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>> Good afternoon everyone and welcome to the Job Accommodation Network network serious. Today's broadcast is give us your challenging, your bewildering and your unusual ADA issues. I'm Tracie DeFreitas and I will be your speaker today. If you have issues, you can call us so we can help you with those.

We will accept and answer topic‑appropriate questions throughout the webcast today. If you would like to submit a question you can use the question and answer pod located at the bottom of the screen. To use the pod type in your question and submit it to the question queue. You can send questions at any time to our email account, also. On the bottom of the screen you will notice a file share pod. If you would like to download the slides click on the button that says "download file" finally I will remind you that a questionnaire will pop up on your screen at the end of the webcast so you can fill that out. Please stay logged on so you can do that. Our objective is to address the ADA issues, issues that our listeners have encountered. Managing the ADA in the workplace can leave us confused and fretting about the best situation. Sometimes it's not clear what's required so we turn to ADA regulations and equal employment opportunity commission enforcement guide answers and resources for direction. Sometimes the answers aren't always found there. Today I would like to address some of your questions along with the interesting issues and employers who contact the service. Some of the information I will share today can be found in EEOC resources but we're also sharing informal guidance we have received from the EEOC during our conversation today.

I'm going to start with the basics of the ADA so we have a quick foundation about the essential rules around the ADA. We will talk about navigating ADA land and then of course we're going to talk about challenging and bewildering and sometimes unusual ADA issues. Of course there is a long list of difficult questions we could address today but our time is limited so we will see where the questions lead us. I may not cover all of the material in the PowerPoint because your questions may take us in a different direction and that's perfectly okay. I know that many F you submitted questions in advance of the program and we're going to try to address some of the questions here throughout the webcast as well.

Keep listening and you might hear your question pop up. Let's get started with the ADA basics. I just want to run through in brief some of the title I requirements so you know how the ADA applies in the employment context. The ADA applies to private employers of 15 or more employees as well as state and local government employers, regardless of their size, employment agencies and also labor unions as well. Interiors with 15 employees also have state statutes that can come into play so if ‑‑ for example there may be a nondiscrimination or accommodation requirement under state statute that mirrors the requirement of the ADA so for those of you in smaller business you want to keep that mind. Also those working for the federal government are covered under the Rehabilitation Information Acts and keep in mind it has the same protections. The ADA does prohibit disability‑based discrimination in all practices during every stage of the employment life cycle. Discrimination is not allowed during people who have qualifying abilities, if they have the qualifications necessary for the job and are able to perform the function of the position they desire or hold either with or without accommodation. You have to be able to perform the functions of the position. Employers are required to give accommodation when it's made known and when a qualified disability is reasonable and doesn't require undue hardship. Reasonable accommodation is a fundamental statute of the ADA. Basically any change or adjustment to the work environment that permits a qualified individual with a disability to perform the essential functions of the job or to enjoy benefits or privileges of the employment so they can access things in an equal way as those without disabilities. I would like to say sometimes people get stuck on the idea that job tasks are performed in one way, without taking a minute to consider if it may be possible to get the job done in a different way and that's basically what reasonable accommodation is all about, finding another way to accomplish a task when there is a barrier and coming up with a solution to achieve success. We were talking about accommodation and it's important to recognize when an applicant or an individual or an employee is requesting reasonable accommodation. So a request for accommodation includes a connection between the individual's impairment and their limitations and a work‑related barrier. You have to have those elements to know whether or not you are dealing with an ADA‑related situation. It becomes know known to the employer that the accommodation is need and had when that happens this leads to the interactive process under the ADA which is the basis for some of the things that we will be talking about today.

With respect to reasonable accommodation to qualify to receive an accommodation an individual has to have a disability under the ADA or a record of a disability. Essentially just to make it as simple as possible, it means that the person has an impairment that substantially limits one or more major life activities. Do they have an impairment at this time? If yes, is the impairment affecting a major life activity and is it substantially limiting in some way? For those who might have a record of disability I'm talking about individuals who at one time may have been significantly impaired because of a disability but let's say you have somebody with cancer, for example, where the cancer is not an issue at the moment they have a record of that impairment and might need accommodations to go see healthcare providers, as follow‑ups or for cancer‑related reasons so those auto could be situations you need to deal with as well. The practical accommodation is to not get bogged down under the definition of the disability. The definition is to be interpreted broad and shouldn't require significant analysis to decide who has a disability. What I say is just if you know there is an impairment, you know there are limitations affecting work then let's focus on the reasonable accommodation and figure out is there an accommodation, will it create an undue hardship and move on in the process. It takes you out of the realm of making medical decisions and gets you moving forward in trying to find a solution.

Before we get to some questions we are about to get into that portion of our program but I want to talk about navigating ADA land. As you know, ADA land is haired place to be in. It's difficult to be successful without having knowledge of the basics of the ADA and to also have a plan for navigation. Understanding how to navigate the interactive process will help you manage the challenging and confusing situation. For example, it's important to know the fundamental rules of the road. You want to be grounded in the essential requirements of the ADA with respect to nondiscrimination, reasonable accommodation, understanding the disability‑related inquiry rules, knowing what it takes to get through the interactive process. You also want to understand that roads travel in a lot of directions meaning there are no two situations that are exactly alike when it comes to the ADA so all of the issues and circumstances will vary widely. You want to treat each situation case‑by‑case so know that accommodation needs will vary and the ability to provide accommodations can vary and that's okay.

You also need to know that it's important to read the signs carefully so when you are in ADA land here I'm talking about being mindful about when something is an ADA matter you need to be able to recognize accommodation requests, you want to notice performance and conduct issues that could be disability related and understand how to act on those things. Next it's easier to navigate ADA land if there is a map like a formal reasonable accommodation procedure so it is suggested that you have procedures in place so that it is a process, a procedure that individuals who are responsible for providing accommodations can follow. So it's a procedure and it's an important tool in the interactive process. Also stop and ask questions along the way. Don't be that person who gets lost because they don't want to stop and ask for help. Access ADA resources, like JAN, for example, when you need support in the interactive process. Finally you want to know your ultimate destination so start at point A, know where point B and work collaboratively to get there. What's the problem? How will you involve it? Aim toward a goal that leads to successful job performance. Knowing these things and having a good understanding of how to navigate ADA land will make it so that some of these bewildering and challenging and unusual situations maybe aren't quite so difficult because you will have a practical approach to handling situations.

So we're here in ADA land and I know you have questions. We will get to some of those next. We're also going to talk about some topics that make people scratch their heads like disability‑related inquiries, leave issues, service and emotional support animals, providing equipment and telework, and we may not get to all of these topics I have listed here and that's okay, we will see where the questions lead us. I do know that the questions that have been submitted touch on these topics so it's good to see that people do have questions be around some of those things we think can be a little bit challenging.

So let's start with taking a question. Let's see, here. See what we have first. Here is a question that came in. We have multi site locations and employees are sometimes allowed to return by manager without corporate review of restrictions. Once we have reviewed and determined we can't accommodate but have accommodated by allowing the employee to work with restrictions for a few days can we ask the employee to leave until we can accommodate or have updated their restrictions?

Something I think that is important is to look at policy and procedure. When you have a situation where there are multiple site locations and it sounds as though there may be different rules in different places and that can be problematic. We feel it's important to be uniform and consistent with regard to how your handling a situation. Particularly when it comes to applying policies or looking at the reasonable accommodation process. So if you have some managers that are allowing people to return to work with restrictions and some that aren't the employer is putting themselves at risk for not handling things in a uniform and consistent way. I think it's important that if you have managers who have the authority to decide on who is coming back you need to make sure they're trained in understanding the ADA and the interactive process and knowing what sorts of questions they can ask and how they can implement accommodations. Is it necessarily a problem to allow people to come back with restrictions? Absolutely not! You want people to be able to come back to work and perform their job duties if there is a way to accommodate them so they can work with those restrictions then that should be the goal. I think it's also a good idea to get your ducks in a row and make sure you have the right information so people can do that. I wouldn't say because someone has comeback to work with restrictions that sort of changing the process and sending them home is great idea.

It's always important to ‑‑ if it's possible to bring someone back to work and have them working as opposed to having them out on leave even during the interactive process you want to do that. I would say if it's possible to provide temporary accommodations while you're gathering information to determine if you can accommodate for the longer term that may be a way to go with that. Certainly employers can provide temporary accommodations. I encourage you to document them as temporary and make it dealer that you're trying to gather information to determine is there a disability, can you provide the accommodations that might be necessary? Doesn't lock you into anything but it does give you the opportunity to say we're willing to do this now and we need to go through the steps to the accommodation process to gather appropriate information and from there we will decide what's going to be the longer‑term accommodation. I would probably say that sending people home after you have allowed them to come back to work may not be the best idea unless you can show that they cannot perform their job duty safely so maybe consider the approach of allowing them back and providing temporary accommodations and gathering the information you need and to be consistent in that process.

Okay, let's do another question. Here we have a situation that this individual had a number of questions I'm going to be able to address a couple of them right now. These are questions around a leave of absence, for example, in this case the employer hired an individual to work part‑time it beings looks like. The person was hired during the third trimester of their pregnancy and they were able to work eight weeks before their date of delivery and they were not eligible for a leave of absence under the employer's medical leave policy so the question was do we have to accommodate the absence if there is no impairment to LLA. Lots to look at here: What is her entitlement to any policy with regard to her situation. So you want to be consistent. If you have determined that she is not eligible for the policy that exists you can cross that off the list. We know that she is not eligible for family medical leave based on the fact that she hasn't been working very long so that's one factor that would help us know that. There may be other forms of state or requirements in terms of leave of absence that might be necessary so it's be important to make sure as an employer you're taking a look at any state law requirements regarding leaves of absence, whether it be for any employees with medical impairments or those with pregnancy‑related conditions.

Now, from an ADA standpoint, you could look at that as well. The question I would have, first of all, is are we talking about a leave of absence simply for maternity leave? Are we talking about a situation where there is a disability involved? This is someone who ‑‑ I don't have a lot more information than that so I don't know currently whether or not there is a disability involved from the perspective of ADA. An individual who is pregnant is generally not going to be a person with a disability under the ADA because pregnancy is not an impairment under the ADA. People can certainly qualify under the ADA as having a disability when they have a pregnancy‑related condition that is significantly limiting in some way. It's not clear in this particular case whether that's true. So the way I read the question it has more to do with the person taking a maternity leave of absence which generally would not come in under ADA as far as a leave of absence. Now, another law that comes into play could be the Pregnancy Discrimination Act. You want to make sure you are following the requirements of that law so if you have other individuals who are able to take a leave of absence for a temporary impairment you want to make sure you are following those policies and treating a pregnant worker in the same way but the PDA does not mandate maternity leave either so, unfortunately, there is no federal law that does mandate maternity leave. In this case there are a couple of pieces to the puzzle missing but if we're talking about leave for delivery and bonding, it's generally not going to fall under the ADA unless there are significant complications with the delivery rendering the person substantially limited in some way and thus having them rise to the level of a disability. Lots of things you would have to look at in that scenario.

Another question that came in related to that scenario was related to employees not returning paperwork. I'm going to address that in general. When you have a situation, for example, where employees are provided paperwork for a leave F absence or in other cases where people might need reasonable accommodations and they're provided what would be called ADA paperwork it's important for employers to give individuals a time frame for providing that paperwork. Otherwise it's difficult to make decisions in some cases without knowing more about the impairment and the limitations and the need for accommodation. So it's important to take a look at that. What you would want to do is provide a time frame. I typically suggest anywhere from 10‑15 days because the ADA has no specific time frame for returning that type of paperwork so it is up to the employer's discretion in terms of what makes sense. 10‑15 days makes sense and if the individual doesn't provide the paperwork within that time frame I suggest circling back and let them know you haven't received the paperwork in order to continue the process and I suggest giving them a deadline extension and if they do not provide it then, it's up to the employer what to do next. If it's necessary to provide the accommodation and they do not provide it then they're not necessarily cooperating in that process and they may not be entitled to the accommodation until they provide what's necessary. So one of the questions was do you chase down the employee? I think it is a matter of making sure that as the employer you're working to get that paperwork and documenting that you're trying to do so.

A couple of questions and since we are talking about medical documentation let's jump into one of the other structured questions we received. Here is an example. Kate informs her employer in the spotlight productions that she is experiencing frequent panic attacks that are affecting her ability to get to work on time, concentrate, meet casting deadlines and she mentions that she may need an accommodation because she has an anxiety disorder. When can employers request disability‑related information from employees who request accommodation? If you're familiar with the ADA reasonable accommodation rules then you know that inquiries and exams of employees must be job‑related and consistent with the business necessity. So if you can meet that threshold, which means that the employer has a reasonable believe that the performance of job functions would be impaired by a medical condition that's known or when it's believed that an employee would pose a direct threat, then inquiries might meet that threshold. Also and probably most commonly after an accommodation request is received when the disability and or the need for accommodation are not known or obvious those are situations when an employer could follow up and request further information. Of course disability disclosure is necessity to receive accommodation so once you have that information you know you can kind of move forward in the process. In the situation presented here, obviously Kate has made it known she has an impairment, it's affected her ability to do job duties and she may need something in order to continue to be successful at work so in this case there is a job related reason to be able to move forward.

What information might be needed to process an accommodation request? I encourage employers to think carefully about if medical information is needed and what medical information is needed because you don't want to ask for too much information. If you have enough information to make a decision like the person has an impairment, how they're limited, what sort of accommodations are needed then you not might not need too much. Essentially if you're meeting those requirements and you understand why the person is having difficulty performing job duties, and you can talk about accommodations then you may not need a lot of medical information to move forward. Now, there are situations when employers may need to think twice about the kinds of information they might request to substantiate disability and need for accommodation. This is sort of a situation that comes up frequently. For example if a work‑related modification like flexible scheduling or ergonomic equipment are available to employees without disabilities then sometimes employers aren't sure whether they can request information about a disability when someone with a disability requests the same types of modifications due to disability. In these situations medical information shouldn't be required for employees with disabilities because in this sense individuals with disabilities shouldn't have to jump through unnecessary hoops to receive the same sorts of modifications in the workplace that others receive, just because they need it because of a disability. So you have to break it apart and figure out is this person asking for something that equates to the same benefit that anyone else would receive and that another employee wouldn't have to jump through hoops to receive? Just make sure you aren't treating people with disabilities differently simply because you are aware that the reason or request for the change has to do with a disability. Think about how you will handle those types of situations.

Now, the ‑‑ before the program some questions were e‑mailed in and I noticed there were questions around employers requesting updated disability‑related information. So I wanted to address that. I do recall one of the questions was around an individual who ‑‑ you know, there were some changes in the restrictions and the medical impairment and whether or not the employer could ask for additional information. Let's look at this scenario real quick. We have Jack who is a project manager of We Build for You and he has successfully completed an alcoholism treatment and has been accommodated for the past five months. His documentation states he will need this accommodation for 12 months but his employer wants an updated note every 4 months. Can employers request updated disability‑related information on a periodic or annual basis? This is something we hear about every now and then. You gotta remember disability‑related inquiries have to be job related and consistent with business necessity. So sometimes subsequent requests for information will be permissible but only under limited circumstances. You want to think, is sufficient medical documentation already available to the employer? This is the key. What do you already know? How does that affect any decisions moving forward? In this case we know that Jack has alcoholism which won't change, we know he will need the accommodation for 12 months because it's documented. This means the employer shouldn't request periodic information because all the information that's needed is really already available. So information is need to do provide the accommodation is there. When there are situations like there is an anticipated change in the impairment so let's say it's a medical impairment that the employee or their healthcare provider has made it known it going to change over time, it may fluctuate in different ways, you notice changes in when the individual is at work and how they're performing their job duties, things like that, or when there is no duration of an impairment or the need for accommodation is provided in the documentation so it's not clear how long the accommodation is needed or how long the impairment might last, or if there is a continuing need tore accommodation but ‑‑ and it ends up going beyond what is documented as far as the medical documentation is concerned, maybe there is a change in the employer's ability to accommodate. These might be situations that could give rise to requesting updated information. I think you want to be careful. You don't want to make it a practice of requesting periodic or annual updates to accommodations. Again, it comes back to what do you already know? Have there been any changes? That she had help you determine whether or not you can ask for that information. JAN does offer an article on this topic in our E news so if you go to www.JAN.org, the article is there and if you need detail you can look at that or give us a call, of course.

Okay, let's see, here. Let's jump into a new category. We did get a number of questions around leave‑related issues, too. Let me see if I can pull out a couple here. Okay, let's maybe take a look at this here. Maybe we'll go here. To make the point, providing leave is a form of accommodation that we get questions about under the ADA. Remember ADA is not a leave law it's a law where leave can be a form of accommodation. So you can look at leave options included accrued leave, providing unpaid leave when somebody exhausts the leave that's available to them, whether it be ADA, could be allowing intermittent, extended time, allow time to be made up, lots of things you can look at. There is quite a bit of information from JAN and the EEOC with regard to leave. The EEOC offers information about leave and you can go to the website through the A‑Z section under the topic of leave to find resources on that.

So a lot of times we will get questions around ADA and FMLA and how to address the leave issues there one of the questions we get is when FMLA leave is requested for leave related to a disability. Can an employer treat the request as a request for leave under FMLA and ADA? This is something that ‑‑ what I normally hear is employers be aren't sure which to apply and whether it can be applied at the same time. What we understand from EEOC is sometimes employers can go ahead and treat a request for FMLA leave as also a request for ADA leave as well but I think the are important thing is to be consistent in the practice. You want to insure if you are providing FMLA time that you're looking at whether or not it could be an ADA issue as well, it could be applied at the same time if that's needed. You want to be consistent in the practice.

For more on that topic you can go to the EEOC leave public and look for more information. Okay, so let's see, here is a question, would you be able to comment on what type of information to provide leave as an accommodation when someone is not yet eligible for FMLA leave, yes, that he is' good question. Like I said, because ADA isn't a "leave" law lots of times employers aren't sure what to do because they've looked at FMLA, they have looked at other state laws that come into place and they're not sure whether ADA comes into play as well. The fact is you may have a scenario where someone is not FMLA eligible but they could be ADA eligible, meaning that they have a disability that would allow them to take leave as a form of accommodation. So even though they're not entitled to the benefit available under FMLA, employers may have to look at whether or not the perch qualifies as having a disability, so do they have an impairment, are they substantially limited? Do they require accommodation? Whether or not leave could be that form of accommodation. So when that's the case, now you're going to have to take a look at how do we apply ADA leave as a form of accommodation? There are no specific parameters around leave as a form of accommodation so it's a tricky scenario under ADA. A lot of employers are bewildered because there is no specific guidance on how to apply the ADA leave because it's going to be case‑by‑case, okay? So what you're looking at there, one, does it apply to the individual? Two, what sort of leave is needed? Extended leave? Intermittent leave? Is this somebody who can be out for long periods of time without it creating an undue hardship on the employer? There are lots of things to look at and here is an example. We have Randall who has a history of receiving treatment for major depressive disorder. Recently his symptoms have become severe and his healthcare provider placed him on leave for two months. He is not FMLA eligible. Is there a duration of leave that is required to be granted as an ADA accommodation? We have somebody who is not FMLA eligible so now we have to look at ADA. Once you have decided that the person has a disability and qualifies to receive an accommodation, now we look at whether or not leave is a form of accommodation that can be provided. Here in this case we know he needs two months. Under ADA, unlike FMLA there is no specified duration of time that is required to be granted as an ADA accommodation.

So it is something that is up to the employer's discretion to determine how much leave is reasonable? This is something that requires a case‑by‑case analysis so you can't necessarily say two months of leave is always going to be reasonable for everyone in every instance. You have to look at the situation. So in this case you have to look at Randall in his position and whether or not the employer can tolerate a two‑month leave of absence. If Randall is not there how is it going to impact the business? It comes down to how that is going to impact the business, will it create an undue hardship for Randall not to be there, that could be somebody who is out for two months or six months, it depends on the situation. My practical guidance is to accurately and objectively document the impact of absence on business operations and finances. What do I mean by that? I typically suggest to employers to keep a log of some sort about the things that might be ‑‑ may be needed to be done while the individual was out of work so. Randall was out and Amy had to come in and work overtime three days every week as a result of that, that's an impact that you can document. You're not using that information against the individual in any way it's simply a way to establish what sort of action is needed to be taken as a result of that person's absence. You're documenting facts. A lot of times we get hung up on feelings and worker moral and things like that but those are not defensible actions when it comes to looking at whether of is an undue hardship were or not so you want to document the true impact of absence in order to assess how long is reasonable as far as duration of leave as a reasonable accommodation goes.

While we are on the leave topic, I do want to talk about something that is trending right now. Maximum leave policy, extended leave issues. Here is an example, Sue what a text tiles manufacturer automatically terminates any employee who requires more than 12 weeks of continuous leave. The question is are employers permitted to have policies that establish a maximum amount of leave that can be taken by all employees regardless of the reason of the need for leave?

Well, the fact of the matter is employers can have these policies. They can establish policies that have a maximum amount of leave but the EEOC says they may be required to make an exception to the policy to extend leave as an accommodation under the ADA if it's reasonable and if it doesn't create an undue hardship. So they can have the policy but that policy may need to be modified as a reasonable accommodation in instances where the ADA would apply and not create undue hardship to do that. The policy in and of itself is not unlawful but how its applied could violate the ADA if it's possible to provide additional time. A lot of times we see you have a maximum leave policy of three months and an individual needs two more weeks and the employer applies that policy you have to look at would providing an additional two weeks create an undue hardship? The practical guidance here is to include language within the policy that notes that employees may be eligible for additional leave as an accommodation under ADA if it's reasonable. So that's something employers might want to consider doing if they're going to have policies of that nature. EEOC has been targeting employers who have maximum leave policies, and more recently they have employers who have had to defend these policies and these are examples of the more recent ones, blood bank of Hawaii, Lowes was a big case, UPS and if you download the presentation you can hyperlink to information regarding those cases. Also not exactly under maximum leave policy concept but the issue of extended leave has been trending recently and it's a related topic. Some of you might be aware of recent Courts disagreeing with EEOC that extended leave may need to be provided as an accommodation. For example the case that has come up recently is in the 7th circuit, which is Illinois, Indiana, Wisconsin and in that case it was ruled that a reasonable accommodation, long‑term is not reasonable. This is contrary to the EEOC's position and it conflicts with other federal circuit court cases that have ruled on these types of issues. What am I getting at here? I don't think it's necessarily ‑‑ changes anything for the majority of employers outside of the 7th circuit for the need to consider extended leave as a reasonable accommodation. My advice to anyone who is thinking about leave issues is that it's a good idea to look at can you provide the extended time? What sort of impact is it going to have and that's where your documentation and making a factual assessment about the impact of the leave is going to be significant and looking at undue hardship. So let's say you do that. Just to help you out a little bit with that, if you go to the EEOC publication on the ADA and employer‑provided leave which is at our website, you can find that publication pretty easily and within that publication you will find information related to determining undue hardship with respect to leave and I find that to be useful. I do send that out a lot so it might be something that helps you as an employer in evaluating undue hardships and leave. Let's see if we can take a few more questions here. Beth, do you see anything that you think might be good to throw at me?

>> (Away from mic.)

>> I can talk about it all day. Let's see here.

>> Looks like a lay‑off situation.

>> Okay so we have an employee that is suffering from a foot injury, upon returning the employee is not 100% and her job duties require her to complete tasks while standing and walking is she entitled to accommodations. The person was out on FMLA, when they came back they were not 100%. This is something we get a lot of questions around, a lot of times people are returning from leave with restrictions, with limitations that could affect their ability to do the job. So employers have to take that into consideration. The whole idea behind accommodation is that there may be limitations affecting job performance. What can we do to accommodate that person? In this scenario if the person does have some restrictions that would affect their ability to stand or walk you I think you have to look at does the person have an impairment? Just having been out on FMLA doesn't necessarily mean they have a disability although I would gather to say it always makes sense for an employer probably to lean on the side of okay, they probably have a disability. Assuming that they are significantly limited and it's not something that is an order injury that could heel quickly, that kind of thing it makes sense to look at reasonable accommodation. I always am pushing for the idea that temporary accommodations can be helpful for everybody. It's always better to have people doing their jobs than to not. In this case the question was basically is she eligible for accommodations and I would say that if there is a foot injury that is an underlying impairment and if the person is significantly limited in their ability to stand and walk you're probably going to treat that as a situation under ADA and if that's the case you want to look at are there ways of her completing her task even though she has restrictions are there ways of her completing her task, so is it possible to implement additional breaks into the day, give her a stool that may allow her to get off her foot a little bit? Are there ways of decreasing the distance that she might need to walk? There are a lot of different accommodations that you might be able to look at depending on the job duties, the work environment and the person's restrictions and limitations.

This makes me think F a question we got earlier. I mentioned the idea of taking breaks. There is one thing I department to talk about, in fact, we will get to that next. One of the questions we often receive is around breaks and whether or not an employer would have to provide additional breaks to an employee with a disability who needs those breaks because of the disability. I would say this comes in frequently in call center environments where you have employees who might need additional restroom breaks. Oftentimes these are people that are tied to the phone so get ago way from the desk can be complicated. But it is a fact that an employer might need to consider modifying a schedule which would include again providing breaks as a form of accommodation, assuming it's reasonable. So when that happens, what you want to look at is first of all, what sort of break structure already exists? Oftentimes you might have somebody who has two, 15‑minute breaks that they may be able to use throughout the day. So I will suggest to an employer is there a way to use the existing break time in a different way? But also you will find that there are more times that are needed than the two, 15‑minute breaks. In that case the employer may need to look at providing additional time, it could be two additional 10‑minute breaks and if that's the case, you want to be creative, you can look at is there a way to modify the individual's schedule to add that time into the day? Is it possible to allow unpaid breaks that would allow the individual the time they need? Can they use, let's say if they get an hour for lunch is it possible for them to make up the time through that but the bottom line is that the employer wouldn't be able to provide paid breaks beyond what anybody else would receive. There could be other issues that come into play, FMLA issues, for example, but from an ADA standpoint additional breaks may need to be considered but you don't have to provide paid breaks beyond what anybody else would receive, it's just a matter of seeing how that would work. On the topic of modified schedule I do have an example here just to sort of go over the topic of modified schedules because this is something we receive a lot of questions about. Whether or not an employer has to consider a modified schedule as an accommodation. In this example we have Kevin who has a work‑related injury to his leg. It was a significant injury, required multiple surgeries, now he has physical therapy and he needed to schedule therapy during the week. He was able to get one day in on the weekend but he needed to go two days during the week and he requested to modify his schedule so he could come in an hour earlier and leave an hour earlier two days per week. That's it is kind of thing when that happens an employer wants to look at is it possible to adjust the arrival or departure times of an individual who needs that because of their disability? There are lots of ways to look at modifying a schedule as a form of accommodation. A lot of times we are talking about allowing a window of arrival for someone who needs to come in later and modifying attendance policy with that as well, allowing a break, change of shift, lots of things to look at there. Okay. Let's see, here. I'm going to move on to another topic here because we did get questions that certainly center around policy‑related issues. Modifying or creating policy is something we talk to people about a lot. There are lots of different accommodations that come in sort of in this topic area. It could be modifying attendance or leave policies, it could would be implementing a food‑related policy, where you have individuals who have allergies to certain situations, it could be modifying a policy related to where somebody works, such as from home or remote, policies related to fragrances in the work environment, changing a dress code for somebody who can't wear the required uniform or certain type of shoes to the work environment, modifying a no animals policy is one we want to go get ‑‑ we get frequently. We did get a couple of questions around the idea of service animals in the work environment and emotional support animals in the work environment so I want to address that as an overall general issue. This should hit on some of those questions that came in. Here is an example. Rebecca has diabetes and has requested as an accommodation to bring her service dog Milo to work. Milo is trained to alert Rebecca when changes occur in her blood sugar levels before things become too dangerous. Is this a form of accommodation under the ADA ADA. This is a tough topic, we are getting more and more questions on and there is no formal guidance or regulation that addresses this matter. From a Title I employment standpoint, what we can tell you from our understanding in talking with the EEOC is that allowing a service or emotional support animal into the workplace can be a form of accommodation. This may be a way of modifying a no animals policy, barring undue hardship. With any accommodation, is it reasonable? Does it create an undue hardship? In this scenario we're talking about individuals who need the animal because of a medical impairment. It's somebody saying I have a disability, these are my limitations, this is how it affects my ability to be at work and this is how the animal supports me in some way. It's a little different under Title I and employment than it is in public access issues. Under the employment requirements if someone is bringing in a service animal it's not an automatic access scenario, it's where a person should be requesting reasonable accommodations, just like some other person at work. So an individual can be requested to make the accommodation. In the public accommodation arena, individuals have the ability to bring their service animals into an establishment and limited questions can be asked about that and they can't be refused. In employment it's different. So you want to look at each situation case‑by‑case. Under Title I requirements there is no specific definition of service animal under the ADA with the Title I requirements and the Title III definition doesn't necessarily apply to employment. So what this means is an employer may need to consider allowing possibly an emotional support animal into the work environment as a reasonable accommodation in the same way it might allow a service animal. Obviously there are different definitions of those, service animals are trained to provide a service to the individual and support them in that way, emotional support an ma'ams are not trained to be beyond obedience, they're there to support the individual for usually emotional reasons of some kind. But making the distinction between the two doesn't necessarily mean you have to consider one and not the other. So it's important to take a look at the situation, case by case, does the person have a disability? You can expect that. We're not talking about pets here, not talking about someone who is asking to bring their pet to work because there is a difference between a pet and an animal that is sort of available to provide some sort of support based on the disability. If you have somebody who makes a request for an animal as an employer you have the right if the disability or accommodation or need is not obvious, you have the right to ask for information, find out more about the impairment the limitations, why the animal is needed, if it's been trained in some way so you understand that so you can have expectations about what sort of information is need to do agree to provide that accommodation. This is the sort of accommodation that is, again, there is be the ‑‑ the regulations don't address it, EEOC doesn't address it formally, a lot of what we're telling you comes from informal guidance and we have provided information on our website so if you go to A‑Z and look under the topic of service animals you will find documentation there with regard to animals in the workplace as well as practical information about addressing emotional support animals in the workplace as well. This slide there is a picture of me, actually with Beth's baby goat who she was fostering for a little while and I couldn't help but share it because M&M did make a lot of people here smile!

>> He is getting big! He's spoiled rotten?

>> Pretty adorable. We still have 8 minutes it looks like.

In the cases of emotional support requests, a lot of times you have employers who are leasing space and the landlord has rules around that and what it comes down to is something called third‑party interference, and that landlord may have obligations to ensure that the employer could allow the individuals to provide an accommodation. They may have obligations under Title III requirements as a commercial facility to allow access as well. It's the kind of thing that what we would suggest is in any contract with an employer if you're going to sign a lease, something of that nature, it's probably a good idea to have something within that contract that ensure that you're able to provide accommodations for your employers are disabilities. That landlord may need to modify that policy and it may be something that needs to be worked out within that lease or contract. Simply having that sort of contractual obligation doesn't necessarily mean that the employer can say that it's an undue hardship or they can't do it, they need to collaborate and see if there is a way to make it happen so don't set yourself up for risk by denying the accommodation because you know the landlord won't allow it, go back to the landlord, have a discussion, and figure out how you can make it work, ultimately individual would file a complaint against the employer and the landlord. Let's jump on to another topic that comes up related to telework. That's a common topic, it's tricky. A lot of employers get request for telework as a reasonable accommodation. It's something that really the questions kind of run the gamut on what might be difficult or challenging but here is an example we have Beth who is 7 months pregnant and developed placenta previous ya, which puts her at risk. She works for a marketing firm that allows telework two days a week and she has requested to work from home for the duration of her pregnancy. So the question is must this be considered as an accommodation? It's something that EEOC has made clear that working remotely or telework can be a form of accommodation when it's reasonable. Of course we all know there are certainly some jobs where tele work is not feasible. It may be the kind of work that is performed must be performed in a certain location at a certain time but ultimately it may be possible to change the location where the work is performed assuming it's reasonable to do that. You have to identify the essential functions of the job to determine if any or all can be performed remotely and to what extent. So it requires an analysis of the job, with the job description as well as the reality of how the work is performed to look at whether or not it's feasible.

EEOC does offer a facts sheet on telework as an accommodation and they address the topic in the reasonable accommodation and undue hardship enforcement guidance as well as the guidance on performance and conduct issues, it comes up there as well so we have enough to pull from, I would say in terms of their guidance on the topic but, again, just like every other type of accommodation you're looking at something that has to be reviewed on a case‑by‑case basis so you want to keep that in mind and evaluate something in that way.

Okay. Let's maybe look at another question. Of.

>> This is a good one.

>> How would you handle an accommodation request where an employee's disability is visible, for example, requesting a larger chair due to their weight do we require a doctor's documentation? Okay that's a great question. Of if you would scoot to slide 33. Okay, so the idea here is we have somebody who has an obvious disability, I'm going to go two different ways on this. Somebody who has an obvious disability they have requested something that is not something that everyone would receive. It's a larger chair, maybe it's something that's bigger, different in some way than what employees are customarily provided. The question is whether or not we would require medical documentation. EEOC makes it clear that when the disability and the reason for the need for accommodation are known or obvious, then an employer doesn't necessarily need medical documentation in order to provide reasonable accommodation. Keep in mind documentation not isn't required to provide an accommodation under ADA it's just that employers have the right to request it. If a situation if it's clear that the impairment is obvious and why the accommodation is needed, you may not need to go through that process of requesting documentation. You might still have them complete paperwork that indicates why they need the accommodation so you have that documented but you may not need to go through the process of requesting medical documentation.

One more minute here, I will address this other similar issues because we're talking about providing accommodation in this scenario as well. We get questions around adjustable work stations so what's trending now, sit/stand work stations, so employers are not sure how to handle these situations. Sometimes it may be a scenario where the employer provides adjustable work stations for anyone who might need them and individuals aren't necessarily required to make a case or provide documentation to receive it. In this type of situation if a person with a medical need for it requests it, you're not going to treat them differently so it goes back to the "hoops" issue I talked about earlier. You don't want someone to go through additional hoops to receive the same thing that everyone else is entitled to, right? But if you have somebody who needs something that goes beyond what others are requesting and let's say it's a specific sit/stand work station that is different in nature and needed because of a disability, in that situation it could become a request for accommodation which might require asking for additional information to provide the accommodation so you have to sort it through and figure out what sort of policies apply, what sort of equipment do people normally receive and is it something that goes beyond what others are entitled to? We have hit on a lot of different issues today!

Obviously there are lots and lots more questions that we have coming in still, and what we can try to do is address those after the program somehow and get those out to people. Right now it's time to say goodbye. That's all the time we have for today. If you need additional information or you want to discuss an accommodation or ADA issue, feel free to contact JAN. The contact information is available on our website at www.JAN.org and thanks to Alternative Communications for providing the CART for today and the questionnaire will pop up on the screen after we are done and take the time to complete that, we would appreciate it. This concludes today's webcast.

(End of webcast.)

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