# JAN Accommodation and Compliance Webcast Series –

# ADA and Accommodation Lessons Learned:

# Stay at Work/Return to Work Edition

# (2/10/22) Follow-up Q&A

1. **(ADA) If an employee has an accommodation in the office workplace, does duplicate equipment need to be given for home use?**

The EEOC has noted that during the pandemic, if an employee with a disability needs the same reasonable accommodation at a telework site that was provided at the workplace, the employer should provide that accommodation, absent undue hardship ([What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) (WYSK), Question D.14.)

It is suggested that an employer and employee engage in an interactive process to determine if the same or different accommodation could be provided to meet the disability-related need.

1. **How is Workers’ Compensation handled when working at home? What if during work hours an employee trips or falls at home by tripping on a computer cord or slipping on ice when going to get mail?**

JAN can’t address whether or how Workers’ Compensation applies in the home work environment. Please contact your State Workers’ Compensation Board for assistance. <https://www.dol.gov/agencies/owcp/wc>

1. **If an employer has a medical record of a work restriction (known need for accommodation) for an employee, and the employee transfers or competes for a new position, but declines to disclose their work restriction in their new position, what is the obligation of the employer to engage in the interactive process in the new position?**

Typically, the responsibility falls on the individual with a disability to request an accommodation.

Assuming this question is not related to reassignment as an accommodation, an employer should treat an employee who *applies* for a new job, as an applicant. The employer, therefore, is prohibited from asking disability-related questions or requiring a medical examination before making the individual a conditional job offer for the new position. Further, where a current supervisor has medical information regarding an employee who is applying for a new job, they may not disclose that information to the person interviewing the employee for the new job or to the supervisor for that job.([Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA](https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees), Question 4)

1. **Is it Federal law to accommodate a temporary condition?**

Per the ADA Amendments Act (ADAAA) of 2008, a temporary condition can be an actual disability if the condition is “sufficiently severe.” The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of the ADAAA. Thus, employees with temporary impairments can be eligible to receive accommodation in some cases; the key is whether the impairment is sufficiently severe. For more information, see JAN’s A to Z: [ADA Amendments Act](https://askjan.org/topics/Americans-with-Disabilities-Act-Amendments-Act.cfm), Substantially Limits, 3. Temporary Impairments May Meet the Definition of Disability.

1. **For employees who have requested a few weeks of leave after FMLA or state leave exhausts, is there any issue with classifying this short extension as ADA leave? Are we "regarding the individual" as disabled by doing so?**

If an employee needs additional leave after FMLA or a state leave has exhausted, leave under the ADA could be appropriate if that person meets the ADA definition of disability and the continued leave won’t create an undue hardship for the employer. Exploring ADA to provide a reasonable accommodation when it is known that additional leave is needed is not regarding the employee as having a disability. For more information on leave under the ADA, see JAN’s [Accommodation and Compliance: Leave](https://askjan.org/topics/leave.cfm) and the Equal Employment Opportunity Commission (EEOC) guidance on [Employer-Provided Leave and the ADA](https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act).

1. **What can you do when during the interactive process you find out that some of the essential functions are no longer necessary (due to business changes) and there is no other comparable work to assign to the employee? The employee is not qualified for any other positions.**

Additional details may be necessary to fully answer this question. If it’s determined that certain functions are not essential, has the job changed? How does this impact what the employee can/cannot do and whether they are qualified to perform the duties of the job, with or without accommodation? The ADA doesn’t limit an employer’s ability to change the nature or content of a job role but it’s important to know what duties are truly essential.

If it’s determined that it is not possible to provide a reasonable accommodation to perform the essential duties in the current job, then reassignment should be explored as a possible accommodation if a vacant position is available for which the employee is qualified. For more information, see JAN’s A to Z: [Reassignment](https://askjan.org/topics/Reassignment.cfm).

1. **Regarding modified/light duty — we have the practice of really trying to limit the amount of time of such an assignment. Can you speak to this?**

Under the ADA there isn’t a timeframe for an employee to remain on modified/light duty as an accommodation. The goal is to return the employee back to their original role at their original capacity as soon as possible. Modified/light duty can be offered as a [temporary accommodation](https://askjan.org/topics/Temporary-Accommodations.cfm) but some situations may require a longer-term assignment, if reasonable. If a permanent modified/light duty assignment is needed, this can be treated as a request for reassignment to a vacant position that aligns with the employee’s restrictions and ability to perform essential job duties, with or without accommodation. Each case is unique and should be addressed as such. For more information, see JAN’s A to Z: [Light Duty](https://askjan.org/topics/liduty.cfm).

1. **Our labor attorneys have advised that we don't ever want to permanently remove an essential job function, which we might do in a modified duty assignment.**

Essential job functions are not required to be removed as an accommodation under the ADA. While an employer is not required to eliminate an essential function, it may do so if it wishes. When removing essential functions either temporarily or permanently, JAN suggests documenting this adjustment, communicating to the employee the expected duration of this arrangement, and making it clear that the job is not permanently changed.

1. **What document would we use to show an accommodation has been met? A statement? An updated job description?**

JAN has various sample forms including a [Sample Accommodation Approval form](https://askjan.org/Forms/upload/accommodationapprovalform.doc).

1. **How do you define to an employer the difference between essential and marginal job requirements when they consider all essential? How do you objectively measure time, %, etc. ?**

Typically, the essential functions are considered the primary fundamental duties of a role. For more detailed information see Chapter II, Section 2.3(a) Identifying the Essential Functions of a Job in the [Technical Assistance Manual for Title I of the Americans with Disabilities Act (ADA)](https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm#spy-scroll-heading-35)**.**

1. **How do you define temporary (accommodation or time period) to employers? Again, what objective measurement do you utilize for how long "temporary" is, that is reasonable?**

There isn’t a set time frame for temporary accommodations or duration, as each situation would need to be assessed to determine what is reasonable and feasible on a case-by-case basis.

1. **We are a construction-based company, and the majority of our positions are physical and don't have light duty. We require a full release doctor's note before RTW to avoid liability of re-injury or a new injury. So I'm hearing we are in violation of ADA.**

Restriction free policies or 100% healed policies can have ADA implication as it ignores the duty to accommodate, absent undue hardship. When an employee can return to work, even with restrictions, and perform essential functions with or without accommodation, they should not be excluded from the worksite. See the section Return to Work and Reasonable Accommodation (Including Reassignment), 100% Healed Policies in the EEOC guidance on [Employer-Provided Leave and the Americans with Disabilities Act](https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act).

1. **When reducing to a part-time schedule, is salary reduced as well?**

Under the ADA, an employer can make this change as long as that’s what the employer would do when employees without disabilities work part-time. Employers should consider whether other laws apply, such as wage and hour laws.

1. **ADA documentation is needed. What if you provide 15 days, the employee requests an extension by 4 days, you grant that 4-day extension, and then the employee still fails to return the ADA documentation?**

If an employee does not provide the information in a timely manner, it is up to the employer's discretion how to handle the situation. JAN often suggests informing the employee in writing that the information was not received and that the employer is unable to proceed with the accommodation process until the information is received and reviewed. For practical guidance on this topic, see the JAN Blog, [Avoiding “The Waiting Place” After Requesting Medical Information](https://askjan.org/blogs/jan/2016/05/avoiding-the-waiting-place-after-requesting-medical-information.cfm).

1. **Does pay have to be the same or equal with temporary/ permanent reassignment?**

When implementing reassignment as an accommodation, an employee should be placed in an equivalent position, in terms of pay, status, benefits, etc., so long as the employee is qualified for the position. When there is no equivalent vacancy for which the employee is qualified, the employee may be reassigned to a vacant lower-level position in an effort to maintain employment. The employee’s original rate of pay is not required to be maintained in the lower-level position unless the employer routinely transfers employees without disabilities to lower-level positions and maintains their original pay. For more on ADA reassignment obligations, see JAN's A to Z: [Reassignment](https://askjan.org/topics/Reassignment.cfm) and the EEOC guidance on [Reasonable Accommodation and Undue Hardship](https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada)**.**

1. **What are employees to do whose medical team does not have an expected return to work date? At what point can an employer say no to an extension? What qualifies?**

According to the EEOC, although employers may have to grant extended medical leave as a reasonable accommodation, they have no obligation to provide leave of indefinite duration because granting indefinite leave, like frequent and unpredictable requests for leave, can impose an undue hardship on an employer’s operations. Also, repeated extensions of leave can become a request for indefinite leave. Employers are encouraged to request an anticipated date of return, even if it is not an absolute return date. For more information see q. 21 in EEOC’s [Applying Performance and Conduct Standards](https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities) and q. 44 in EEOC’s [Reasonable Accommodation and Undue Hardship](https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada).

1. **If you write to the treating physician for clarification, such as if they can return back to light duty, do you need to copy the employee and provide them with a copy?**

Nothing in the ADA addresses this, but it may be good business practice to keep the employee informed of all medical information that is being exchanged to ensure they feel comfortable and to show transparency.

1. **An employee's medical documentation supports telework. However, after some time, their supervisor determines telework is ineffective due to performance concerns. What do you do? Do you provide training (e.g., organizational skills, using automation tools) while keeping telework in-tact? Do you explore alternatives if there's still a medical necessity for accommodation? How would you handle this? Thank you!**

According to the EEOC, a reasonable accommodation may not be withdrawn as punishment for poor performance. An unsatisfactory rating does not necessarily mean the accommodation is not working, but it will be useful to learn more about the cause of the performance issue and whether an additional accommodation is needed, or whether the original accommodation should be withdrawn and another substituted because the accommodation is not effective. For more information, see JAN’s A to Z: [Performance and Production Standards](https://askjan.org/topics/Performance.cfm), and [Telework](https://askjan.org/topics/telework.cfm), and EEOC’s [Applying Performance and Conduct Standards](https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities).

\*\*This information is provided as follow-up to questions asked by attendees during the JAN Accommodation and Compliance Webcast Series – ADA and Accommodation Lessons Learned: Stay at Work/Return to Work Edition (2/10/22). JAN provides information to assist with engaging in the interactive process and successfully resolving accommodation situations. This information is informal guidance only; it is not legal advice. For additional information, please [contact JAN](https://askjan.org/contact-us.cfm).