

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Accommodation and Compliance Series

### Accommodation and Compliance Series: Stay at Work (SAW)/Return to work (RTW)

Job Accommodation Network  
PO Box 6080  
Morgantown, WV 26506-6080  
(800)526-7234 (V)  
(877)781-9403 (TTY)  
[jan@askjan.org](mailto:jan@askjan.org)  
[AskJAN.org](http://AskJAN.org)



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## **JAN'S Accommodation and Compliance Series**

### **Introduction**

A Stay-At-Work (SAW) and Return-to-Work (RTW) program is part of a business strategy to retain valued employees and to enhance the productivity of the workforce. The primary focus of these types of programs is to keep an injured, disabled, or temporarily impaired employee working as much as possible, instead of taking leave, in order to reduce the cost of absenteeism and lost productivity.

Employees may need accommodations in order to stay at work or return to work so a SAW/RTW program may include temporary or permanent accommodations such as modified schedule, modified job duties, modified methods for completing job duties, transitional work, or reassignment to an alternate position.

### **Legal Considerations: ADA, FMLA, WC**

When analyzing SAW/RTW programs, there can be overlap with various employment laws including the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and worker's compensation (WC). All three laws may be applied depending on the situation, and employers must do a case by case evaluation to determine employee rights and protections under each applicable law.

For more information, see:

- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [Workers' Compensation and the ADA](#)

### **Benefits of SAW/RTW**

Early intervention through participation in SAW/RTW programs can be key in preventing a long term or permanent disability. In many cases an employee has not been completely restricted from working but remains on leave for extended periods of time unnecessarily. SAW/RTW programs reduce the need for employees to remain on leave during what is a relatively short window of time in which an injury or illness can transition into a longer-term issue. Research suggests that the likelihood of an injured worker returning to work drops to 50 percent by the 12th week of leave (Zurich, 2015). And when employees remain on leave when they could be working, the negative impact can extend from the individual to the employer and beyond.

Another benefit of SAW/RTW programs is that keeping those experienced and trained employees on the job costs less than hiring, onboarding, and training new hires.

According to an on-going study of the employers contacting JAN for accommodation information and solutions, most were doing so to retain or promote a current employee. Retaining these employees through SAW/RTW programs and providing accommodations can often be done at little to no expense.

Naturally, keeping an employee on the job through a stay at work program and with accommodations can help to reduce workers compensation costs. And for those who are concerned that accommodations equal costs, the JAN study data show that 58% of accommodations cost nothing. The same study consistently shows that 37% of the time there is a one-time cost and that cost is typically \$500.

Another key benefit of SAW/RTW programs is to help employers comply with disability related legislation, including the ADA and often worker's compensation laws. Under the ADA, when employees with disabilities prefer to work rather than stay on leave, employers have a duty to consider providing accommodations that would enable employees to return to work. SAW/RTW programs can show that employers are making a good faith effort to provide accommodations.

For more information on the JAN's Annual Study, which highlights Costs and Benefits of Accommodations, see [JAN's Accommodation and Compliance: Low Cost, High Impact](#).

## **Best Practices for SAW/RTW**

The following topics cover various techniques an employer can consider and implement to effectively create and maintain successful SAW/RTW programs.

### ***Job descriptions***

Developing and maintaining job descriptions can be a good business practice for employers. While employers are free to change the content, nature, and functions of a job, a prior prepared job description will create a common understanding of what is to be expected and required in the position.

Periodically updating job descriptions will create consistency across multiple locations while also clarifying essential functions versus marginal functions.

For more information on job descriptions, see [JAN's Accommodation and Compliance: Job Descriptions](#).

### ***100% healed policies***

Policies such as 100% healed policies or restriction-free policies could be problematic under the ADA as they ignore the ADA requirement that employers consider providing reasonable accommodation to overcome disability-related limitations, absent undue hardship. Employees who wish to either stay at work or return to work, perhaps with restrictions, could potentially still safely perform essential functions with or without accommodations.

To explore accommodation ideas, see [JAN's A-Z page](#).

### ***Temporary Accommodations***

Temporary accommodations can help employers with ADA compliance as well as participation in RTW/SAW initiatives. Providing a temporary accommodation can show a good faith effort, as it encourages employees to perform their job tasks. Temporary accommodations can be considered for a variety of reasons, including to research a permanent solution, to test effectiveness, for temporary impairments, to avoid temporary adverse working conditions, or when temporary accommodations cannot be long-term solutions.

For more information on temporary or trial accommodations, see [JAN's Accommodation and Compliance: Temporary Accommodations](#).

### ***Light Duty***

The term "light duty" has several different meanings in the employment setting. Generally, "light duty" refers to temporary or permanent work that is physically or mentally less demanding than normal job duties ([EEOC, 1996](#)).

The ADA does not require an employer to create a light duty position. Under ADA an employer may have to restructure a position by reallocating marginal tasks or changing how essential functions are performed to mirror a light duty position. The ADA may require an employer to reassign an employee with a disability to a light duty job as a reasonable accommodation, depending how an employer's light duty program is designed. If there is a pool of vacant light duty jobs, then reassignment to one of those jobs should be considered, regardless if they are typically reserved for Worker's Compensation injuries.

For more on light duty, see [JAN's Accommodation and Compliance: Light Duty](#).

### ***Job Restructuring***

Job restructuring is a form of reasonable accommodation under the Americans with Disabilities Act (ADA) that can involve removing job functions (typically marginal functions) or changing when or how a job is done. The following information is from a publication by the Equal Employment Opportunity Commission (EEOC), [Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA](#).

Job restructuring includes modifications such as:

- reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and
- altering when and/or how a function, essential or marginal, is performed.

An employer never has to reallocate essential functions as a reasonable accommodation but can do so if it wishes.

### ***Transitional Work Arrangement***

Transitional work arrangements include, for example, modified duties, tailored accommodations, or even a reassignment to another position to try to minimize the transition period from limited duty to full duty. The goal of a transition work arrangement is to enable an employee to return to work at a reduced schedule or limited work task and to build up time and tasks slowly to eventually lead to full recovery back to the original role. These plans are often temporary setups, as they are typically designed to provide work for the employee to do while working toward fully performing the original job.

Transitional work arrangements are not necessarily required under the ADA, as the ADA doesn't require employers to create positions, but it makes business sense in some situations to create a role that entails work tasks that need to be completed. Transitional work plans can benefit the employee from a medical standpoint, but also can benefit the employer with increased productivity.

### ***Plan of Action***

A plan of action is an emergency preparedness tool. It can be used to prepare for, or respond to, difficult situations that arise when a person has a medical emergency in the workplace. A plan of action can make it possible for an employee with a disability to safely return to work, thus these plans can be an important part of SAW/RTW programs.

A plan of action could be established so everyone understands who is in charge and what responsibilities each person has during a medical emergency. Designated people will have their tasks; recognizing an emergency, calling an emergency contact or perhaps 911, waiting with the employee, and knowing whether to provide medical aid, as it may or may not always be necessary.

A properly implemented plan of action may reduce the confusion, panic, or fear that staff may experience if they witness a medical emergency on the job.

If your organization would benefit from more information on plans of action, see JAN's [Sample Plan of Action](#).

### ***Reassignment***

Under the ADA, reassignment to a vacant position may be considered reasonable if the employee is qualified for the vacant position and reassigning the employee doesn't pose an undue hardship to the employer. For SAW/RTW programs, reassignment may be a temporary accommodation or in some cases, it may be a permanent accommodation. As previously mentioned, the creation of a new role is not required under the ADA.

Oftentimes, reassignment is used as a temporary accommodation during the interactive process, while an employer is looking for accommodation solutions for the employee's original role.

Under the ADA, reassignment is the accommodation of last resort, but employers are free to jump to reassignment as an accommodation if both the employer and employee agree to it.

For more information on reassignment as an accommodation, see [JAN's Accommodation and Compliance: Reassignment](#).

### ***Administrative Modifications***

There are many administrative modifications that can be made to make SAW/RTW programs successful. As discussed, consider transitional work agreements even if it entails going above and beyond the ADA requirements, as these are often needed only on a temporary basis. Consider establishing light duty programs, which may include creating a bank of limited duty positions reserved for those with limitations, regardless of whether they are work-related injuries or non-occupational injuries. Training on ergonomic techniques from the moment an employee is hired can reduce cumulative trauma injuries. Implementing proper lifting techniques and posture positions, while emphasizing task variation and workstation set ups, can also reduce injuries.

Administrative modifications may involve modification to any existing restriction-free policies, as they could be an ADA violation when applied to a person with a disability. Employers should be mindful and engage in an interactive process to learn what an employee's limitations are in relation to their essential functions. Lastly, employers should not make assumptions about employees' ability or inability to do their jobs, but instead should make a case by case assessment to analyze what accommodations are needed, if any.

### ***Leave***

Typically, it's a better business practice to try to minimize leave as an accommodation, but sometimes it is medically necessary for an employee to use leave. Leave could be applied through a variety of laws, such as the FMLA, ADA, Worker's Compensation laws, and state leave laws.

There isn't a set amount of leave that is required under ADA, but an employer does have a duty to grant leave until it becomes an undue hardship. Upon returning to work from an ADA leave, an employee should be returned to their original role unless it would pose a hardship to keep that job open.

For more information on leave as an accommodation under ADA, see [JAN's Accommodation and Compliance: Leave](#).

For more information on FMLA leave, see [JAN's Accommodation and Compliance: Family and Medical Leave Act \(FMLA\)](#).

## Resources

Equal Employment Opportunity Commission. (1996). Enforcement guidance: workers' compensation and the ADA. Retrieved October 2, 2020, from <https://www.eeoc.gov/laws/guidance/enforcement-guidance-workers-compensation-and-ada>

Zurich. (2015). Early intervention & RTW best practices. Retrieved September 29, 2020, from [http://dmec.org/wordpress/wp-content/uploads/2015/08/Zurich-Whitepaper\\_Early-Intervention-RTW-Best-Practices.pdf](http://dmec.org/wordpress/wp-content/uploads/2015/08/Zurich-Whitepaper_Early-Intervention-RTW-Best-Practices.pdf)

## Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

### **A teacher had been released to return to work following a stroke resulting in hemiparesis of her dominant left side.**

The individual had undergone treatment and rehabilitation, but had trouble balancing, standing, walking, and grasping small items, such as a pen. Accommodations provided included a stand/lean stool, a height-adjustable laptop tray with a laptop connected to the classroom smart board, low-tech grip aids for writing, and grab bars placed along the walls of the class and in the hallways for assistance with balancing.

### **An account representative was out of leave due to treatment for Hepatitis C.**

The employee wanted to return to work, but due to side effects of treatment, could not maintain the stamina needed to visit clients. The employer reassigned the employee to another account representative position that did not require travel.

### **A new employee had only worked for a manufacturing company for four months and had not accrued paid leave at the time that symptoms of Guillain-Barré Syndrome developed.**

The employer provided unpaid leave as an accommodation and were able to hold the employees' position open for when they were able to return to work.

### **An employee voluntarily admitted herself to a hospital inpatient unit due to severe depression.**

Her mother called the employer to let them know what had happened and to tell them her return date was uncertain at that time. The employer provided leave under the ADA for the employee and requested her mother to keep them informed about the employee's progress and possible return to work date.

### **A maintenance worker with alcoholism came to work under the influence of alcohol.**

When confronted by his employer, he disclosed that he had recently relapsed after his son was diagnosed with a serious medical condition. His employer decided not to terminate him under the circumstances, but required him to sign a last chance agreement before allowing him to return to work.

### **A special education teacher with agoraphobia had been off on leave for a school year.**

With her psychiatrist's help, she determined that she could return to work if the school was within a five-mile radius of her home – the distance she and her doctor considered safe for her to travel. There were actually six schools within that area. She asked for an accommodation of being placed in one of those particular schools when a special education position came open. The teacher was actually given the choice of two



schools right off as the district knew those particular jobs were going to be open for the next year. She accepted the offer on the elementary position, since she felt most comfortable with that age group.

**An employee who works as a truck driver has recently had her dominant arm amputated.**

She has expressed concern in her ability to return to work because she is unable to shift the gears in the vehicle. As an accommodation, the employer arranged for the employee to drive an automatic transmission truck.

**An individual with Guillain-Barré Syndrome was released to return to work following an extensive recovery period.**

The employee asked to work light duty. In lieu of this the employer provided a modified schedule and job restructuring while allowing a transition work arrangement. With this type of arrangement the employee gradually increased their hours and work duties over a short period of time and was able to eventually work a typical schedule.

**A teacher developed Guillain-Barré Syndrome during summer break, but was able to return to work at the start of the fall semester if provided with accommodations.**

The employee used a wheelchair and was not able to access certain items in the classroom or the employee restroom. As an accommodation the employer modified the employee restroom so that the employee could access it independently, provided a smart board with a laptop and laptop tray for the wheelchair, purchased an accessible desk, and they lowered the shelves and bookcases that were inaccessible. The employee was permitted to come into the classroom prior to the semester starting to ensure that the classroom had been modified and prepared for her to successfully begin the new school year.

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