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**JAN**

**MONTHLY WEBCAST SERIES:**

**ADA BASICS: COMPETENCE BUILDS CONFIDENCE**

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>> BETH LOY: Hello, everyone and welcome to the Job Accommodation Network's Monthly Webcast Series. Today's program is called "ADA Basics: Competence Builds Confidence". And features Tracie DeFreitas, Lead Consultant ADA specialist. Before we start the program, we need to go over just a few housekeeping items. First, if any of you experience technical difficulties during the webcast please call us at 800-526-7234 for voice and hit button 5 or for TTY call 877-781-9403 I do want to let the audience know today that we've been having -- well we've been experiencing a few electrical issues in the building so if we do go away just hold on for a second and we'll try to be right back, right, Tracie.

>> TRACIE DeFREITAS: That's right.

>> BETH LOY: Second towards the end of the presentation time allowing we'll have a question and answer period but you can send in your questions at any time during the webcast to our account ask at askJAN.org or use your question and answer pod located at the bottom of your screen to use the pod type in your question and submit to the question queue on the bottom of your screen you'll also notice there's a FileShare pod. If you have difficulty viewing the slides or you would like to download them, click on the button and save into your computer. And finally, I want to remind you that at the end of the webcast an evaluation form will automatically pop up on your screen in another window. This will happen as long as you don't have your popups blocked.

If you do have your popups blocked we'll send you an evaluation form after the webcast so we do really appreciate your feedback so please stay logged onto fill out the evaluation form. So now let's go ahead and get started with today's program. Tracie, take it away.

>> TRACIE DeFREITAS: All right. Thanks, Beth. And welcome all to ADA Basics so we expect that everyone listening knows a little about the ADA but our goal today is to give you the information you need to build your ADA competence and boost your ADA confidence competence begins in many ways but we're typically confident of what we're knowledgeable about or our -- with our skills or what we can do or because we have experience some of you may feel less confident about the experience you're making when applying the ADA while others are more confident but sometimes faced with complex scenarios or ADA nuances that make it difficult to make decisions. You might identify with one or the other weightlifting dogs in this picture to me the smaller dog seems less confident about lifting that bar above its head and the other is taking on that challenge knowing she can do it. You have to do the work to become the big dog and that means training and educating yourself. Exercising your skills. Building a team that can support you and using effective resources. So let's get started with that training now, by the end of this session we should all feel like the big dog so let's begin with a few ADA basics like what is the ADA.

The ADA is a Federal civil rights statute Title I of the ADA is the part of the law that's designed to remove barriers to equal employment opportunities for qualified individuals with disabilities. The law was amended in 2008 known as the ADA Amendments Act or the ADAAA. The ADAAA only changed the interpretation of the definition of disability under the ADA for the most part so if you're only discussing the current definition of disability then it's appropriate to refer to the law as the ADAAA. All of the other parts of the ADA like reasonable accommodation, non-discrimination, stayed the same. So if you're talking about those parts, it's appropriate to say ADA. Now for the ease of discussion today and to keep me from being too tongue tied we're going to go with ADA today.

So the ADA has two essential requirements. First Title I of the ADA prohibits disability based discrimination in all employment practices. And during every stage of the employment life cycle so from hiring to retiring. The law prohibits covered entities from discriminating against qualified individuals on the basis of disability.

So this is when an employer treats a qualified individual with a disability unfavorably because they have a disability.

And the other statutory requirement is to provide reasonable accommodation so covered entities are required to provide reasonable accommodations to an applicant or an employee when it's known that the individual has a disability and needs accommodation and also when providing an accommodation will not create an undue hardship for employer. A covered entity is an employer in the private sector who employs 15 or more employees and also state and Government employees and labor unions and Management Committees. Now, religious entities, while they are exist from -- exempt from Title III the public provisions of ADA they must follow Title I of the ADA as employers but they may give preference to people of religious affiliation there are some coverage exclusions so corporations owned by the U.S. Government, Indian tribes and bonafide private member clubs that are exempt from taxation are excluded from Title I compliance.

Also executive agencies of the U.S. Government are excluded from the ADA but they are held to non-discrimination and reasonable accommodation obligations applied under Section 501 of the Rehabilitation Act. Everything that I'm telling you today with respect to the ADA basics apply also under Section 501 of the Rehab Act so those with a Federal employer the information I'm sharing to you today will also be relevant.

Title I protects individuals with disabilities who are qualified so individuals who meet the definition of disability under the ADA. Who possess the qualifications the skills the certifications needed for the job and who can perform the essential functions of the job that they desire or hold with or without reasonable accommodation. The ADA doesn't require employers to hire or retain individuals who are not otherwise qualified for their jobs.

The law applies to applicants and employees. However, ADA Title I protection does not extend to individuals who might be classified as an independent contractor or someone who is a volunteer under most circumstances. Because an employer-employee relationship must exist. This is often dictated by the control the employer has over the manner and means of work that the employee must perform.

Now, here is where we start with some practical information about the law's protection. So for example, did you know that the ADA prohibits discrimination based on a relationship or association with an individual with a disability.

This means that employers can't treat someone unfavorably because they have a known relationship with someone with a disability. So for example, discrimination occurs when an employer denies health insurance to an employee on the basis that their spouse or child has a disability.

Also while caregivers of individuals with disabilities are protected from disability-based discrimination by association, the ADA does not require employers to accommodate an employee without a disability who must care for a family member with a disability.

Employees with caregiving responsibilities may be entitled to workplace flexibility that's available to all employees, though so for more information the Equal Employment Opportunity Commission does offer some enforcement guidance on unlawful disparate treatment of workers with caregiving responsibilities on the EEOC.gov Website. And finally certain situations are excluded from protection under the ADA so for example individuals who are currently engaging in the illegal use of drugs are not protected on the basis of current illegal activity. Certain sexual and behavioral disorders like pedophilia and compulsive gambling are not disabilities and home sexual assault and bisexual assault are also not -- homosexuality are not a disability. But other things do exist under Federal and state laws.

Now every law comes with its own definition and terms to set expectations for things to be covered under the ADA the person must have a disability as defined by the ADAAA so how is disability defined? The basic definition of disability has three prongs an individual with a disability is someone who has a current physical or mental impairment that substantially limits one or more major life activities this is where someone has an actual disability. There's no exhaustive list of covered impairments that are considered actual disabilities so each situation must be evaluated case by case. Individuals who have an actual disability are entitled to request reasonable accommodation.

The next prong is someone who has a record of or a physical or mental impairment that at one time substantially limited one or more major life activities individuals who have a record of an impairment are also entitled to request reasonable accommodation.

And then the third prong is the regarded as prong. This is used when an employment action is taken based on an individual's impairment or their perceived impairment. To satisfy the regarded as standard an individual need only show that they have been subjected to a prohibited discriminatory action like termination or failure to hire because of an actual or perceived impairment.

Now, a few more facts. Conditions that would be considered both transitory and minor like a common cold maybe the flu maybe a broken bone minor broken bone are generally not covered under the ADA. But temporary impairments can be an ADA disability. So how long an impairment lasts is a factor to be considered but does not by itself determine whether a person has a disability. So a temporary condition can be an actual disability if the condition is considered sufficiently severe so for example this means that a condition that might last fewer than six months could rise to the level of a disability if it's sufficiently limiting enough. Like a temporary injury that might be resulting in a 15 pound lifting restriction. That does last for several months.

And while there's no comprehensive list of impairments under the ADAAA, the individualized assessment of some kinds of impairments will require a little analysis. These are known as predictable assessments.

So for example, diabetes, blindness, HIV, cancer, epilepsy, bipolar disorder, these are impairments that should easily be found to substantially limit a major life activity and typically might qualify under the ADA.

Now, moving on to discuss reasonable accommodation. When individuals with disabilities are faced with barriers in performing job duties or meeting productivity standards, reasonable accommodations may help. So what does reasonable accommodation mean?

Well, any change or adjustment to a job or the work environment that permits a qualified applicant with a disability to participate in the job application process or an employee to perform the essential functions of the job or to enjoy benefits and privileges of employment that are equal to those enjoyed by employees without disabilities. So an accommodation is essentially a change in the way things are usually done. It's about finding another way to do the work.

Reasonable means that the accommodation seems feasible or plausible. Those are terms that the EEOC uses. Essentially is it possible to provide the accommodation without it causing significant difficulty or expense? Which would be considered undue hardship under the ADA and this must always be determined on a case-by-case basis.

Also, reasonable accommodation must be effective. So -- which means it must enable participation in the hiring process or performance of job duties or access to equal benefits and privileges of the job.

Now, there's no comprehensive list of accommodations that are reasonable under the ADA. Employers have the right and the responsibility to determine what is considered reasonable as an accommodation. While an individual with a disability may request a specific accommodation, ultimately the employer does have the right to choose among effective accommodation solutions so this means they don't have to provide the exact accommodation requested if there is an alternative effective and less burdensome accommodation but if more than one accommodation will be effective, EEOC does say that the preference of the individual with the disability should be given primary consideration. We generally encourage individuals to ask for what they believe is needed. And then the employer and employee should engage in the Interactive Process to determine the best course of action.

EEOC does make reference to some accommodations that they believe are reasonable on their face. Like job restructuring, making facilities accessible or modifying a policy or schedule or even reassignment. As well as accommodations that are not considered reasonable in their view. Like removing essential job functions or providing personal use items that are used both on and off the job. And lowering production standards or creating new jobs. These are kinds of accommodations that the employer generally would not be expected to provide because on their face, they may not seem reasonable.

Now, having established some of the fundamental requirements of the ADA, let's dig a little deeper by navigating the Interactive Process to explore some of the ADA requirements that continue to pose challenges for employers like determining who has a disability. Knowing when and how to request disability related information and also deciding what accommodations are reasonable.

Navigating the Interactive Process really kind of exposes us to some of the intricacies and nuances of applying the ADA. Simply put the Interactive Process requires employers and individuals with disabilities to work together to identify reasonable accommodation solutions.

Note that there is no specific Interactive Process that's required under the ADA. Meaning that covered employers may draft a reasonable accommodation procedure that's effective for their organization. The process really should be interactive. It should be flexible. It can be informal or formal.

But formal written reasonable accommodation procedures that facilitate the Interactive Process are recommended as a best practice.

Now, JAN consultants do advise employers on a six step Interactive Process that can be found at askJAN.org. That's askJAN.org.

By A to Z under topic, interactive process.

So if -- Interactive Process. So if you would like to know a little bit more about the process I'll be talking about today you can go there for more information the process includes recognizing a request for accommodation, gathering information about the job-related limitations imposed by the individual's disability and how those limitations can be addressed through reasonable accommodation and analyzing the particular job involved to determine the purpose and essential functions. Exploring and identifying potential accommodations and assessing effectiveness, choosing and implementing the accommodation that's most appropriate for both the employee and the employer and then finally monitoring the impact of the accommodation. Now I do have some tips for you for engaging in the Interactive Process. First of all, know the ADA rules, management staff and HR must be knowledgeable about the basic principles of the ADA. Disability related inquiry rules and they must understand the concept of reasonable accommodation. They must also know the employer's obligations general accommodation requirements and how to avoid discrimination in the workplace. Also you might engage employees with what I would call a solution oriented approach. Creating a disability inclusive culture requires that management and HR be supportive and open to new ways of doing things and to identifying solutions that improve employee productivity so they should be trained to engage employees with a solutions oriented approach and to know how to ask, how can I help? That leads to solutions.

Also staff need to be responsible for handling reasonable accommodation requests and they need to be able to be respected in a timely way so to respond within a couple of business days for example basically to respond to requests without delay and to gather reasonable information to go through this Interactive Process and identify effective accommodation solutions by using the best available information and resources to make accommodation decisions like the individual with a disability, internal Subject Matter Experts, external resources like the Job Accommodation Network. So they should be familiar with what resources can assist them in the process.

Finally don't make it complicated to engage in this process and provide accommodations. It shouldn't take significant analysis to determine if someone is entitled to receive accommodations. And the process of determining what accommodations can be provided doesn't have to be difficult if you focus on solutions. Throughout the process you want to keep employees informed. You want to make sure that they understand what's happening because it's more likely that this will lead to an individual who is satisfied with the accommodation outcome. And then always, always document the process every step of the way and this is a benefit to both the individual and the employer.

Now let's navigate the Interactive Process starting with very first important step of recognizing an accommodation request. Requests for accommodation they generally don't come in a tightly easily identified package but when an individual asks for an adjustment or change at work for a reason related to a disability, a medical impairment, this is a request for accommodation under the ADA. There must be a connection between a medical impairment or disability and a work related issue. Without this nexus there's usually no request for accommodation.

So here are some examples on your screen. I'm having difficulty or I'm having trouble getting to work on time because of medication side effects. Or an employee returns to work using a wheelchair and says the wheelchair won't fit under the desk or maybe a healthcare provider says an employee requires leave for a medical treatment of some kind these statements can be interpreted to be requests for accommodation under the ADA.

Now, the ADA doesn't require that reasonable accommodation be requested at a particular time. But should be requested when there's a workplace barrier affecting a job performance due to medical impairment as a practical matter it's in an individual's best -- before performance suffers you should do it but the individual must determine when the time is right for them.

Accommodation can be requested using plain English that's how EEOC refers to it. There's no requirement to include words or terms like ADA or reasonable accommodation.

Which can really kind of make it difficult to know what someone is asking for unless you are trained to recognize that nexus I talked about. So when there's a mention of a medical impairment, a disability causing a problem and there's a work related barrier you're going to put those two pieces together also accommodation requests aren't required to be documented but JAN always recommends a documented request it's useful to document accommodation requests in the event there's a dispute about when a disclosure occurred and accommodation was requested.

Now generally the obligation to request accommodation falls on the individual with a disability. Employers are not expected to assume that someone has a disability or to guess what accommodations are needed. Therefore, when the disability and the need for accommodation are not known or obvious disability disclosure is necessary to receive an accommodation.

Because employers are only required to provide accommodations under the ADA for a known disability.

When disclosure occurs with the request for accommodation and disability is not obvious an employer may request disability related information to substantiate the disability.

And when requesting accommodation the individual should inform someone who can act upon the request like a manager, a supervisor, someone in Human Resources, this then of course triggers that Interactive Process. Now some tips on recognizing an accommodation request err on the side of caution when you're not sure whether an employee has requested an accommodation ask the employee to clarify what's being requested and why you don't have to make any assumptions about what had a they are doing also act quickly once an accommodation request is recognized get to work and engage in that Interactive Process as quickly as possible.

Also you want to assign responsibility for responding. Sometimes an employee will request accommodation but no one acts on the request. Maybe it gets passed around from one person to another. With no one taking responsibility for moving the Interactive Process forward so make someone or a team of people responsible for acting and make sure they are trained. Employers have been found liable under the ADA when management or HR have failed to recognize or act upon a requested accommodation so don't end up in that spot and finally does the organization have a formal reasonable accommodation procedure? A formal RA procedure creates a standard of practice for everyone to follow which increases the likelihood that accommodation requests will be handled properly and consistently.

Formal procedures that are followed effectively also help employers document their efforts to comply with the ADA as part of a reasonable accommodation procedure some employers do have in-house ADA forms and asks employees to complete these forms when they make a request for accommodation. JAN actually offers a sample form for employers to use to document a request for accommodation and to kind of formalize the Interactive Process. When a request is not already made in writing so if it's something a person has requested verbally for example there could be a request to go ahead and complete a form. These documents can be found on again the askJAN.org Website. So while we're recognizing requests for accommodation it's also important to know what is not considered a request for accommodation under the ADA. Sometimes employers aren't sure.

Individuals think they are putting the employer on notice but maybe they are not doing so in a clear way.

Again, if you're not sure an employee has requested an accommodation, ask the employee to clarify what's being requested and why.

So for example when there is a voluntary self-identification of disability for affirmative action purposes like under Section 503 of the Rehabilitation Act or when there's a disability disclosure absent a work related barrier or specific request, these are not requests for accommodations. There needs to again be that nexus between a medical impairment or disability and a work related barrier.

If an employee is simply identifying as having a disability often for affirmative action purposes but not always, this is an -- this isn't a request for accommodation, it's just a disclosure.

Also a request for workplace adjustments or access to benefits available to employees without disabilities is not necessarily a request for reasonable accommodation. I talk to our callers about this a lot. So for example if employees are permitted to work a flexible schedule or to telework without a specific reason for doing so, so these are just sort of benefits of employment, then employees with disabilities should not be required to jump through extra hoops to receive the same workplace flexibility as those employees without disabilities.

Even if they are just asking for it because there's a disability based reason for it.

Now, if the individual is requesting access to something that's beyond that flexibility that's available to all employees. And if they are asking for it for a disability related reason then it can be a request for accommodation. So what I mean by that is if an employee can tell -- let's say ordinarily employees can telework one day a week without having any particular justification for it. But there is a request from an employee with a disability to telework three full days a week because of a disability related reason then this is a request for accommodation because the person is requesting something that goes beyond the benefit that's available to everyone. So then it can be interpreted as a request for accommodation.

Now, once an accommodation request has been recognized, we move to Step 2 in the interactive. And gather the information that's needed to process the request.

This process should be about learning if the employee has an impairment. What their limitations are. How these limitations are affecting their ability to perform job duties and why accommodations are needed.

What's the first thing you technically need to know to determine your next steps under the ADA? Well, does the individual have an actual or record of a disability? Because remember to be entitled to receive accommodation under the ADA, the employee must have or have had a disability that substantially limits or limited a major life activity.

Now as part of the Interactive Process under the ADA when the disability and need for accommodation are not known or obvious, employees are permitted to request reasonable medical information to substantiate an employee requesting an accommodation has a disability and needs an accommodation. Now keep in mind, documentation is not required under the ADA. And sometimes the individual who is requesting the accommodation really is just going to be the best resource of information about their impairment, their limitations and their need for accommodation. But employers do have the right to request disability related information from an appropriate professional in order to provide accommodations.

So not required. Something you have a right to do, if it's necessary.

The important thing for employers to remember is not to ask for too much information. And also not to ask for it at the wrong time.

The ADA restricts employers from requesting disability related information so what are the disability related inquiry rules under the ADA? Well employers are restricted from asking disability related questions or requiring medical exams during three stages of employment. Now I'm only going to address these restrictions very briefly today. This is something that we spend a lot of time on in training. But today I'm just going to cover them real briefly in the context of looking at gathering information in the Interactive Process.

So the pre-offer stage of employment is the most restrictive. This is the hiring period. Application, interview, testing. But when there's not a job offer that's been made yet. No non-voluntary disability related inquiries or medical exams may be requested of applicants until after a conditional job offer is made so pre-offer is most restrictive next is the post-offer stage which is the least restrictive. During post-offer disability related inquiries can be asked and medical exams can also be required as long as they are required for all candidates that are entering the same job category. Also all of the medical information that's obtained at that stage has to be kept confidential well at every stage so all medical information must be kept confidential at all times and also the job offer can be conditioned upon the results of these inquiries and exams.

Next after a candidate is hired, we're back to a restricted stage. So once an individual becomes an employee, employers are now restricted in the questions and exams that are required so disability related inquiries and exams must be known as job related and consistent with business necessity today's presentation focuses predominantly on this stage of employment because we're talking about the Interactive Process so when gathering information from a current employee to engage in an Interactive Process you have to know your inquiries are job related and related and consistent with business necessity. When will it be true that they are related with business necessity and job related when the employee has a reasonable belief that job functions is impaired by impairment or direct threat due to known impairment so this is based on reasonable belief this must be based on objective evidence obtained or reasonably available to the employer so it can't be an assumption that these things are true usually this job related and consistent with business necessity standard is met after an accommodation request is received from an employee whose disability and/or their need for accommodation are known or obvious so this is typically when an employer will ask an employee to provide disability related information from an appropriate professional. Usually a healthcare provider but not always.

Sometimes positions that affect public safety might require annual physical exams or medical inquiries of employees that can be job related and consistent with business necessity.

Now we do know that generally the obligations to request reasonable accommodation falls on the individual with a disability and then this triggers the Interactive Process and a disability related inquiry.

It is possible to initiate that process without being asked if it is known that an employee has a disability and you know or have reason to know that the employee is experiencing workplace problems because of the known disability.

So when there's a known disability affecting performance but maybe there's not a reasonable accommodation request yet and the employer has that good reason to believe that the performance issues are disability related then an employer may ask about the need for accommodation.

Now, what can help employers decide when to gather disability related information? Well when the impairment and need for accommodation are not known -- I'm sorry; are known or obvious disability related documentation may not be necessary so here we're thinking about when we might need to ask for it and when we might not. For example if an employee who uses a wheelchair requests an automatic door opener to enter the building and the impairment and need for accommodation are obvious medical documentation is probably not needed here, right? But more information about the accommodation may be.

So your discussion is sort of going to center around the actual accommodation. So you're going to focus on gathering information about the specific accommodation as opposed to getting documentation about the actual disability in a situation like that.

Now, when the impairment is not obvious, employers may request documentation that verifies the existence of an impairment so does a person have a learning disability or mental health impairment or back injury or seizure disorder and that the impairment affects a major life activity in a significant way, major life activities can range from I call them the ing words like lifting, concentrating, reading, seeing, hearing.

Now, for example when an employee shares she's having difficulty meeting the employer's attendance policy because of the side effects of medication but she has never disclosed a disability before it's possible to gather information about the impairment and limitations. Why her disability or I'm sorry; why her ability to meet the attendance is affected by her impairment. Or maybe the treatment for the impairment. And also what accommodation is needed. In this situation, the impairment isn't obvious so you may need more information to substantiate that the impairment exists, what the limitations are, and why accommodation is needed.

So in a situation where there's a hidden impairment you're more than likely going to or you have at least the right to access information about the disability.

An important tip for everybody in light of the ADA changes in interpreting the disability is to establish coverage but I tell you don't get stuck on the step of determining disability. You may need to know does or did the individual have an impairment that is or was substantially limiting in some way but don't make it hard to decide who has a disability under the ADA. Because the definition of disability is supposed to be interpreted broadly, not requiring little analysis, employers really are encouraged to err on the side of caution and process accommodation requests without placing too much emphasis on determining disability. But rather focus on determining if a reasonable accommodation can be provided.

Now, you can ask appropriate questions about the individual's impairment like what are the limitations and restrictions? How long has the -- is the impairment expected to last? What is the expected duration of the limitations and restrictions? What accommodations will help? The questions can go on and on. This information will help you determine the next steps in exploring and providing reasonable accommodation. But then you want to just turn your focus to analyzing the request for accommodations to decide is it reasonable.

Gathering information and asking disability related questions can make employers kind of anxious. So know that there are resources available to assist you in gathering information during this step of the Interactive Process. The EEOC's enforcement guidance on disability related inquiries and medical exams for employers is very helpful they also have a pre-employment inquiry document and there's also information in the agency's guidance on reasonable accommodation and undue hardship under the ADA, particularly Question 6. These should be your go-to EEOC resources. And JAN consultants can help you find the information you need using these documents. So we can certainly help you kind of work with those guidance documents.

Also we frequently write about requesting medical information and so JAN offers many practical resources on this topic. Again you can visit askJAN.org in the A to Z section by the topic of medical exams and inquiries, scroll to the bottom of the page for some articles and blogs and you'll find a lot of practical information there.

Also because there are no required forms for gathering disability related information under the ADA, JAN offers some sample forms that employers can customize. I mentioned a few already. It's on the topic of medical inquiries. JAN has a sample medical inquiry form to use in response to a request for accommodation. And we also have one more directly related to leave as well we encourage you to customize them to meet your needs but they can help you along the way if you don't have a standard process or standard forms to use.

Okay. So if you're not sure whether to ask about disability or the need for accommodation and like I said this gets people a little bit hung up, situations do arise when you have reason to believe that accommodation is needed but the employee hasn't formally discussed or disclosed a need for accommodation or disability.

Employers are sometimes really leery about addressing this kind of situation because of the disability related inquiry restriction. But I can really offer some practical guidance on this topic. Instead of asking if there is a disability or if accommodation is needed, explain what's been observed. Explain what the employer's expectations are for performance. And ask, how can we help? Or is there anything we can do to support you in performing your job duties or meeting performance standards?

Asking how can I help is really a strategic way of creating a safe space for disability disclosure. And it can be useful when an accommodation has not been requested but there's an obvious impairment or limitations in performing job duties or meeting performance standards.

Asking this kind of question doesn't make employers vulnerable to appearing as if they are making assumptions about disability or the possible need for accommodation. Instead, it's a good practice for conveying interest in employees and a desire to be part of a solution to resolve a challenging situation so that's typically my suggestion for how to handle those kinds of situations. It's a good best practice overall.

Now, to summarize Step 2, when you're gathering information to process a request for accommodation, you may need to know about the employees impairment and limitations and expected duration of limitations. Or the restrictions. And the impact of these limitations on work. You'll need to know what essential functions are affected and/or the standards that are not being met. And how those standards are ordinarily applied to others. You'll also need to know about the environment. The duties must be performed in or any equipment or tools that must be used and how these affect the situation. And of course if there are any known accommodation suggestions.

Now, ultimately if you're not sure what information to gather, JAN staff can help you decide. We are here to help you work through the process of gathering information and asking the right questions to get the information you need to proceed in the Interactive Process. So use us as a resource to help you along the way.

All right. Next after sufficient information has been gathered about the impairment and the limitations and the need for accommodation, we move to Step 3 in the Interactive Process, which is exploring accommodations.

During this step you want to be open to creative ideas, new ways of doing things. It's really the time to brainstorm and consider what accommodations might work.

Now, JAN is here to help employers identify ways to maintain and improve employee productivity through reasonable accommodation sometimes it's hard to get our heads kind of wrapped around some of the changes that may be needed at work. But we know that even minor modifications can have a positive impact on productivity. And this can lead to benefits for employers and employees.

And we know this because employers who make accommodations for employees with disabilities do report multiple direct and indirect benefits to the JAN service we have had an ongoing study that's been conducted since 2004 it shows that workplace accommodations positively impact the workplace in many ways these results are updated annually in a JAN document called workplace accommodations low cost high impact as of the last update there were over 2300 employers who have been interviewed over the years. One finding of the study is that most employers report no or low cost for accommodating employees with disabilities.

And of those who did give cost information related to accommodations that were provided, 59% said the accommodations cost absolutely nothing.

And of those where there was a cost, the typical one-time expenditure by employers was $500. I can tell you the top direct benefits reported in the study include the company allowed them to retain the employee increased productivity eliminated the cost of training somebody new and increased employee attendance as well so there can be benefits to providing reasonable accommodation.

Now there are three categories of accommodation they can include modifications or adjustments to the hiring process like requesting an interpreter for an interview or pre-employment testing modifications. It can include changes to the work environment or how the job is performed. like installing an automatic door maybe restructuring a job to remove marginal tasks maybe allowing somebody to work from home or providing a sit-stand adjustable workstation. Also accommodations can be related to receiving privileges too like providing accessible parking or providing an interpreter to enable someone to participate in an optional training that's offered through the employer.

Now of course each accommodation situation is unique. What's reasonable will vary widely and will depend on the circumstances. Examples of some of the most common times of accommodations can include things like making facilities accessible and usable so door openers parking spaces wider paths of travel job restructuring when you're changing when and how essential functions are performed removing marginal functions. It can be modifying a schedule or obtaining equipment like lifting equipment, specialized software, assistive technology. It can be providing a service like a qualified reader or interpreter or a job coach. Reassignment is also a form of accommodation to a vacant position.

Providing unpaid leave, working at home. And even allowing access for a service or emotional support animal in the workplace these are just examples and the most common examples of accommodation but keep in mind there's no comprehensive list and so accommodations can be just about anything now there are basic accommodation principles that may be relevant during the exploration stage of the Interactive Process. First accommodations that pose an undue hardship are not required which is any modification that will cause significant difficulty or expense to provide. But undue hardship is truly a high threshold to meet it's really a deficiency for when no -- defense for when no accommodation can be provided. Personal use items for on and off the job are not usually an accommodation unless they are only related to job related rather than personal needs examples of personal use items are medically prescribed hearing aids, corrective eyeglasses, powered wheelchairs, things like that. And it bears repeating employers are not required to remove essential job functions create new jobs or lower production standards as reasonable accommodation. Now you may need help when exploring accommodations and one of the best places to start the process is with the individual who requested the accommodation. Often the individual will know what's needed and can suggest effective options. The individual's healthcare provider may be able to offer useful information about the employee's limitations that can assist with exploration. Keep in mind it's not the healthcare provider's job to recommend accommodations. Healthcare professionals are sometimes willing to suggest accommodations or at least willing to say whether ideas under consideration will help overcome the employee's limitations but it's not their job to make the accommodation recommendation.

Vocational rehabilitation specialists rehab engineers a job coach ergonomic consultants disability related organizations these may also be other types of resourceful entities to check in with. Also internal Subject Matter Experts like information technology professionals, safety and ergonomic specialists they all may be able to help and may need to be part of your Accommodation Team of course you can also consult with outside resources like JAN that can provide technical assistance on the ADA and offer a variety of accommodation solutions keep in mind that JAN is a free resource we're a national resource for anyone seeking help exploring accommodation ideas so definitely take advantage of our service we can be a go-to resource during every stage of the Interactive Process you can visit askJAN.org or contact us directly by phone, chat, email we'll provide one-on-one assistance. Visit the Website as a start and you can access all of our contact information there.

Now, after accommodation options have been explored the next step in the process is to choose the accommodations. Employers have the right to choose among effective accommodation solutions. This means they don't have to provide the exact accommodation requested if there's an alternative effective and a less burdensome accommodation and of course undue hardship does not have to be demonstrated in those situations. Of course I mentioned earlier that EEOC says when there's more than one solution the employer should consider the preference of the employee so I will say that's a good place to start. If for some reason an individual is requesting a particular accommodation, maybe start there and kind of figure out why they are asking for that specific accommodation and then you can work through the process and decide where to go next. As I've mentioned employers get to decide what's reasonable. A reasonable accommodation doesn't have to be the best accommodation available as long as it's effective for the purpose. That means it gives the employee an equal opportunity to perform the essential functions of the job for example and also when it's not clear whether an accommodation will work, it's possible to test the accommodation and stop it if it doesn't work so you might consider what we would call a trial or temporary accommodation period when you're choosing accommodations as part of this Interactive Process.

Now I can offer some tips and best practices for choosing accommodations. First you want to give frontline management the authority to implement simple reasonable accommodations to make the Interactive Process uncomplicated and solution focused.

It also may help to create a list of preapproved accommodations that maybe don't require a full reasonable accommodation assessment. These might be fast track adjustments that could include things like sit-stand desks, ergonomic chairs, flexible work arrangements or providing CART captioning for large meetings and employer sponsored events. It also may be useful to have a centralized accommodation fund. This can help reduce the fears of managers, supervisors, that maybe their individual unit or departmental budget will be charged for the cost of providing accommodations. In turn this can make it easier to choose accommodations because it takes the guesswork out of where the funding will come from.

And also a task bank can be useful for providing return to work or modified duty accommodations. A task bank is a list of tasks or jobs that an employee who might have an injury is able to perform for a temporary period given their medical restrictions and this is looked as a way to transition someone back into the workplace. So that can be an option to kind of get people out underneath that leave umbrella and back into the workplace.

Now, after reasonable accommodations have been chosen it's time to implement. This is the next step in the Interactive Process now implementation may involve changing when or how certain functions are installing it can be installing and providing training on equipment maybe approving a schedule change, booking services, et cetera.

As part of the process of implementing accommodations it can be useful to document the accommodation approval or denial if that's where you are in the process and/or to maybe draft an accommodation agreement of some kind. This would outline the expectations for implementing the accommodation. This is not required under the ADA but it can be useful for effective communication and also for compliance. Documentation is always very important.

Now, JAN offers a sample accommodation approval form. So again in that sample forms resource on our Website you will find approval as well as denial forms that you can ask again askJAN.org again we encourage you to customize these forms they are not standard forms issued by anyone but JAN and they are intended to be sample forms. Now if the accommodation will be tested or provided temporarily it's useful to have a written temporary agreement as well with the employee it just makes it clear the accommodation is being tested how long the test will be and what will happen if the accommodation doesn't work that way no one is surprised when the accommodation is revisited and possibly changed and JAN does offer a sample temporary trial accommodation approval form as well now implementing accommodations often requires communicating important accommodation information to certainly personnel who are responsible for ensuring the accommodations are provided like a supervisor or parking authority or safety personnel but you have to remember the ADA confidentiality rules. So for example a question that arises during implementation is whether employees may be informed -- may be informed about other accommodations that have been provided so may co-workers be informed that an accommodation is being provided. So implementation will often require communication with others but employers may not disclose to other employees that a co-worker is receiving accommodation for a disability related reason because of the ADA's confidentiality rules so responding to co-worker questions about accommodations can be tricky because of the confidentiality requirements but it is possible to do so without revealing information about disability accommodation or the law so one tip to consider before questions arise it can be useful to educate all employees about ADA and accommodations as a way to curtail questions.

That way everyone understands the concept of ADA and accommodation and won't be asking questions. It can also be helpful to have a workplace culture that values flexibility and supporting employees. That culture emphasizes that employees can ask for changes at work to support their ability to meet job related and personal needs.

So when responding to co-worker questions a manager might find it useful to point out that it has a policy of assisting any employee who encounters difficulties in the workplace, that many workplace issues are personal and in these circumstances it is the employer's policy to respect employee privacy that's one approach to addressing that kind of issue.

With implementing accommodations -- when implementing accommodations does require communicating an employee's need for accommodation to essential personnel something else to keep in mind when I say essential personnel these are people who are on a need-to-know basis the employer should restrict the sharing of specific disability related information. And keep medical documentation confidential we often get the question should the managers or the supervisor have the disability related information. We would encourage you to safeguard that and if it's possible to just communicate the accommodation need just go with that and keep that information confidential regarding their diagnosis, that kind of thing.

Now issue -- another issue to consider relating to implementation is whether new managers and supervisors should be informed by existing things so anyone at an organization for a lengthy period of time is likely to experience a change in management at some point during their tenure this kind of change can bring a fresh perspective on business operations but for employees with disabilities this change can sometimes impact accommodations that were provided by previous management. So new management may and probably should be informed by existing accommodations when necessary. Employers should be aware of the risks of violating employees rights in these kinds of situations though so in particular uninformed new supervisors might request new medical information to support a previously approved accommodation or they might burden the employee by requiring a new Interactive Process. These kinds of actions can increase risk and can violate the ADA.

When it's clear that accommodations were approved by past management, and when it's sufficient medical information was already provided by the employee to establish a disability and need for accommodation, chances are management won't have a job related reason to request new or updated information so you want to be careful in those situations.

So in summary, some practical guidance on implementing accommodations. Don't delay. Keep the process moving along. Implement as quickly as possible. Make sure all necessary steps are taken to implement the accommodation and ensure that it will be effective. For example make the formal schedule change. Inform the manager about the attendance policy. Provide training on equipment.

These kinds of things.

Also communicate accommodation information as needed. So not everyone needs to know that an accommodation has been implemented. When management needs to be aware inform them but keep details about the employee's specific disability out of the conversation.

Okay we're finally in the homestretch of the Interactive Process the final step in JAN's process is monitoring the accommodation. It's worth noting as important as it is to explore and choose and implement accommodations it's equally important to ensure accommodations continue to be effective after implementation by moping accommodations. Accommodations can stop being effective for various reasons. Maybe the employees limitations change. Maybe equipment changes or the workplace changes or providing the accommodation becomes an undue hardship so adjustments may need to be made over time. The most important way to monitor accommodations is to encourage ongoing communication. So employees who are receiving accommodations they really should know who to communicate with if there's a problem. Also when monitoring accommodations you want to keep in mind that accommodations need to be effective in meeting the needs of the individual. And in the context of job performance this means that the accommodation enables the individual to perform the essential functions and meets standards or access benefits. When accommodations are not effective, employees may not be productive and employers may not be in compliance with the ADA.

And finally we'll end the Interactive Process and our training today with some tips related to monitoring accommodations so check on the effectiveness of accommodations that were implemented as things change in the workplace, accommodations may need to change, as well. So periodically check in on the effectiveness. Maintain equipment. Equipment won't function forever without maintenance so when equipment is part of an accommodation employers need to make sure the equipment is properly maintained. Encourage ongoing communication with the employees. For any workplace issue ongoing communication is the key to success. The same is true with respect to reasonable accommodations.

Again, restrict medical inquiries during this stage so inquiries should focus on the effectiveness of the accommodation as opposed to details related to the medical impairment during monitoring. Document your findings at any -- and any new plans. So if the accommodation remains effective make a note of it. If changes are necessary, explore, choose, implement those changes and document the actions taken to resolve the situation. There's no standard process or documentation for monitoring. Sometimes it's not obvious what types of questions need to be 2KR5E6D. It can be useful to follow a checklist or to use a form to guide and document the process. Here I go again, mentioning a JAN sample form but we do offer a sample form to be used as a guide when monitoring accommodations. This form again can be customized to gather information relevant to each unique situation but it's offered to you as a tool to use as part of this Interactive Process.

So that's it, ADA basics and the Interactive Process in record time I think by listening today you've done some of the work to become the big dog so hopefully the information I've shared today will help build your ADA competence and boost your ADA confidence should you have any questions as you engage in this process along the way please don't hesitate to contact the JAN service Beth I'll put it down on the table here and hand it over to you if you want to throw a question at me.

>> BETH LOY: I do first question is pregnancy considered a disability under the ADA.

>> TRACIE DeFREITAS: I love that question. So pregnancy as many of you may be aware is generally not considered a disability under the ADA. Because it is not an impairment. Now does that mean it doesn't fall under the ADA? Well there can be situations where if someone has a pregnancy related impairment or condition, it could rise to the level of disability under the ADA. You'll also need to keep in mind that there's a Federal law the Pregnancy Discrimination Act that also requires accommodations for pregnant workers to the extent that you might accommodate or make changes for others who are temporarily unable to perform job duties so while the ADA is there and it might be something that comes into play you also need to be fully aware of the Pregnancy Discrimination Act. That aside, there are also many state laws that actually provide broader protection to individuals who are pregnant so my advice to you would be to take a look at your state law, take a look at the PDA and also consider the ADA.

>> BETH LOY: Tracie we have a parking question reserve parking spots are often requested as ADA accommodation this employer does have the appropriate number of parking spots that are considered accessible. Some employees do have reserved parking and it's based on tenure if the person does meet the definition of disability under the ADA are we required to provide the parking spot and you mentioned parking under your section under types of accommodation so can you clarify.

>> TRACIE DeFREITAS: Absolutely so parking is actually one of the more complicated accommodation issues to address under the ADA. It is something where if an individual should need -- an employer may need to consider providing a reserved parking space for somebody who has a disability.

Now it's extremely complicated meaning that let's say an employer offers an employee parking lot and let's say they meet the minimum required number of spaces from an ADA standpoint. If those spaces are still not meeting the needs of all of your employees with disabilities you may have to go to the extent of either adding additional spaces. It could mean providing a designated space for someone who is frequently unable to get a space that's available. So parking can go beyond the actual minimum requirements as far as providing accommodation so you may have to deal with a parking request as an accommodation on a case-by-case basis if there's not enough parking available now that can also be based on the benefit of employment that doesn't mean somebody who is not a manager gets to park in a management employee lot if that's not a benefit of their employment. The parking space that might be available to them is in a different lot that falls in line with their status as an employee.

>> BETH LOY: Okay Tracie great we have a HIPAA question how do you respond to an employee that states the doctor won't respond with information due to confidentiality for HIPAA.

>> TRACIE DeFREITAS: Another good question we need to keep in mind HIPAA doesn't apply in the employment context meaning HIPAA applies to the healthcare provider as long as the individual can provide consent for let's say the employer to contact the healthcare provider directly then that healthcare provider can offer information to the employer. Additionally the individual can obtain any information they wish from the healthcare provider and bring it directly to the employer so the idea that HIPAA prevents an individual from providing medical documentation is not true. That is something that can't typically be used as a reason why someone will not provide or refuses to provide documentation from their healthcare provider.

>> BETH LOY: Okay Tracie let's get one more here. This is one from the beginning of your presentation are employees who are regarded as disabled entitled to reasonable accommodation.

>> TRACIE DeFREITAS: That is a good question and the answer is no.

So as far as the three prongs go only those who have a actual disability or record of a disability have a -- are entitled to request and receive reasonable accommodation so the reasonable accommodation provision does not apply to the third regarded as disabled prong.

>> BETH LOY: All right since you answered that one so quickly one more.

>> TRACIE DeFREITAS: Okay.

>> BETH LOY: One someone is an independent contractor for a company does ADA still apply.

>> TRACIE DeFREITAS: Another good question it kind of depends on so we know those who are classified as an individual contractor would not be considered an employee which means that they don't fall under the ADA. I think when we look at the term independent contractor I think we have to take a look at what does that mean. Are we talking about someone who is a contractor with a company who is placed with another employer? Are we talking about someone who is truly acting as an independent contractor. So that question is a little bit more complex depending on the actual facts of the situation. But if we're talking about an independent contractor someone who is not classified as an employee someone who the ADA would apply to.

>> BETH LOY: Okay Tracie that's going to be it and a wrap a lot of good information there today and the electricity didn't go out.

>> TRACIE DeFREITAS: No we were very lucky.

>> BETH LOY: Yes we were and now that we have completed the webcast for today we just want to say that we want to thank you for attending. Thanks also to Alternative Communication Services for providing we do hope the program is useful if you need additional information for anything we talked about today including some of the questions that you sent in please let us know. Also if you want to discuss an accommodation that's what we're here for and please feel free to contact us here at JAN as mentioned before we're taking an evaluation form that will pop up on a screen as soon as we're finished we appreciate your feedback so take a minute to complete the form again thanks for attending this concludes today's webcast.

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