REALTIME FILE

JAN‑Monthly Webcast Series‑Ask the JAN Psychiatric Team

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>> BETH LOY: Well, hello everyone and welcome to the Job Accommodation Network's accommodation and compliance audio and web training series. I'm Beth Loy, and I will be the moderator of today's program called ask the JAN psychiatric team. Featuring Melanie Whetzel and Sarah Small, a consultant on the same team. But before we start the program, I want to goal over just a few housekeeping tips. If you experience any technical difficulties during the webcast, please call us.

Second, we do plan to answer as many of your questions as we can during the presentation, so please go ahead and start sending in your questions at any time. You can send them to the webcast platform. You can use that question and answer pod located at the bottom of your screen, or you can use our e‑mail account at question@askJAN.org.

Also on the bottom of your screen you'll notice a file share pod. This is our webcast downloads pod. And you can use this if you have difficulty viewing the slides or if you would like to go ahead and download them. Finally, I would like to remind you that at the end of the webcast, an evaluation form will automatically pop up on your screen in another window. We really appreciate your feedback. So please stay logged onto fill out that evaluation form.

Let's go ahead and get ready and start today's program.

>> MELANIE WHETZEL: Okay. So we're just going to jump right in here today so we have plenty of time for your questions. We have just a few slides for you here at the beginning. And in this first one we have listed the most common. Addiction, anxiety, bipolar disorder, major depression, OCD, panic disorder, PTSD, and seasonal affective disorder, or SAD.

Here we have a list of the most common limitations that are associated with mental health impairments. Individuals will develop some of these. Very rarely would anyone develop all of these. And also the degree of limitation or the severity is going to vary among individuals, but also it will vary from time to time based on flair ups or exacerbations of symptoms or the conditions themselves.

I wanted to say here from the beginning is the most important thing to remember about providing accommodations to individuals with disabilities is each situation is viewed individually based on the employee experiences along with the difficulties they're having with job tasks.

The most common limitations are concentration, memory, organization, time management, stress and emotion, panic, sleep disturbances, attendance, coworker interaction, and then working effectively.

So moving into the main part of our time today, we'll be looking at some common accommodations that might be provided to employees with mental health impairment. We'll also look at a few specific examples and solutions.

So the first example here deals with disclosure. So we have Tilly who has a bipolar disorder. She needs to disclose her disability and ask for an accommodation of a flexible schedule while she adjust to a new medication. Tilly is having difficulty sleeping and waking up. She is wary of disclosing her medical condition to her employer because she doesn't want to get into disciplinary action.

She decides to disclose and provide medical documentation. Because her work doesn't depend on or affect others, her employer found no hardship in adjusting her schedule as long as she gets her time in between the core business hours of 8 a.m. and 6 p.m. Sarah?

>> SARAH SMALL: Thanks, Melanie. Another topic that sometimes come up is seeking medical information. In this case Jon, a long‑time employee of an university discloses he's been having severe bouts of depression that affect his ability to do a night shift. He is asking to be switched to a day shift. His manager is very surprised. The manager decides to ask Jon for medical documentation that will provide information about why the accommodation is needed. The manager then takes a look at the I.T. schedules to see what can be done to assist the employee.

>> MELANIE WHETZEL: Okay. We actually are already getting into questions, which is very exciting for a moderator like me. Let's take a couple. Let's see which one we want to do here first. Okay. This example that will we've just had actually, we have a question. This has to do with Jon. We just saw on the example with Jon how surprised the employer was when he disclosed what's the best advice for employers who suspect a mental health impairment. Who suspect that that impairment may be causing problems but the employee hasn't admitted or disclosed anything. Sarah?

>> SARAH SMALL: In a case like that, we always recommend to sticking to what is just related. In this case, the employer was surprised because Jon really wasn't having any sort of issues on the job. But more commonly we see this situation come up where somebody is having some sort of difficulty and the employer suspects that maybe there is something going on, or maybe it could be disability related. But in this situation, you really want to stick to the performance and conduct piece of it. So you want to have the conversation or address the issues as you would with any other employee. And we find that in those cases oftentimes that discussion with open that door if there is going to be a disclosure. It might help the person disclose or help them realize if something is going on that's causing those problems. And then you can kind of go from there and maybe that leads down the accommodation path.

But if there is no disclosure, you really just want to continue as you would performance and conduct wise with any employee. You don't want to try and force a disclosure. And really if there is no issue, you just kind of don't want to do that.

>> BETH LOY: Okay, that makes sense. Melanie, we have a couple of questions related to your scenario. What are specific accommodations for Tilly if there are specific start and stop times for a business?

>> MELANIE WHETZEL: That's a really good question. Because in that example that just works out perfectly, but not everyone has a job like that. In fact, we get questions like this all the time. And I had one not very long ago. It was a bank.

And the employee could not come in until a certain time. Several things to do, depending on hardship issues and the number of other employees. If there are a number of other employees there at that starting time, let's say in a bank, there are enough employees to handle that business in the first hour when that employee needs to be out, that would be one way to do it. The employer could look at leave. If the person qualifies for FMLA, they could use FMLA for that hour and add up that FMLA time. They could also use leave, whether it be sick leave or vacation leave. It could be unpaid leave. That again could be up to whether the employer could add that, if it were a hardship or not.

I think it would come down to depending on the job if there are enough other people to cover during that period of time. We get that question with a teacher. The teacher says I can't come in until a certain time, let the principal cover my class until I can get there. That won't work in a school situation. There are situations where that would work, but other ones where it's not possible.

>> BETH LOY: In that situation, Melanie, you talked about something that is very common in accommodation requests when individuals are being put on some type of medication. Do you find that to be a common accommodation where employers may not understand that adjustment period?

>> MELANIE WHETZEL: Right. That's where it's important for the doctor to provide the information about how long it's going to take. I'm not a doctor. It's probably not going to be a permanent need for the accommodation of an adjusted schedule. It may be a temporary until the person's body adjust to that medication. They may not know. It could be 6 weeks. It could be 3 months. That would be something to look at. Can we do it for that amount of time? If it's something they have to do for the next two years, might not be able to do. But can we do it for a month or six weeks, that's one way to look at that.

>> BETH LOY: It's pretty common to have limitations for 6 or 8 weeks, and sometimes an individual has to change medications for that period of time and it might change the accommodation.

>> MELANIE WHETZEL: It might start it all over again.

>> BETH LOY: All right. Let's see. What are some common problems employers have with disclosing medical information.

And what information do you often give them?

>> MELANIE WHETZEL: Employers often want to know if they can get medical documentation once an employee discloses a disability. Yes, they can. They can get information about the nature of the disability, what are the limitations and some ideas for accommodations. Sometimes when it's a mental health impairment, the employers get a little more nervous about it. How much and how many questions can we ask? The questions want to be directly related to the business and the employee's work duties or job tasks and the difficulty that they're having. And another thing, well we have a couple publications. I want to make that clear. One helps a doctor understand what the sufficiency of the information is that they're going to provide. Sometimes the doctor is not sure of how much information. Sometimes the employee is not. We have a publication on that that can help everyone. We also have some sample forms that are helpful.

But one of the things I wanted to say at this point, too, is if the employer can make the situation as stress‑free as possible for the employee when they are disclosing because that can be very stressful. Like Tilly. She didn't want to disclose her disability. She wanted her employer to know she had a mental health impairment. That can turn out really bad. She didn't want to do that until she absolutely had to. It can be really stressful and cause or worsen anxiety. So anything the employer can do to help with that situation to cause the least amount of stress or anxiety I guess is going to be best for the employee to keep them on track and keep them working to the best of their ability.

>> BETH LOY: Melanie, that actually leads into another question that we received. This individual wants to know how do you overcome stigma and lack of trust in the a workplace. The reality for an employee may seem that retaliation is inevitable even if the accommodation request is allowed.

>> MELANIE WHETZEL: Right. That's why a lot of people have difficulty deciding whether to disclose or not. If you need an accommodation, of course you're going to need to disclose. You may start out with not having as much information, provide as much information about the mental health impairment to your employer. You can start out a little bit more broad so they don't have the exact diagnosis. Sometimes people with bipolar or certain other mental health issues don't want their employer knowing exactly what that diagnosis is. You can start out doing that.

I think looking around at some employees, they will say well I've noticed when somebody else has difficulty how easy they handle that or how accommodating they were. That makes it easier. In other situation where is the employer isn't as willing to make accommodations or a specific supervisor isn't, and that's why it's important to look at that and consider do I tell my supervisor. Maybe not. Maybe you don't want your supervisor to know. Maybe you go directly to H.R. The supervisor may have to be involved in the accommodation, but wouldn't have to know what the medical impairment or diagnosis is.

>> BETH LOY: Speaking of diagnosis, someone wants to know if ADHD is considered a mental impairment and whether they have to work from home the whole time.

>> There's really no straight answer to that question. It's all about meeting the definition of disability, which is any physical or mental impairment that substantially limits one or more life activities. We do see ADHD come up. And the common limitations associated do tend to fall within the similar limitations we see with mental health or with cognitive impairment. So with that, I think the best advice would be to look at how specifically it's affecting that person and is that something that sort of rises to the level of definition of disability under the ADA.

>> BETH LOY: It's classified as a mental condition in the DSM. Sometimes individuals get it confused with a learning disability.

>> Yeah, sometimes it does get very confused and sometimes they go hand in hand. Sometimes someone has ADHD and a learning disability. But it tends to kind of be its own diagnoses.

>> BETH LOY: So if an employee does have ADHD and the employer says we do believe you're covered by the Americans with Disabilities Act and then the employee wants to work from home for the entire job, what do you talk to employers about in that situation?

>> SARAH SMALL: In situations like that, we first would talk just a little bit about the idea of telework and looking at the functions of the job. First would be looking at does the employer already have a telework policy? If they do, what is that? Is it something that the person could be accessing or could be utilizing? Is there a variation of that, that maybe could be needed because of the disability? But I think with a request like that, looking at the need, looking at what's going on with the employee, is that something that would be possible for them to do those functions from home whether that's on a full‑time basis or some variation of that if there are functions that maybe need to be done in the office. But also wanting to have that conversation with them. Also with telework we see implementing on a trial period. So if it seems like it could potentially be done from home, sort of giving that trial period to try that out and see if it could actually be effective on both ends.

>> BETH LOY: Okay. That sounds like good advice. Next we're going to step into accommodations that modify policies. Fill us in, Sarah.

>> SARAH SMALL: Yeah, modifying policies could be accommodations. We have Rico in this example. His main job function were troubleshooting the problems of other staff members. He was good at that, but he became impatient and rude and disrespectful sometimes to those coworkers who were contacting him for assistance. In this case, a new policy was instituted that would allow Rico to take the request by e‑mail instead of in person or by phone. This allowed him to reduce the stress, but also allowed him to continue performing those functions and keep his emotions and behavior in check at the same time.

>> BETH LOY: Excellent.

>> SARAH SMALL: Service animals is a big one and oftentimes does entail modifying a policy, as well. Tana is a file clerk with an anxiety disorder and she uses a service animal to help deal with stress in the workplace. Again, modifying a policy, the employer was able to modify a no‑animal policy. And that way they were able to allow the service animal to be in the workplace.

>> BETH LOY: Well, let's ask you this Melanie. Will the diagnosis or accommodation request follow an employee from job to job?

>> MELANIE WHETZEL: Well that would depend. If it's a job within the same company with the same H.R, yes. If not, then it's up to the employee to disclose that. If they go to another job, another company, they would need to start that process all over again. A different job may require different accommodations, maybe not as quickly, maybe on the first day, who knows. But yes, it would be up to the individual to disclose that, provide the medical documentation, ask for the accommodations. If it's a new job with like a new H.R. department.

>> BETH LOY: Okay. And Sarah, we have a question that coincides with one of your scenarios. This person first says good morning. I would like to know where this person is.

>> SARAH SMALL: Good morning! West coast. It's afternoon here.

>> BETH LOY: This person says to what extent is an agency expected to use technology to facilitate no direct interaction with the public? This agency handles business face to face, which is a fundamental aspect of the agency's position. So is this something that an agency would be expected to change? Related to this aspect of the job?

>> SARAH SMALL: You know, with something like that, under the ADA there's going to be no obligation to change an essential function of the position. So I would encourage in a situation like that first looking at that face‑to‑face contact. Is that something that is essential? Or is that something that is just typically done that way? If the it's something that maybe there could be the opportunity to do it via technology, sometimes that does come up depending on the environment and the job itself. I know today with technology we see all the time communicating via phone or e‑mail, things like that. But I think if it is something that is essential and there would need to be that face‑to‑face connection or meeting with somebody, then instead you might look at are there accommodations that could help the person to be able to do that. And so I think depending on the situation, I think definitely considering it, but I think you could certainly assess the position and everything, and also see might there be some alternatives that could help the person actually do that function.

>> BETH LOY: Okay. We currently have two questions related to service animals.

>> SARAH SMALL: Okay.

>> BETH LOY: And these are based on what to do if someone else in the workplace has an allergy.

>> SARAH SMALL: That's a common topic. And that is something that we have a publication on the website that tries to give some practical solutions in those scenarios. I think it really depends on the situation and the extent of it. But oftentimes you don't want to then just not accommodate that person. So instead, oftentimes you kind of want to look at the two pieces separately. So assessing first. Can the service dog be the accommodation? What does that look like? And if that's going to be the most effective or the most helpful, then I think looking at that separate piece of okay, now there is this coworker who maybe has an allergy, is there a way to work around and accommodate that person with the allergy, as well.

>> BETH LOY: And that publication is located where on the website?

>> SARAH SMALL: The easiest way I know to find it Beth is to go through the A‑Z link at the top of the page and go by topic and scroll down to S since it's alphabetical and click on service animals, you'll find a lot of links there. But there is one that let's see here is called, it's the third bullet down. Service animals and allergies in the workplace.

>> BETH LOY: And that's one of our consultant's corners. Pretty easy to find. Thank you for that information.

Let's see here. A couple more service animal questions coming in. What kinds of documentation would be considered acceptable for service animals?

>> SARAH SMALL: Everything in formal regulation right now pertains to more of the public access situations. When it comes to Title I with employment you're really looking at that request to have the service animal as an accommodation request in the workplace. That being said, as far as documentation goes for the individual, any time that an employee, the condition is not known or obvious, you're entitled to that same documentation that you would ask for any accommodation request. But then when it comes to the dog, there is really no universal certification per se. So you can certainly ask questions about the training, you know, has the dog been trained. Since there is no formal regulation, and since it's just defaulting to that accommodation process, it does open up for more conversation. How is the employee going to perform the job with the dog there? What training has the dog had? Really looking at behavior. Behavior is a big concern that comes up. I would suggest asking maybe the person does have a training certificate that they could provide to you. If they don't, I would encourage you to not just stop at there because they don't have one. Oftentimes we're seeing more and more people are training the dog with another person or something they might not have a physical piece of paper.

In those cases you may have the dog come in for a meet and great and demonstration or something to help you assess the behavior and make sure it's not going to be a disruption. And this is a big area where we see those trial periods, as well.

>> BETH LOY: Okay, Melanie, I'm going to toss you a service animal question. What is your advice if you have another employee who has a real fear of a service animal? And can the employer require another type of animal that the employee is not afraid of?

>> MELANIE WHETZEL: The answer to the second question is no. There is be no kind of breed discrimination. You can talk about certain types of products that might reduce the dander of the dog. Beth sent me this question because I have a real fear of dogs. It's very real to me. The thing is when Sarah is talking about employees with allergies, there could be someone with a disability, the allergies can be a disability. They can bring in documentation to show that. I would have no documentation that I have a fear of dogs. I've never been to the doctor about it. Most people who have phobias probably do not. Maybe people are receiving therapy to reduce that fear. I would say you would have to look at that as how much contact is a person going to have with that service animal? Can they be separated? Can the person with the animal talk with the person who has the fear, explain to them about their dog, the training, can they watch the dog to see that it's trained, that it's not going to attack or whatever the fear might be. It's not a hostile dog. It's not going to bite or growl. A working dog is not going to bite or growl or jump on someone. The employee who has the fear could be assured of all of those things, but may not want to be in that same proximity. So maybe they could be in two separate locations.

>> BETH LOY: It's basically like having two employees who don't get along. You try to keep them separated. So what type of documentation would back up an individual having a service animal? And you actually wrote something similar to this for another one of our consultant's corners called documentation of a learning disability. A little bit different, but the same standards for medical professionals apply.

>> MELANIE WHETZEL: Right. Yeah. Yeah. You want the medical documentation that would state that. And here is the thing for someone with a phobia or a fear, they may not have any documentation.

And Sarah wrote a publication. I don't know. Is that a consultant's corner or an E‑news.

>> SARAH SMALL: I think that was an E‑news.

>> MELANIE WHETZEL: About the medical documentation. It doesn't really matter. If the person comes to the employer and says I'm having difficulty with this because of this real fear of dogs, then the employer would have the obligation to look at that and really consider it.

>> BETH LOY: It needs to be from a medical professional.

>> MELANIE WHETZEL: It needs to be from a medical professional. And that can include a mental health professional more likely for a phobia. It could be from a general practitioner who has seen that or noticed that or had that discussion with a person. Because like I said earlier, sometimes people aren't in any kind of treatment. I'm not. In any kind of treatment or therapy or anything. There is no doctor who knows that. I would have to go discuss that and they would have to believe me, I guess.

>> BETH LOY: That documentation could include a psychologist, neuropsychologist, oncologist, nurse‑practitioners, vocational rehabilitation specialists, and other types of mental health professionals.

>> MELANIE WHETZEL: Right.

>> BETH LOY: Okay. Let's see here. That was really good info.

>> MELANIE WHETZEL: Yep. We do. We have good info for people.

(Laughter).

>> BETH LOY: Okay, a couple more service animal questions, because I've got a slew of them here. Do you recognize anything besides a dog as a service animal? Now we're talking about Title I. That's what we deal with. That's employment. Titles II and III are going to be different when it comes to the definition of a service animal.

>> SARAH SMALL: Right. Title II and Title III is where you're going to find those specific definitions. With Title I we most commonly see dogs. But really it could potentially open up to a different type of animal. Sometimes we do get those calls and more commonly it's in regards I think to the emotional support side of it. But I think regardless and it's something you haven't heard of or something like that, I think the key is to still acknowledge that accommodation request coming in and sort of engage in that conversation.

>> BETH LOY: We actually got a question that has to do with what I just stated related to the different titles.

And this is someone who is a little bit confused about the different titles of the ADA and how those apply to the definition of a service animal. This individual says that I understand that a service animal is identified as a dog or a miniature horse. What about an emotional support animal? We usually ask for the same guidelines as a service animal. Identify the functions and tasks. Do we restrict it to only dogs and miniature horses? This is a title mixup.

>> SARAH SMALL: Yeah, with Title II and Title III, that's where you're going to see the specific definition. Service animal versus emotional support. That's where you're going to find the automatic access in public settings and those differences there. In Title I and employment, there really is just no formal regulation at this point in time, which is why it does default to looking at the request as an accommodation request and engaging in that same process you would with any request. So whether it's coming in as a service animal or an emotional support animal, you're really going to want to engage and move through that same process regardless of those two titles.

>> BETH LOY: Right. Okay. So let's move on here to reassignment.

>> MELANIE WHETZEL: Okay in this example we have Vaughn who is an RN with nearly twenty years of experience in a veterans hospital who is having great difficulty working in the emergency and critical care units due to an increase in symptoms dealing with trauma. He asked for an accommodation of a reassignment. So the hospital's H.R. department worked with Vaughn to determine positions he was qualified for that were open or would be soon. Together they ranked the positions in the order of which were best suited to him. Vaughn was able to choose among three different positions in the veterans' healthcare system.

>> BETH LOY: Okay. Now we'll take some more questions, which we have quite a few here. What's the most common question you get related to that?

>> MELANIE WHETZEL: To reassignments?

>> BETH LOY: Mm‑hmm.

>> MELANIE WHETZEL: Probably does the employer have to do it. (Chuckling) sometimes, just do we have to help the person find a position? The answer would be yes, that would make the most sense. In this case the H.R. department helped. They would know what's available and what's going to become available, who's quitting, and who's going to get promoted, who might be getting married and moving away, that type of thing. They would know the qualifications of the job and they can help work with the employee to determine which positions they were most qualified for. We get questions do they have to apply for an interview like everyone else. No. That's what makes it an accommodation. If they have to interview for it and apply for it, that's not an accommodation. They're treated the same as anyone else in that regard. So if they don't have to be the most qualified for the position, they just have to be qualified. And if they are, they can be you just kind of slide them right in that position.

Another question we get is if it's a lower position, what do we do if it's a lower position and the employee doesn't want that. If the only one that's available is one that's lower, then the employer would have met that obligation to accommodate that person at that time. And then it would be up to the employee to decide if they wanted that position or not. And we will tell employees if they call upset we'll say it's still a position that's paid with benefits. And you'll have an opportunity to move to another position maybe at some point. But this way you're still employed. You don't want to be out of a job.

>> BETH LOY: That would not be good. That's not what we do. If there is a change in a policy, okay, someone is reassigned or someone gets a different schedule, and the policy is typically that people work a certain schedule, what is the best way to respond to coworkers who ask why someone gets that change.

>> MELANIE WHETZEL: The employer has to be very careful that they're not giving anything away that that employee has a disability or that they have an accommodation because that would violate the ADA. They want to talk about what they're doing for other employees is private. And if somebody came to them and asked, if you're addressing the person who says I want that too, if you come to me and ask for that, our discussions are going to be confidential. You can ask that person what's the reason you need a flexible schedule. And if they relate it to any kind of medical condition, then you say we bring in the medical information and we can look at that and determine whether we can do that for you, as well

Sometimes employers are really hesitant to make accommodations of certain types because then they're afraid that other people are going to want the same thing and how do we handle that. You look at it. Is it a disability. If so, can we do that for this person and this job at this time. And maybe you can. And maybe you can do it for the first two or three and then maybe you can't because it would create a hardship. Maybe certain jobs are more applicable to be working from home, some aren't. And some can be more flexible than others depending on the department, if there are more people in that department. That might allow more flexibility. If there are only a couple people in a department, that may prohibit that person from having that same flexibility. But the most important thing would be to not give out any information about the other person who is getting that accommodation.

>> BETH LOY: Melanie, we have several questions about your reassignment scenario and reassignment as an accommodation. Is it an equivalent position with the same pay and grade? Does the person have to be on the same shift, same pay, et cetera. The next question is I thought there was a rule change to lower grade, but you have to save the pay.

>> MELANIE WHETZEL: Okay, no you do not. Under the ADA, unless you have a policy of moving people to lower positions, all people, not just people with disabilities, but other people, and keeping them at that regular pay, then you would have to do the same for someone with a disability that you reassign. If you don't have that policy, then no you do not have to do that. You do not have to pay somebody the grade they're not working at if that's not your policy.

Yes, you want to try to get that person a position as equal as possible to the one they have in pay and status and all that type of thing, but that may not be possible. Employers tell us years ago they have a lot more open positions, now they don't. They don't have open positions. So they're limited in what they can do. You look at what you have currently open and you would talk about that with the employee. That's why it would be a lower position.

It could be you don't have to reassign someone into a higher position. That's certainly something that they could apply for and compete for, but you don't have to automatically reassign them into a job that is a promotion.

>> BETH LOY: I always try to look at this as a process. You look at the existing position and then you look at an equivalent position, and then you can go to a lower position, and then if an individual cannot be accommodated in the current role and there isn't another position and the individual is not being accommodated at the company, the individual may no longer be qualified for a position with the company.

>> MELANIE WHETZEL: Exactly. And that's not a good thing. But that's just the reality of it.

>> BETH LOY: And when it comes to reassignment, a lot of things may come into place like a bona fide seniority program or a union and collective bargaining agreement. Those are other things that can be tricky when you're talking about reassignment.

>> MELANIE WHETZEL: Right. The reassignment is usually considered an accommodation of last resort. The employer tries to accommodate the person in the position they're until the extent that they can no longer do that.

>> BETH LOY: Right. And there are times when maybe leave time would allow the individual to be back in that position.

>> MELANIE WHETZEL: Uh‑huh. Absolutely.

>> BETH LOY: Or another position. But you certainly wouldn't have to give indefinite amounts of leave time.

>> MELANIE WHETZEL: And here there was a question about the shift. If the person cannot work a night shift then they're not qualified for that job. Or they might have to move into a night shift and take that position until they're able to get transferred and reassigned to another position that is a day shift. Because oftentimes day shift is assigned by seniority. And they wouldn't have to create a day shift position or bump someone out of a day shift position so that person could have that job.

>> BETH LOY: Okay. We got some good questions here and I'm going to try to come back to some of these. But let's slip on here to performance standards.

>> MELANIE WHETZEL: Okay, under the ADA, an employer never has to lower performance standards. They can. But they don't have to under the ADA. What they are obligated to do is to accommodate someone to help them meet that standard. Here we have an example. The hotel employer conducts a meeting with Mina, a housekeeper to talk about her recent performance difficulties. The employer knows of Mina's OCD diagnosis, but he doesn't mention the disability and is prepared to handle the situation as a performance issue. And gives a verbal warning. Mina relates it to her disability.

In the solution the employer documents that this is a first verbal warning but doesn't rescind the discipline. He asks Mina what would help her meet the timelines of her task.

>> BETH LOY: Okay. And let's go on here to the next one. Conduct standards.

>> MELANIE WHETZEL: And the same goes with conduct standards. An employer doesn't have to lower conduct standards. Here we have an example of Jo, who is a nurse with severe depression who is written up after several verbal warnings for inappropriate conduct. She is placed on a thirty‑day plan of improvement and is told if it doesn't stop she will be let go. Jo decides to disclose her disability and asks for accommodations to assist her in responding more appropriately to her coworkers. Since Jo discloses and asks for accommodations the employer puts the performance improvement plan on hold until they receive medical documentations and can put accommodations into place, but does not rescind the discipline that occurred before they knew she had the disability. Once the accommodations are put in place, then they start the performance improvement plan.

>> BETH LOY: Let's talk about job restructuring.

>> SARAH SMALL: Job restructuring can be a form of accommodation. Jack is an elementary teacher who experienced temporary but extreme fatigue expected to persist for several months due to changes in medication and the onset of winter. He was accommodated with removing two extra duty requirements. So with job restructuring, this consisted of temporarily removing his early and late bus duties, and that caused no hardship to the employer and greatly reduced his expenditure of depleted energy.

>> BETH LOY: Okay, a couple of questions to follow up on this section. What if a team member is sleeping on the job? And the team member has disclosed he has OCD, Obsessive‑Compulsive Disorder, that prevents him from falling asleep at night, no medical documentation has been provided, would you be able to follow up with disciplinary action?

>> MELANIE WHETZEL: Yeah. I think sleeping on the job isn't going to be acceptable even for someone with a disability. The employer can still hold them responsible for sleeping on the job and continue with the disciplinary action, whatever that might be. So they can request that the employee bring in the medical documentation. If they refuse to do that or the employee just never gets around to it, then the employer has no reason to believe that that really is the case. So each time it happens, they could continue to address that as they would anyone else who falls asleep, whether they have a disability or not.

It's a really good idea for employers to just administer their performance or productivity disciplinary plans, however we want to say that. It could also be a conduct issue. You would want to make sure you follow your disciplinary plan or process across the board with all employees. You could certainly do that with this one. You could also say if you give us some information, maybe there are some ideas or things we could work on that would help you stay awake and get your work done.

>> BETH LOY: Okay. Good info. I'm going to toss this one out. This individual says the impairment du jour seems to be PTSD. How are we required to accommodate that?

>> MELANIE WHETZEL: You would be required to accommodate it like anyone else once you have documentation. Not everyone with PTSD needs the same accommodations. There are plenty of employees working with PTSD that aren't requesting accommodations at all. Sometimes there is an exacerbation of their condition. Sometimes there is a natural disaster that happens that can cause them to have flashbacks and that kind of thing. But you would be required to consider accommodating that, the same as any other disability. It would just depend on what those accommodations were.

>> BETH LOY: Okay. For both the scenarios, the housekeeper one and the RN one, how do you specifically help the housekeeper to improve performance? And how do you specifically help the RN improve conduct?

>> MELANIE WHETZEL: Well, the housekeeper was because she had OCD she was, oh what do I want to say? She was like perseverating on certain tasks and making sure she had things done. She was checking her cart and kind of wasting time that way. They came up with a checklist. You've replaced the soap, you've replaced the towels, made the bed, all the things she had to do. She would check those off and would check her list to make sure she was done. Some people with OCD have difficulty with even that. I have a list and have it checked off, but I still have to go back and have it checked. That would be for the individual to learn that that's what the checklist is for and you have to get onto the next room.

For the person responding inappropriately to her coworkers, it would depend on what that was. Was she too tired or stressed? Or in certain situations? The employer would want to find out more about what was that? How was she inappropriate? Was it certain coworkers? They would look at how do we accommodate her in that situation? Does she need more training in something? Was she unsure of what she was doing? Was someone telling her what to do and she wasn't taking that well. Was it her social skills? Was she too tired? Did she need a break?

You want to look at each individual individually. You want to look at each case on a case‑by‑case basis. Because two different people with major depression might have similar symptoms but in the different workplaces depending on what's going on, they might need totally different accommodations. And that's why it's so important to get that information and also to have that interactive process where you talk to the individual and say hey what's going on. What do we need to do to help you and get that information from them, as well.

>> BETH LOY: Okay. Let's see here. This is our last section coming up. It looks about modified schedules and leave.

>> SARAH SMALL: Okay. In this case you'll see Sally is an employee who works in a corrections facility and she is having some difficulty waking due to newly prescribed medications. So in this case, she is having some increasing symptoms of PTSD with the approaching 10‑year anniversary of the traumatic event. Because of her inability to get to work on time and attend work at all on some days, Sally's employer provided her with an accommodation of leave to help her manage the temporary side effects of the medication.

>> BETH LOY: Next topic confidentiality.

>> SARAH SMALL: And with confidentiality, we have another example here. In this case Jasmine confronts her supervisor with a request to be provided an opportunity to work from home as one of her coworkers is now doing. Although there is no formal policy that allows telework, Jasmine states that one is available to one employee should be available to all employees. And I think Beth we had kind of had some questions on that earlier.

So in this case the supervisor cannot disclose that another employee is receiving an accommodation. So in this case it kind of came down to the employer emphasizing the policy of assisting an employee who needs help in the workplace and the need for privacy. So emphasizing that link. The fact that they respect privacy of all employees.

>> BETH LOY: Next topic would be direct threat.

>> MELANIE WHETZEL: Okay. All right. So a direct threat is when the employee, there is a chance that the employee could be dangerous, harmful to themselves, or others. And it's a pretty high standard to meet. So in this example, a 9‑1‑1 dispatcher begins to have panic attacks on the job that cause him to leave his workstation and the phone lines to take a walk outside the building to calm himself down. The What started out as a couple of episodes a month have progressed to several daily episodes.

So the solution here in this case the supervisor views the situation as a direct threat and requests medical information from the employee that includes a job description review form and strategies to keep the panic at bay.

Another way to look at this situation and not call it a direct threat, although it could be certainly if he's not at his desk to get calls that are of an emergency nature. He's unable to meet his performance standards or goals if he's not at his desk working. That could be addressed as performance, as well. He says I have panic attacks, the employer can still say bring us an information about that so we can see how we can help you reduce that panic in the workplace so you can spend more time at your workstation.

>> BETH LOY: Excellent. Let's take a few more questions here. Sarah, how about this one. Do you have suggestions for dealing with the challenges of tardiness and the employee states that it's due to a mental impairment?

>> SARAH SMALL: Yeah. That comes up frequently. Employees who run into attendance issues resulting from manual health impairment. I think having the discussion as we mentioned earlier with performance and conduct. You are able to hold everyone to those same standards. You wouldn't have to excuse it. But you could talk about what's going on. Is there anything that could be helpful. Some common accommodations we see with that is maybe allowing if it's a change to a start time, a flexible window where if the person is going to be 5‑10 minutes late they make up that time whether it's through their lunch or stay late or come in early the next day. So sometimes we do see those modified schedules, things like that coming into play there. But I think first, addressing it, having that conversation, and then kind of seeing what kinds of accommodations like that could improve the situation moving forward.

>> BETH LOY: Excellent. Here is one Melanie. It seems that an individual with PTSD tends to use their impairment to avoid disciplinary action. Also, how do we address the individual's need to smoke illegal stuff during their break? Other coworkers report a funny odor on this individual. I would say that's marijuana.

>> SARAH SMALL: I would agree.

>> MELANIE WHETZEL: I would say that's a tricky question that we can't answer at this point. But we can say that regardless of the disability all employees can be held to the same performance and conduct standards, disciplinary action. If the disability directly relate to that, you can look at okay, we can look at accommodations. But you have to be able to perform or conduct yourself in a certain way. We can't have this kind of behavior in the workplace no matter what the reason for it is, so let's look at how we stop that behavior from happening. That can be information from the doctor. That can be information the employer just says, you know, I don't know what that might be. Perhaps somebody who has outbursts. They may be related to the disability, but you cannot do that in the workplace. It's too disruptive. We have to figure out a way to accommodate you to keep those outbursts from happening. Is there something that is accommodating the outburst? Is there something that we can reduce or eliminate that's going to not cause those outbursts? Can we move you someplace if it's a certain location?

Let me give you a quick example. This example is something I refer to a lot. An employer called and said the employee has PTSD. And she's saying that the microwave, the work space is located near the microwave or near the opening to an employee's lounge and the microwave goes off and it triggers her PTSD. He says it doesn't bother anybody else. I said okay but it bothers her. Do you have a place to move her? He said of course. Okay, just move her. It's as simple as that. You could have employees who are triggered by things and you need to figure out what. That's why the interactive process is so important. You need to know what those are. If there is an employee who has a certain kind of a voice or laughs a lot or curses. I don't know what. But have the employee talk about that. Move them from that person. Or look at exactly what's causing the outburst or the issue and then look at how do we eliminate or reduce that from happening. The employee can be held to those standards and say you can't do this, but we want to help you so how do we do that?

>> BETH LOY: We have about 150 service animal questions.

>> SARAH SMALL: I'm not surprised!

>> MELANIE WHETZEL: Figured that would happen.

(Laughter).

Based on the phone calls we get.

>> BETH LOY: I'm going to try to summarize these. Emotional support animals. What comes to mind?

>> SARAH SMALL: With that, again I think making sure you're looking at the titles separately. You know, I think it is something that you would need to consider as an accommodation and move through that same process. So someone is coming to you with a request, whether it says service animal or whether it says emotional support animal, you're still going to want to move through that same process. I know the biggest thing there that we see is people are used to the service animal as having those specific tasks they perform. Emotional support, there is still that expectation that the dog is going to be well behaved and appropriate for the workplace, but it tends to be more so that it's just providing that emotional support. So if someone does have anxiety, panic attacks, oftentimes the dog can be calming or help get through those, and really it's about that support versus a specific function. But it all comes down to the fact that the dog should still be having appropriate behavior in the workplace.

>> BETH LOY: And we do have a question about that. This individual says is it reasonable that one of our parameters be no disturbances in the workplace. And I say yes as long as you have that rule for everyone. There can't be any disturbances. Meaning, if there are kids in the workplace.

>> MELANIE WHETZEL: Obnoxious people.

>> BETH LOY: You got to be careful.

>> SARAH SMALL: Yeah. I think there is that expectation that the dog isn't going to be constantly barking or running around or having accidents. All of those things. You're able to have that expectation that those are not going to happen. And I think you wouldn't really have to tolerate those things in the workplace. I think absolutely you can have those parameters. And oftentimes I think some of it can help within those interactive process about where the dog is going to be. Is it going to be by the person's side all the time? On a leash all the time? But yeah, you absolutely would not just have to ignore or tolerate some sort of behavioral issue.

>> MELANIE WHETZEL: And something we talk about, too, is maybe doing that on a trial basis. And say, you know, we can't require certification that your dog will behave. So you bring it in and show us that. And then we'll temporarily allow that until we're sure that it's going to be a situation that's effective for you and effective for you, as well.

>> BETH LOY: And is it less annoying than your most annoying employee?

>> MELANIE WHETZEL: It may be. But we do hear stories of dogs that run around and sniff and jump on people. That's not a working animal.

>> SARAH SMALL: Again, some of that could come about sort of hashing out that interactive process. You may be able to talk about some of those expectations.

>> BETH LOY: Right. Let's see. What documentations should an employee keep about the interactions with the employer to make sure they are not being discriminated against because of their mental health impairment? Should I keep e‑mails about every interaction?

>> SARAH SMALL: I think it kind of depends on sort of what you want to take on in some ways. But I also think in this question I'm not sure when you're talking about interactions, if you're talking about all interactions period, or if you're just talking about those interactions for the accommodation process. I know we do often encourage submitting things in writing and sort of having that documentation. But I think, you know, in a case like that you might be able to keep track of it in other ways, too. I think saving every single e‑mail you certainly could do. But I think you could also create a calendar and kind of have on there your different meetings and maybe some notes in there and separating that out. But it kind of depends on if you're talking about the interactive process interactions or all interactions you have. I think it never hurts to kind of have those things if something you receive strikes you as being off or a red flag. Something like that. You can save those things. But it might be more practical to kind of set yourself up in like a calendar or something just to kind of keep track of those interactions but not to necessarily have to save every single conversation.

>> BETH LOY: Okay. And we have come to the end of our hour. Thank you for burning up the question line! That was pretty exciting!

>> SARAH SMALL: A lot of questions.

>> BETH LOY: A lot of questions. We like that. So that is all the time that we have. If you do need additional information or you want to contact us related to an accommodation or ADA issue, please feel free to contact us. And also remember that the EEOC website has a lot of great information. And we work in conjunction with the EEOC to provide you information.

We thank you and thank you also to Alternative Communication Services for providing the net captioning. An evaluation will pop up on your screen if you don't have your pop ups blocked. This will appear in another window. If you do have your pop‑up blocker on, we will send that in an e‑mail later. We do appreciate your feedback. We hope you'll take a minute to complete the form. This concludes today's webcast.