Lea is reluctant to disclose disability-related information, so share your perspectives on this one.

**LORE LEE:**

I can understand an apprehension — an employee's apprehension to disclose. We talk to individuals, and there are instances of discrimination. So I can understand Lea's apprehension there, being fearful of potential discrimination or retaliation. But with her disclosure of that disability, I think that can likely be seen as an implicit request for accommodations, and so I think obviously an employer can ask for medical documentation in that case. And so, I think that an employer may want to acknowledge that apprehension to disclose but explain that "Hey, we still have these conduct standards. We still have these expectations, and if we want to modify something we are going to need more information."

**LISA MATHESS:**

Yeah, I think you're absolutely right. And I think if I were consulting with an employer, I would encourage them to show empathy. "Hey, I understand this is a sensitive subject. Anything you tell me and disclose is going to be kept confidential, it is going to be secure, but knowing more details around those limitations and what is it about communicating with your colleagues that causes an issue? More information is going to help me help you in these instances." But really kind of educating your staff that "Hey, any medical that's shared is confidential." Because we all don't want to be broadcasting our private health information, but ultimately, under ADA, we know we do have to provide limited info to establish that ADA disability and give enough information on those limitations to help that employer make an informed accommodation decision. And so without knowing what those triggers are, I think it's going to be hard for that employer to explore accommodation ideas.

**LORE LEE:**

Right. And I think that perhaps if you do have an employee, after they've disclosed that — or after the employer's had that conversation of, "Look. We're going to keep this confidential. This is why we're asking for this." If the employee — if Lea is still showing that apprehension, maybe in this case the employer could consider asking for reduced information, trying to figure out, "What is the bare minimum information that we need to kind of make a decision here?" Especially if the accommodation is simple enough, like just having Lea communicate in a different format, or just allowing Lea some time to respond to requests and things like that, or creating a point person for Lea to work with for time-sensitive requests. It may be possible that the employer can make this decision with reduced information, and that way they still get what they need, and Lea doesn't have to disclose more than she feels comfortable.

**TRACIE DeFREITAS:**

I think you're both hitting on some really key strategies here for changing perspectives on this particular situation. I think especially that employer, like you said, offering to accept limited information. and I think offering the assurance to Lea, too, that that information's going to be kept confidential and I think for a lot of people who are concerned about sharing their personal health-related information, they need to know that that's not information that's going to be broadcast widely, like you mentioned, so some really good strategies there.

We do have some resources on this topic, too, I think would help. Some information that might help someone like Lea, who is interested in learning more about disability disclosure in the workplace. and then for employers who are maybe faced with situations where someone has kind of disclosed a disability or shared some information in the midst of maybe a performance discussion. We do have some information about "How can I help? What can I do? How do I engage in this type of situation?" So another resource around that too, so those should be in the chat now. And again, we'll get those out to you after the webcast as well, so you don't have to jump in and grab that chat link right away. We will certainly share those with you.

### [POV — Policy Modification Justification or Privacy Right]

All right. Ready to move on to the next one? Okay. Let's do it. So the next scenario offers additional perspectives on the employer gathering information to make a policy modification as an accommodation and also employee privacy rights again, so we're carrying out that privacy thought again.

So here's Taylor. Taylor is a property manager who asked to bring their emotional support dog to work to accompany them while in the office and when showing rental properties. Taylor did not offer the employer any information to support their ADA request, and the employer does not ordinarily allow dogs in the workplace.

Now I'm going to go ahead and throw this one over to Matt and Lore. What are your perspectives on this one?

**MATTHEW McCORD:**

Well, I mean, I think here it's important to keep in mind that service animals and emotional support animals, under title I of the ADA, are seen as forms of accommodation, so access is not automatically guaranteed like it would be for a grocery store under title III. So obviously the property manager — I'm sorry — the property owner, the employer here, would have the ability to request some information on how was this dog trained? Is it trained to meet the needs that this person has? Or is it trained to act appropriately in the workplace? Because we don't want the dog to make a disturbance or things like that. So I think those are all things that we should want to keep in mind, that they are allowed to ask for that stuff.

**LORE LEE:**

Yeah. And Taylor may be looking at this as a — like you mentioned, this is going to be different from say in a grocery store, and the workplace is going to be treated differently. Taylor may be looking at this as, "Oh, this will be handled in the same way." Meaning that the employer is limited in the type of information they can ask, and, therefore, I don't really need to provide any supporting information. But under title 1 they are able to ask for that information, and in this case, maybe the employer could treat it similarly to the way they handle emotional support or service animals with tenants. Again, if you've got Taylor, who is apprehensive to provide information, maybe they ask those two questions: Is the dog required because of a disability? What does it do for you? Again under title 1, they probably could ask for more information, but if that is good enough for the tenants and the tenants are having animals in the same area, maybe the employer could treat it similarly.

**MATTHEW McCORD:**

Right. And I think that that's an important piece here, because it is a rental property, The rental property is probably going to need to allow service animals into the area, even if it's just like coming into the office whenever someone needs to pay their rent, the service animal might be coming into that work area, even though we normally wouldn't allow it for employees, so if we would have to allow it for tenants, is there really a burden here to allow it for an employee too? I think that's an important perspective to keep in mind, because it may not that different from what they're used to.

**TRACIE DeFREITAS:**

Again, really valid points. And you actually mentioned something I've not thought about before, that idea of limiting it to those two questions, Lore, that you mentioned, I think oftentimes employers get caught up in thinking about the accommodation process and what I'm able to ask for and I need more information, but at the end of the day, maybe those two questions really are enough to decide whether or not it's possible to accommodate. So I think that's a really helpful perspective on that. So as it relates to emotional support animals in the workplace, it's a tricky issue, of course, and there's not a lot of information to be found as it relates to the employment provisions of the law. Do we have any resources that might be helpful?

**LORE LEE:**

I know the FAQ that the Department of Justice has put out is a really good starting place, but it's not always helpful under title I. But that FAQ's a really good starting place. for trying to get just some general information about service animals and ESAs.

**MATTHEW MCCORD:**

We also have a practical approach Consultants' Corner article that I believe — yeah, we've already linked that in the chat for you guys. But I think that one's a good one too, since that one focuses more on workplace stuff in particular. so that one would be a little bit more applicable to a workplace scenario. But yes, the one that Lore mentioned is very useful, especially if you need to understand it from more perspectives than just workplace stuff.

**TRACIE DeFREITAS:**

Absolutely. Our service animal resource could also be helpful, I would say, just because it gets into some more details around having dogs in the workplace, so that might be helpful too. We do have a lot of information around that as far as JAN resources that could be available.

Are there any other issues you want to touch on in this scenario, or are we ready to move on?

**LISA MATHESS:**

I just wanted to butt in and say our service animal pub, it has the different perspectives of for employers, for employees, when it comes to these service animal issues in the workplace, so it's a tangent on the perspectives, but it gives you food for thought for each party involved in this interactive process.

**TRACIE DeFREITAS:**

Excellent. Good thinking, Lisa. All right, then. We'll move to the next.

### [POV — Nice to Know or No Need to Know]

We're going to talk about Patrick here. Patrick is an attorney who is receiving treatment for cancer. Due to having difficulty handling job-related stress, he requested a temporary reduction in hours. The accommodation was granted. Patrick asked that his supervisor not be informed about the reason the accommodation was granted out of concern for how the supervisor might treat him. Now here we're considering the points of views of it perhaps being nice for the supervisor to know this information and maybe the employee's point of view that there's not really a need for them to know.

Who's going to get us started with this one?

**MATTHEW McCORD:**

I can go ahead and start. I think that it's important here to remember that yes, it is probably typical for the supervisor to be told this type of information, it's probably part of their usual process that that would happen, but if there is no real need for the supervisor to know it in order to implement the accommodation or process the accommodation, then it might be more of a "Well, do they really even need to know it?" And if the individual would prefer them not to know it, I think that that's something we should keep into consideration. There's a lot of reasons why someone might not want them to know about this. Even if they know the supervisor might be fully supportive, they still might have some sort of implicit change in the way that they view them, and it makes sense that Patrick might not want that change.

**LISA MATHESS:**

Yeah, I'm sure. I can only imagine that the long hours that attorneys have to work and the high-stress environment, I'm sure Patrick is just nervous that "If my supervisor knows I'm going through cancer treatment, I might not be able to continue in this high-stress, long-hour role. I might never return to how I was before cancer treatment." There's a lot of pre-judgements and biases that go with that, so if Patrick can work this limited modified schedule for the short duration, hopefully, then the supervisor doesn't need to know, especially the medical information. Perhaps the supervisor just needs to know, "Patrick's going to be working a modified schedule for the next four months." Doesn't need to know the underlying medical reason. That's probably on that necessary, need-to-know basis. And yeah, the supervisor might want to know, but it might not be necessary under ADA standards.

**LORE LEE:**

I know that sometimes it seems — employers may feel that the supervisor — and sometimes coworkers, but the supervisor in this case — may respond better if they know. Oftentimes coworkers or supervisors, they may be more amenable if they're given some information, if they're given some explanation of why this is happening. And it's possible that Patrick could experience disparate treatment — Let's say no information is given — There's a possibility that Patrick experiences disparate treatment or what's perceived as preferential treatment, and so I'm wondering if maybe the employer and Patrick can discuss this like, "Hey, here's what our concerns are. We think if we give them something, if we give them some explanation, they be more amenable to this," Is Patrick okay with sharing that it is an ADA accommodation? Nothing more than that, but now the supervisor knows, "Oh. Okay. This is a legitimate thing," but no other details are given.

**TRACIE DeFREITAS:**

From an ADA perspective, it's certainly okay to go ahead and do that. We know that, with regard to the confidentiality requirements, that supervisors can be notified of that sort of thing. They don't need the specific details of the health condition, the disabilities, so I think that could certainly work. It could even be trimmed down a little bit more to "A modification's been made due to a health condition." So we don't have to necessarily mention ADA. We could, but if there's a way to even trim it down even further that the supervisor's satisfied and understanding, "Okay. A modification's been requested, it's something that the organization is comfortable with, and so we're going to make that modification." and the supervisor needs to be able to implement that change and allow that change.

Matt, were you going to say something?

**MATTHEW McCORD:**

I was just going to say that from — if I was talking to Patrick here, I would be like, "Of course, totally understand you wanting to keep this stuff private. There's a lot of reasons, I'm sure, why you would want to. I would just also keep in mind — help him keep in mind that "Well, there is the possibility that if you do disclose some things, that you might have an ally in your corner when you otherwise wouldn't have one." If the supervisor is completely in the dark and suddenly Patrick's performance starts to slip a little bit, if the supervisor knows that it's because of a medical need or if Patrick is okay to tell him because of cancer, it's possible that the supervisor might give leniency on that and be like, "Hey, I'm noticing this is happening. How can I help?" Whereas if he doesn't explain any of that and it's just, "I need to work less hours," he's probably not going to get that level of courtesy, and that can be a problem for him down the line.

**TRACIE DeFREITAS:**

I think this really illustrates the different points of view that can come from either having information or not having information and the difference it can make. Anything else to add?

One of the resources we can offer around this topic is centered around confidentiality and medical information under the ADA. So anyway, there's that resource. It should be in the chat now. It does sort of talk about confidentiality of medical information and so that might be helpful, just at least from an ADA perspective.

All right. Let's move to the next scenario. The next scenario explores the points of view of an employer expecting that an employee follow the workplace rules and the employee's point of view of their access needs perhaps not being met.

### [POV — Follow the Rules or Needs Not Met]

So here's Rebecca. She works at a small long-term care facility. She needs an accessible parking space but has difficulty finding a space in the employee lot and often parks in the visitor parking area. Employees are required to park in a designated lot. The employer asked Rebecca not to park in the visitor lot, but Rebecca believes that she would be allowed because she has a parking placard issued by the DMV.

Matt and Lisa, I'm tossing this one to you. Will you share the way you see it?

**MATTHEW McCORD:**

Sure. Allow me to begin by just saying that having a DMV parking placard doesn't give you the ability to park in lots that you don't have the ability to park in. It just gives you the ability to use those blue-painted spaces within a lot that you are allowed to park in. But there can certainly be accommodations here. Maybe we can review if the parking rules on parking in the customer lot can be altered, or we maybe we could review some changes to be made to the existing employee lot. Those are all things that we can consider, but just having that placard alone is not going to be enough.

**LISA MATHESS:**

The definition to get you those placards furnished by the DMV, that's going to be a different definition of an ADA-defined disability for title I purposes. Just because you got a placard, it might not rise to the level of an ADA disability that an employer needs to consider, and vice versa. Typically as far as the visitor lot, I would say, if you don't have access to that lot ordinarily, accommodations, it might not be reasonable to put you in that lot as an accommodation, especially if it's going to take away a closer accessible spot for the visitors. That could trickle down to an undue hardship from a business perspective.

So this is where you kind of want to pivot and look at accommodations in that employee lot, once you have established ADA definition of disability, if you choose to. So like Matt mentioned, can you do a reserved spot closer? Can she telework? Is her job more admin? Can she telework to remove parking from the equation completely? Are there valet options? Can we ask colleagues to help transfer her on a volunteer basis? Can we move her workstation closer to a point of entrance? Perhaps she uses the back door because the back entrance is the employee lot, so if we can move her workstation closer to that door, that might limit that distance that she is unable to walk. It might be effective for her.

**MATTHEW McCORD:**

Yeah. And also, I think that it's important to just keep it in mind that parking is a very tricky thing, under the ADA. It's something that unfortunately, I wish there was more clear-cut guidance on, but we just don't have very much clear-cut guidance. So I think that it's important for everyone involved to just take things from a more "Let's be practical about this. What can we do to help here that wouldn't be too much of a burden on everyone?" And if we already police the lots, because obviously they police the lots, because they knew that she was parking where she wasn't going to be parking, then it seems like it would be within the realm of possibility to be like, "Okay. Here is your parking space, and we'll make certain no one else parks there."

**TRACIE DeFREITAS:**

Good discussion on what is actually a very difficult topic, like you've said. So many times people contact us about parking issues, and they think it's going to be real easy, but we're always like, "Well, this is one of the more complicated scenarios." So it's definitely one that could even take further discussion, but I think you've both illustrated that we can kind of meet in the middle here. There might be accommodations to provide, and it can change perspectives if we do make those changes. Just communicating with the individual about their needs and trying to work with them will change, I think, everyone's perspective on that situation. Some good ideas, there. I appreciate that.

We do have — JAN does offer a resource related to parking, one of our A to Z resources, that talks about some of the tricky issues around parking, so check that resource out.

All right. We'll move to the next one now. Let's talk about a situation that can result in the various perspectives, but let's focus on the employer point of view of kind of feeling stuck in the waiting place, and then the employee may be needing some timely support.

### [POV — Stuck in the Waiting Place or Support Needed]

So here's Callie. Callie experienced significant leg and back pain when sitting for long periods of time. She also needed to use the restroom frequently. She requested additional breaks beyond the time ordinarily allowed, and the employer requested documentation to support the need for the additional breaks and to help explore accommodations to address the sitting limitation, but Callie was unable to provide the documentation in a timely manner.

We know Callie's situation is not uncommon. There can be many barriers to obtaining medical documentation. Maybe the employee might not be able to get in to see a specialist, maybe the healthcare provider has little time to complete the paperwork, or sometimes they even refuse to complete it. Here the employer is simply trying to learn about the underlying cause of the limitations and ways to accommodate while Callie is trying to provide the information and is faced with a hurdle in receiving the supports that are needed to effectively perform their job duties.

Lisa, what's your perspective on this situation?

**LISA MATHESS:**

Well, I think that the simplest response would be do we need more medical? We could forgo it. Sometimes we get adamant on requesting medical because ADA says we're entitled to medical. but that's exactly what it is — just an entitlement. It's not a requirement. You can forgo medical and just have that open dialogue and that open conversation with Callie, "What do you need? How can we better help you? Do you have a chair at home that suits your needs? Is there something similar we can furnish here at the workspace? What did you use in your previous job? Does it help to walk around? Do you just need lumbar support?" Having that open dialogue with Callie shows a good faith effort, and you probing the employee might give them the floor to bring up suggestions that they might otherwise be intimidated to bring up to their employer.

So just because you're entitled to it does not require that you ask for medical, but if you are going to ask for medical, good faith effort, again, is those temporary accommodations while we're waiting for that doctor to fill out that documentation. I know Tracie can talk hours on medical documentation, so I'm going to pass it over to you, because I know you're chomping at the bit.

**TRACIE DeFREITAS:**

Both of these topics; right? they're two of our favorites to talk about: temporary accommodations and flexible approaches to receiving medical documentation, because it's not always necessary. And I think in this case Callie is trying to do what she can — It's my perspective on it is that she wants to provide what's needed to the employer, but at the same time, are these accommodations that could easily be provided, at least in the interim? So it's absolutely okay to do that. It doesn't mean that the employer is guaranteeing that those specific accommodations would be provided long-term, but it's a place to start. It gets that individual the supports they need in place while they're working to perhaps get further information.

So I think, Lisa, you laid it out there to really just consider whether that information is necessary in order to move forward in the accommodation process. If it is, that's okay. You can make that decision, but maybe give an extension and work with the situation that you have in order to ensure that Callie is supported on the job. Because ultimately, if Callie had the support she needs, she's going to be able to meet your business needs. So at the end of the day I think we need to keep that in mind.

**LISA MATHESS:**

And on the other side of that, if I am an individual requesting accommodations, and my employer has given me just 15 days, — ADA doesn't have set timeframes — but they've thrown me a deadline of, "You have 15 days to bring this medical back to us to make a decision." If my doctor's not filling it out, I want to communicate that to my employer. "Hey, I'm really trying. I am trying my best to get this documentation, my doctor refused. They said they'll do it next week." Let your employer in on next steps so it doesn't appear that you've dropped the ball and you're disengaging in that interactive process.

So again, I feel like a broken record, but this communication is a two-way street, and so inform your employer what's going on. What is the holdup with that medical documentation? Because the more they know, they might be more courteous and accommodating in extended the deadline with those temporary accommodations.

**TRACIE DeFREITAS:**

Absolutely. And it may be even if you just told them something like you're having difficulty getting into your specialist, maybe they'd be willing to accept documentation from a different type of provider. Maybe it's just your primary care physician, who can at least indicate that you do have the underlying condition you say you have. So they might be able to make some modifications in terms of what they accept in that situation. So that communication is so important.

All right. Well I think — we could talk for hours on this topic, absolutely, but we won't, because we don't have it. So, we do have some resources — We have lots of resources, actually, on medical documentation and the ADA and providing temporary accommodations. So do be sure to check that out.

All right. Let's move to the next scenario. The next scenario is a hot topic as it relates to returning to the workplace and processing telework requests.

### [POV — Return to the Workplace or Enough is Enough]

Here we have Adrian. Adrian's employer is returning in place to the worksite, and Adrian is immunocompromised and is concerned about the risk of exposure to COVID. He has worked at home successfully for two years, the past six months as an accommodation, and the job duties will not change at the worksite. Adrian requested to continue telework accommodations.

The employer required Adrian to recertify the need for accommodations, even though medical information was provided six months ago. In this case, the employer probably views this as a "new policy" type scenario, and they want to ensure that only those who need telework as an accommodation are working from home. But the employer's not considering the ADA rules related to requesting medical documentation. Of course employers can request documentation under the right circumstances but should only ask for updated medical documentation if the available information is not sufficient to establish that the employee has a disability and needs the reasonable accommodation requested.

So team, I know we have lots of perspectives on this particular scenario. Someone get us started.

**MATTHEW McCORD:**

I can begin if you would like. My main point here is I think it's important for them to understand why Adrian is immunocompromised. Even if they're not getting the diagnosis, understanding why he is immunocompromised, because right now we don't know if this six-month timeframe makes sense why he is immunocompromised. If this is something where he has a long-term need, like he's taking immunosuppressant medication to treat a specific diagnosis that he's going to have for the rest of his life, six months doesn't seem to make sense with that need, because they already know that it's lifelong that he's going to take that immunosuppressant medication. So why is he immunocompromised? That's where I would start.

**LORE LEE:**

Yeah. Presumably Adrian did provide a documentation six months ago. Presumably it included a duration, because that is one of those aspects of documentation that makes it considered sufficient. And so if it does include a duration, that will be something — if I was talking to Adrian for example — I would have Adrian bring that to the employer's attention. "Look, I did talk about why this was needed, and we did talk about a duration." Now if — sometimes they don't include a duration or they include more of a more wishy-washy duration like "long-term" or "for the foreseeable future." So if there's no concrete duration, I think I would encourage Adrian that you want to ensure that your healthcare provider includes a duration in that next documentation. Whether you comply with this request or you kind of push back on it, one way or the other when you do provide it again, be sure that you have a more concrete duration.

**LISA MATHESS:**

I think from a general practice, these blanket policies of the semiannual or annual asking everyone who has accommodations to recertify, it probably isn't job-related and consistent with business necessity as far as ADA goes. Now there are going to be times when it could be appropriate to request new information when there is a change in the employer's ability to accommodate. Then, in this example, it could make sense that the employer wants to seek information about whether alternative reasonable accommodations may be effective. So perhaps we're asking Adrian's doctor, "Hey, we can't do continued telework. What we can do is a private office space, an air purifier, additional PPE. Would that be effective in meeting Adrian's needs?" So perhaps we are not opening up recertifying that full medical record; we're just focusing in on alternative accommodations. We're exploring accommodations back under that interactive process. An employer can choose amongst effective options, so perhaps we're getting more insight from the doctor in lieu of telework.

**TRACIE DeFREITAS:**

Lisa, I think that's the important point here too is that the focus in this case is whether the accommodation can continue. The employer already has this documentation. They have already established the disability and the need for accommodation, so you probably do not need new medical documentation. So that's a really key point, I think, to consider. Check in, see what you already have. What information do you already know as an employer before you go asking for this type of information? Okay. Really good insight.

**MATTHEW McCORD:**

I would just add one other thing. The issue here — I've actually gotten a call like this — where the issue here is flipped in that the concern is more that the employer doesn't know if they can continue the accommodation beyond six months in the future. For instance, in the call that I am thinking of, they could handle it now, but in six months someone was going to retire, and they didn't know if they would have the ability to continue it beyond that, because they didn't know how the retirement was going to affect things. So in a situation like that, even though we know the need is ongoing, maybe we need to revisit the accommodation in six months because of that. But just because we are revisiting the accommodation doesn't mean we should be gathering medical documentation again. So I just wanted to throw that out there, because I thought that was an interesting little wrench in the things.

**TRACIE DeFREITAS:**

That's great. That's another perspective.

Okay. In the interest of time, I'm going to move forward. So this next scenario involves leave as an ADA accommodation. And we know that leave situations can be complex and involve various federal and state laws. This particular scenario is ADA-focused, so I'm just asking everyone to keep that in mind.

### [POV — Equal Access to Leave or Personal Time Off]

Here we have Travis, who is experiencing limitations related to generalized anxiety and depression. Travis began treatment with a new healthcare provider who adjust his medications and recommended biweekly counseling sessions for two months. Travis had one week of accrued paid leave but did not want to use accrued leave to attend counselling appointments. Instead, intermittent unpaid leave was requested as an ADA accommodation so Travis could reserve accrued time for vacation days.

Lisa, let's talk about this one. Can you share your perspective on this?

**LISA MATHESS:**

Sure. I think having the policy that we make employees use their accruals — the sick time, the annual personal time — before we opt to provide unpaid leave, that meets the needs of the disability-related limitation. It stinks that Travis might not be able to go to a vacation next summer because he's used all of his accruals but as far as ADA goes, we've met that disability-related need. We've permitted him to use his leave to go to these biweekly counseling appointments.

**TRACIE DeFREITAS:**

And the employer here is thinking from their perspective, "We have a need to ensure that everyone has equal access to leave. Leave is provided via a policy that's available to everyone. We don't necessarily dictate your reasons for using that leave necessarily. It's available to you. So once you have access to that and you use it, if you need an accommodation that goes beyond that available leave, now we're looking at unpaid leave as a possible accommodation." So it's tricky. We certainly understand Travis's point of view on this, but we also have to see the employer side of that as well.

Are there perhaps other ways that this situation could be addressed through other types of accommodations, maybe?

**LISA MATHESS:**

I certainly think so. Taking accrued leave and unpaid leave out of it, can he extend his workday? Could he jump on a Zoom therapy session and then work an extra 40 minutes at the end of the day so he's never touching any leave accruals? You can get super creative with a modified flexible schedule. Extending those hours: Can he start his day early? Can he work an extended day? Can he add his typical breaks onto his lunch to get some counseling appointments in? I think there could be a lot of modifications to his schedule to help accommodate him.

**TRACIE DeFREITAS:**

So this may be one to come back to the table and negotiate some other options to kind of see both the employer and the individual's perspective and kind of meet in the middle somewhere with an alternative solution, perhaps.

**LISA MATHESS:**

If Travis were calling JAN, I would tell him, "Ask if you can save your vacation time for that vacation. There's no harm in asking." Some employers might not have a policy where you have to run through that paid accrual, so you can save it for a vacation. So as far as practical guidance you could certainly ask, but as far as ADA goes, they might not be required to permit you to do that.

**TRACIE DeFREITAS:**

Okay. We could talk — again this is another topic — for days, really. But do know that there are some great resources around leave-related issues. One, of course, is EEOC's Enforcement Guidance on Employer-Provided Leave and the ADA as well as JAN's A to Z on leave, so do check those out.

Okay. Next scenario for Matt and Lore here.

### [POV — Meeting Business Needs or Retaliation]

Andy is a retail sales manager who is frequently late to work due to flareups of gastrointestinal disorder. Andy was responsible for opening the store and being tardy affected business operations. He was written up for tardiness according to the attendance policy. After working through the accommodation process, the employer modified the attendance policy to allow unplanned absences during flareups but also reassigned Andy to an afternoon shift.

Matt, Lore, what are your points of view here?

**LORE LEE:**

An employer does have business needs. An employer can discipline Andy in the same way they normally would for tardiness, but I am also glad to see that accommodations are being made here. I think, though, that communication is key in that I think the employer probably really wants to make it very clear, when they're talking to Andy about this, they want to make it very clear that this is not punitive. "Here are the performance expectations. Here are what the business needs are. We're absolutely fine to accommodate, but these things still needs to be done." I think that the employer should explain the decision-making process. I think that will go a long way to getting Andy to understand this is not retaliatory.

**MATTHEW McCORD:**

Right. And I do also think it would be important to include in that discussion that obviously the store has to be opened. We can't have business without the store being open, so someone has to be available at a specific time to open the store and get things set up before everyone comes in. So that might be part of Andy's job since he was the manager, but my question here — And I would pose this to both Andy and the employer, depending on who was calling me — is it required that Andy be the one to open up shop? Does the manager have to do that? Can that be done by someone else? Because if that's the main concern for this reassignment to the afternoon shift but someone else can open up, we might not need to reassign. We might allow just that flexible schedule, and it would be done. There might be a concern of finding an employee on the day shift who is responsible with the keys, but if nothing else, we could definitely pitch that as a, "Hey. We know you want to move up, so here is some added responsibility."

**LORE LEE:**

That's a really good point. Because I think ideally — especially if Andy likes this shift — you do not want to modify. You want to modify things as little as possible. You want to let them maintain their position as much as possible. So if that is a possibility — and that's another instance where that back-and-forth communication between them where Andy's saying, "Hey, I think I could do it this way." I think that's a really good idea. It's a very good idea.

**TRACIE DeFREITAS:**

All right. Great perspectives there. We do have some resources that might be helpful. A conduct-related publication and then also some thoughts about accommodations beyond job performance as well.

We have about nine minutes to finish up, and we have one last scenario. So let's hit that real quickly, and then we'll get to some takeaways.

### [POV — Alternative accommodation or Ineffective Solution]

Here we have Donna, who has degenerative disc disease and experienced severe back pain and numbness after sitting for long periods of time. Donna provided medical documentation and asked for a specific ergonomic chair that was rather expensive. The employer opted to get a less-expensive ergonomic chair, selected from a list of preferred vendors the company used, but Donna continued to experience back pain and numbness while sitting in the new chair.

Lore and Matt, I think you're going to talk just a little bit about this situation.

**MATTHEW McCORD:**

Yeah. This is definitely a situation that I talk about all the time. I think, first of all, if the pain and the numbness is continuing, then that certainly does make it seem like there's not enough here. But the question is what is enough? What is really needed? So I would start off by asking Donna "What specific features were in the chair that you asked for, and how does that compare to the chair you were given? Is the chair that you have been given lacking a specific feature that you need? And if that's the case then okay, maybe we need to get a different chair." But if it's exactly the same in all ways, same features, everything seems to be good in that regard maybe the issue isn't the chair at all. Maybe we need to have some more ergonomic features looked into; maybe we need a footrest; maybe we need to change the workstation. Adjust the monitor. Adjust the keyboarding tray. The issue could be something outside of the chair too, so we want to do a little bit more in-depth look at that if the chairs themselves seem to be pretty identical and the only difference is cost.

**LORE LEE:**

I think it is good for Donna to be able to explain that, but if Donna isn't able to explain that, or if we're talking to the employer, the employer does need to be prepared to adjust if it's not effective. But I think they can ask questions. They can ask questions to try to understand why it's not effective. Trying to ask these specifics, trying to pull that information out of Donna, asking them, "Can you compare — " exactly as you said — but them say, "Can you compare these chairs? Can you tell us what the difference is with these chairs?" And so the employer needs to be prepared to ask those questions. An employer can choose a less-expensive alternative, and it makes sense that they would prefer a cheaper chair first. But just to be prepared to find out why it is not effective.

**TRACIE DeFREITAS:**

I think, as we're seeing, all of this really boils down to communication; right? There are clear perspectives that vary; our points of view at any situation can be different. As it relates to the way that we see or perceive the accommodation process, Lore, will you please share some key takeaways for us?

### [KEY TAKEAWAYS]

**LORE LEE:**

Yeah. I think the main takeaway from our conversation is the role of effective communication in resolving differences in perspective throughout the interactive process. Many of the scenarios we discussed can be improved by the employee and employer engaging in good-faith dialogue with one another. This begins with open and honest communication where you keep the other party in the loop at every step. A good-faith dialogue means actively listening, seeking common ground, and showing a willingness to collaborate.

Trust is crucial for an effective interactive dialogue. Transparency and communication involves being open about decisions, policies, and other information relevant to the accommodation process. When leaders are transparent, employees feel informed and included. Even unintentional misunderstandings can lead to conflict, so don't assume others know what you mean.

Communicate clearly so that everyone is on the same page. This way differences in perspective can be addressed, common ground can be established, and issues can be resolved. Instead of approaching the interactive process as a battle to win, it's more productive to view it as a collaborative process. Employees will sometimes assume their employer wants to deny as much as possible, while employers will sometimes assume their employee is asking for things that they don't need. Instead, take your pride out of the equation and simply assume the other party means well. Both parties want the same thing: an effective solution to the interactive process. Therefore, treating it as an us-versus-them situation ensures both parties fight an uphill battle, and neither party is ultimately satisfied. When we work together to solve problems and address concerns, it's more likely we'll find solutions that benefit everyone.

Sometimes our own perspectives can limit our understanding of a situation, no matter how confident we are. so stay open-minded and willing to adjust your viewpoint based on new information. This approach emphasizes the importance of humility and self-awareness. Ask questions in good faith rather than rhetorically, provide details to inform rather than as a "Gotcha!", and reevaluate at every step whether this scenario is going as smoothly as you think it could be. When you're open to the possibility that you might be wrong you allow for a more constructive interactive dialogue.

There isn't going to be a one-size-fits-all answer to most accommodation situations, but by embracing these takeaways, I think we can build a stronger and more collaborative interactive dialogue where conflicts are resolved and differing perspectives begin to converge.

**[Conclusion]**

**TRACIE DeFREITAS:**

That was perhaps the most perfect summarization of what we've just talked about today, so thank you for those insights, Lore. We appreciate it so much.

With that, we are going to go ahead and close out the webcast for today. We talked about so many important things today. Lore, Matt, and Lisa, thank you so much for a fun and informative conversation. It was really great to hear your different points of view on these topics.

The next and final JAN webcast in 2023 is "Accommodation Solutions: Respiratory Conditions, Allergies, & Fragrance Sensitivity" on Thursday, November 9, at 2 p.m. Eastern.

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If you, of course, have any ADA and accommodation questions, I know we didn't have time to get to attendee questions today, but we'll certainly take a look at those. But you can contact JAN any time. So Ask JAN. We can help! If you go to the AskJAN.org website you will find our contact information. You can reach us by toll-free call, you can use a live chat feature that's available on our homepage at AskJAN.org, or email us at JAN@AskJAN.org. And if you're not doing so already, please do follow us on social media, on Facebook, LinkedIn, or Twitter/X, and we also have a YouTube channel too. So please do that.

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To everyone, thanks for joining us today, enjoy the rest of your day, and this concludes today's webcast.