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>> LINDA CARTER BATISTE: Hello, everyone, and welcome to the Job Accommodation Network's Monthly Webcast Series. Today's webcast is called "Service and Emotional Support Animals in the Workplace". I'm Linda Batiste and will be one of your speakers today along with my colleague Melanie Whetzel.

>> MELANIE WHETZEL: Hello, everyone, thanks for joining us.

>> LINDA CARTER BATISTE: Before we start I need to go over just a few quick things first if any of you experience technical difficulties during the webcast, please use the pod located at the bottom of your screen to send a chat message or send an email to question@askJAN.org.

Second you can submit questions during this presentation using the question and answer chat pod located at the bottom of your screen. To use that pod just type in your question and submit to the question queue. You can also send questions at any time during the webcast to our email account, which is question@askJAN.org.

We do plan to leave time for questions at the end of the presentation so don't hesitate to send them in. Notice on the bottom of your screen you'll notice a FileShare pod if you have difficulty viewing the slide or just want to download them click on the button that says download file. And finally at the end of the webcast an evaluation form will automatically pop up on your screen in another window if you don't have popups blocked. We really appreciate your feedback. So I hope you'll stay logged onto fill out that evaluation form. All right, let's get started.

Again our topic today is "Service and Emotional Support Animals in the Workplace". We picked this topic because in our work here at JAN we get questions about this almost daily I would say. Most of the questions are about how the Americans With Disabilities Act applies. To me it seems to be a source of ongoing confusion for both employers and for people with disabilities who use service or emotional support animals. So we thought we would start with our opinion about the source of the confusion. You may have other opinions, and we would love to hear it. But in our opinion, we're going to tell you what we think is creating all of those confusions.

So most of you probably know that the ADA has several titles. We think the confusion comes from mixing and matching the first three of those titles.

So we're going to try to sort them out starting in reverse order with what we have on the slide here. We're going to start with Title III. Title III deals with public accommodations. Which are private companies that are open to the public. For example, banks, hotels, restaurants, gyms, insurance companies, et cetera.

Regarding public access Title III has specific regulations written by the U.S. Department of Justice about people bringing service animals with them into public accommodations they define service animals as dogs that are trained to do work or perform a task for a person with a disability.

The definition specifically states that emotional support animals, which provide comfort just by being with the person, are excluded.

Meaning that public accommodations don't have to let them in.

The regulations also state that public accommodations can only ask two questions to determine whether a dog is a service animal. One is whether the dog is a service animal required because of a disability. And the other is what work or task has the dog been trained to perform? Public accommodations are not allowed to require documentation or demonstrations or to ask about the nature of the person's disability. Period. They can ask those two questions only.

So basically this means that public accommodations must allow people with disabilities to bring their service animals with them when they are accessing goods and services in those public accommodations. And there are very few exceptions. Things like if the animal is out of control. Or there's a valid safety issue. So there's a few reasonable exceptions. But in general they have to let the person bring their service animal in.

Leading up to the next -- moving up to the next title on the same slide we have Title II. Title II applies to public access to the services and activities offered by state and local Government. The good news for everyone listening to me drone on about this everything about Title III I said about service and emotional support animals apply to Title II, as well. Both regulations apply to both there's a definition of service animals it includes emotional support animals. So far so good now let's get to the top of the list and we'll talk about Title I. Title I of the ADA applies to employment in places with 15 or more employees and in state and local Government. So here we're talking about employment and employment relationships with applicants and employees.

We're not talking about the public or customers or patients coming into buildings. We're talking about employees and applicants. Under Title I, there is no mention of or definition of service animal or emotional support animal. I'm going to take that back. I'm going to -- one qualifier here, there's one tiny mention in the Title I regulations from the Equal Employment Opportunity Commission. And I'm going to tell you exactly what it says it's the only mention that I'm aware of in the ADA with this regulation. And that statement says it may also be a reasonable accommodation to permit an individual with a disability opportunity to provide and use equipment, aids or services that an employer is not required to provide as a reasonable accommodation.

For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be permitted to provide the guide dog for the employee.

It's this one small statement that will set the groundwork for the rest of our discussion today.

I want you to forget everything I told you about Title II and III I appreciate you listening through it but now I want you to forget it. Everything I said about the definition of service animals and emotional support animals are excluded. Just wipe your brains clean of those rules because none of them apply to Title I in employment settings. So for the rest of our time together today we're going to talk about what does apply.

As a statement I red to you from the EEOC regulations said it can be a reasonable accommodation to allow a service animal into the workplace. And because there's no specific exclusion of emotional support animals like there is in Title II and III, there's a very strong argument that allowing an employee to use an emotional support animal at work is also an accommodation that employers must consider.

So what this means is that individuals who use service or emotional support animals should ask their employers whether it's okay to bring the animal to work rather than just assuming it's okay. What this means for employers is they can approach these kinds of requests as they would any other accommodation request and we'll talk in a minute about what that specifically means. But first I want to talk about what type of accommodation I'm referring to.

Under the ADA, there are several categories of accommodations employers must consider, including things such as making the workplace accessible. Modifying or providing equipment. Providing services such as interpreters or CART.

Job restructuring and sometimes reassignment. Another category is modifying workplace policies. This includes all kinds of workplace policies like dress codes, leave and attendance policies, schedules. And for our discussion today, it includes a no animals in the workplace policy.

With that said I want to mention that if an employer does not prohibit animals in the workplace, let's employees bring their animals to work if they want, then an employee with a service or emotional support animal should be able to bring their animal to work automatically just like everybody else. But most employers we talk to prohibit employees from bringing animals to work so allowing an employee to bring a service or emotional support animal would be a form of reasonable accommodation.

Specifically modifying a policy.

That's what we're referring to today.

With that in mind, now we want to talk about the questions we get related to processing an accommodation request to use a service or emotional support animal when an employer otherwise prohibits the animals in the workplace. The information we're going to share is practical guidance for complying with the ADA but we always suggest you check your state laws as they could provide something more specific you would have to follow. You follow whichever law provides the most protection.

We're going to be framing our discussion using JAN's simple Interactive Process. Our steps have the accommodation request, gathering information, exploring options and choosing, implementing and monitoring accommodations. This specific process isn't official or required. Employees can have any process they want as long as it works. But we wanted to use a framework to talk about our topic today. So we'll use JAN's sample process.

For each step of the process we'll be sharing relevant ADA information. A couple of real life situations we've had related to the issue. And practical guidance for addressing each situation that we bring up.

So that's our plan for the day.

And with that let's start with Step 1. For employers Step 1 is recognizing that an accommodation request has been made. For employees, Step 1 is making the accommodation request. And in general it's going to be the employee who starts the ball rolling. The employee has to let the employer know that they need something in the workplace because of a medical condition. That's basically all they need to do to trigger an accommodation request.

Then the employer takes it from there and moves into the rest of the Interactive Process.

Sounds easy. But we know it's not always straightforward and we'll be looking at some issues that can come up related to service and emotional support animals. I'm going to start with an example related to a service animal.

All right. The situation is an applicant shows up with their service animal for a job interview. The employer refuses to conduct the interview because the applicant did not notify them ahead of time.

The question is, is this a good approach? So let me start with the general ADA rule here.

The rule is that employers do not have to automatically allow service animals in the workplace like we talked about earlier. And can go through the accommodation process before considering the request.

But I don't think that this is a good approach for an application process. In general, if an employer can go ahead with the interview, the person is there, the person is ready, if there's no -- there's no reason not to hold the interview. It may be in the employer's best interest to go ahead and conduct it if they end up hiring the individual they can go through the process then. But denying the interview at that point and then trying to reschedule it, I think that's just kind of a punky way to do it. Unless you have a situation where the interviewer can't be around a dog for some reason. I personally think a best practice would be to go ahead and consider having that interview.

And with that, Melanie, I think you're going to do the next one, right?

>> MELANIE WHETZEL: Yes. Okay, our situation here is an employee mentions to her supervisor that it might help her with her anxiety if she could bring her dog to work. The supervisor says there is a no-animal policy and that a co-worker has animal allergies and the supervisor doesn't discuss it further. Is this a good approach? Well, what the ADA would say is when an employee mentions that something is needed because of a medical condition, this needs to be treated an accommodation request so the employer needs to go through the accommodation process to determine the reasonableness of the request there's a policy change under the ADA that says that an employer can modify policy for someone with a disability that they don't for anybody else and that can be the no-animal policy. Allows someone to bring a service animal or emotional support animal when they don't let other people bring their animal to work. And then they want to look at the person who has the allergy, handle that as they would any other accommodation request that somebody is saying, okay, I have a medical condition. And they can work through that process to see how both people can be accommodated. They can ask the employee that has the allergy to provide the medical documentation that would substantiate that and then look at how they can combine those two peoples' needs.

>> LINDA CARTER BATISTE: Great, thanks, Melanie. We're going to move on to Step 2, which is gathering information.

This is the stage -- to me I think this is a really, really important stage. We use the information gathered at this step of the Interactive Process if somebody calls us asking for accommodation ideas we find this step important. This is where the employer asks whatever questions are needed to help process the request. And the employee provides that information.

It can be kind of tricky when you're dealing with service animals and emotional support animals. And we're going to illustrate that with our situations here.

The first situation is an employee asks to bring his seizure alert dog to work the employer asks for the dog's certification, vet records and proof of insurance.

Is this a good approach? This is the type of question we get a lot.

So as I mentioned, there's no specific guidelines into the ADA for processing a request for a service animal in the workplace. So it's not really clear what information employers can ask for related to a service animal what I suggest an employer thinks about why do you need that information what are you going to do with it and really restrict your inquiry into what is necessary for example something like certification, No. 1, there's not a national certification process or requirement for service animals. So people may not have certification. If they do have certification, they may have just gotten it off of the internet. So it's not necessarily a reliable predictor of how this animal is going to behave in the work environment or whether it's even a valid service animal. It could be. But just be aware that may not be available. And maybe not require it.

For things like vet records. Do you really need all the vet records? What are you going to do with that? What's it going to tell you? What's your real concern? Are you worried about fleas? If so, maybe have a conversation with the individual about whether the animal has been treated for fleas. It might be simpler to do that rather than get a whole bunch of the records that the individual has to pay for.

Proof of insurance. I always suggest to employers are you going to be held liable anyway? You might want to check with your Workers' Comp if something happens with the dog, are you really going to be excused from liability just because someone has insurance? Maybe check on that before you make the person go through the paperwork of getting proof of insurance or even getting insurance for the first time.

So lots of things that employers need to think about when they are considering what information to ask for and take a look at why they need it I think is the best approach.

All right. Melanie.

>> MELANIE WHETZEL: Okay. Our next situation is after an employee with depression requests to bring an emotional support dog to work the employer asks for medical documentation to support the request. Is this a good approach. And I'm going to say sure it is. The employers are always free to obtain medical documentation that substantiates the need for the reasonable accommodation. Especially when the disability or need for the accommodation are not known or obvious. There's two parts to this. Best practice is related to animal itself consider non-medical documentation. Because the doctor may not have recommended that the person get an emotional support service animal. That doesn't mean it's not going to be helpful for the person. But it wasn't recommended by the doctor so there's no medical documentation that's needed. The documentation may come from someone who helped the person attain the animal or train the animal. Like Linda said earlier, there's no certification. You can't request that they provide certification for the animal. Even training certification. If they have it, that's great. But a lot of people obtain their dogs on their own and train their dogs on their own. So there is no documentation for that.

So probably the best thing to do is to ask for demonstration. And agree to a trial period. Where the person can bring the animal in, demonstrate the training its had, what it can do for the person, the behavior it's going to have in the workplace. You can put that in writing. You can say we're going to do a trial period. We're going to see how this works and go from there.

>> LINDA CARTER BATISTE: Great, thanks, Melanie, moving on to Step 3 of the Interactive Process which is exploring accommodations. This is probably my favorite step in the process because this is what JAN does. We help employers and individuals with disabilities explore accommodation options. Sometimes you don't need help exploring them. Sometimes you know exactly what you need. And what you're going to do. But if you do need assistance that's what we're here for and we enjoy helping you with that.

Under the ADA if an employer wants to explore accommodations, the employee has a duty to work with the employer to try to come up with other options. Even if an employee believes that the only option is the service or emotional support animal. And we've got some illustrations of how this works here.

Our first situation is an employee who is deaf asks to bring his service animal to work to help alert him to sounds in his environment.

The employer wants to know if there is technology available that would work instead.

Is this a good approach?

So I think this is a good approach to have that conversation. Employers, as I mentioned, get to explore whether other accommodations might be effective. For individuals, you may need to plain to your employer that your service animal needs off-work requirements that you may have. Like getting to and from work. Sometimes employers aren't aware of that. They are just thinking about what you have specifically said the service animal is going to do for you at work. But if you need the service animal, for example, to commute to work, you may want to let your employer know that. Because employers aren't responsible for providing accommodations relating to commuting to work. But it may be that the technology isn't going to be an effective option because you will have difficulty getting to work and you may need to explain that to the employer. So this is a give-and-take conversation. It's back and forth. Employers sometimes don't fully understand what a service animal or emotional support animal does for you. And that may be something you need to explain. For individuals we always suggest don't assume your employer knows what you know. Because a lot of times they don't.

And just be prepared to have that conversation back and forth and be willing to explore other options. And provide relevant information.

All right, Melanie? Another example?

>> MELANIE WHETZEL: Okay. Our situation here is an employee asks to bring an emotional support animal to work. When the employer tries to discuss whether there might be other options, the employee refuses to discuss the other options. So the employer denies the request.

And just here is a good time probably to talk about the definition of an emotional support animal that's any animal including a cat we have one there in the picture that provide comfort and emotional assistance to an individual. So let's say is this a good approach? Well, both parties, the employer and the employee, I talk about this a lot on the phone. Both have rights but both have responsibilities, as well. And both parties require a good faith effort to discuss the options. And we'll talk to employees who dig in their heels and say it's probably -- we say it's probably not going to end well if you dig in your heels and you have only one option and you're not willing to discuss that. It is the responsibility of the employee, they have a duty to cooperate in the process. And I think some good advice for the employer is to ask the employee why they refuse to comply with the process. And document those efforts. That conversation you have. I think you can assure the employee that the conversation is going to be helpful. It's going to be confidentiality. And it's -- confidential and necessary to the process. And sometimes, too, like Linda said, we'll talk to the employee and say -- excuse me -- this may be an opportunity for you to talk to your employer and kind of sway them to see it not just -- not to see it your way. But to see what you have to say. If you have an honest and -- a conversation that's full of information, it may help the employer see your point of view. Where if you just clam up and refuse to participate, they are not going to have that opportunity.

>> LINDA CARTER BATISTE: I'm glad you brought it up about the emotional support animals not just being dogs, Melanie. You think of the service animals because of the definition in Title II and III everybody thinks of dogs as being the only animal but we definitely hear about lots of different kinds of animals being emotional support animals. Some of them are not appropriate for the work environment. I can't remember some of the strange ones we've had. But the best approach is to consider the request and don't make any assumptions but just actually get the facts. It may not just be the dog you're hearing about and not just cats, either.

Okay. We're up to Step 4 in the Interactive Process and that's choosing an accommodation. This is the employer's prerogative to actually choose the accommodation once in Step 3 you have explored different options and come up with some things to look at, it's the employer who gets to make the final decision here.

And we have a couple of examples.

The first one is an employee with diabetes asks to bring his service animal to work to notify him when his blood sugar drops. The employer decides that the employee should use a glucose monitor instead. Is this a good approach? Some of you may be thinking this is like the one we just had with the person who is deaf and the technology. How is this any different? Why are we doing the same example again?

So the general rule is that employers get to choose among effective accommodations, like I said before. But the little twist here is that doesn't include choosing medical treatment. So the other example we had was technology that the employer would purchase. This situation is deciding how someone is going to manage their own healthcare and what medical intervention they will use and that's something that the Equal Employment Opportunity Commission says you should stay away from my best suggestions it's best not to suggest alternative medical treatment but I think there's sometimes where there's an exception to that. Where you've had situations where the employer and employee have gone through the total Interactive Process. They have gotten to this step of the process and there's no effective accommodation that can be provided without an undue hardship, I think in that situation if an employer knows of something that could resolve the problem that's a personal choice of the individual, the employer could throw it out there, maybe the individual doesn't know. But generally I think it's best to stay away from that area and certainly not to insist on specific medical treatment. You're not always aware of every decision or factor that goes into making a decision of medical care and that really should be left up to the individual. So just realize that when you're exploring accommodation options you get to choose among effective options but stay away from medical interventions as one of your choices. Melanie?

>> MELANIE WHETZEL: Okay in this situation we have an employee who has been having emotional outbursts at work and asks to bring an emotional support animal to work. The employer is not able to determine whether this will be an effective accommodation, can't come up with alternatives, so stops there.

Is this a good approach? I would say that no employers do not have to consider ineffective accommodations. But what makes the employer think at this point that it is ineffective? Did they talk to the employee? We had a webcast when I first started here at JAN many years ago we had a webcast with the EEOC one thing I remember them saying is for employers to never overlook a full conversation with the employee and I think that's so important they need to find out from the employee how it's going to work. Why the employee thinks that's going to work and offer a trial accommodation. They can always do that. We talk about this a lot. Trial accommodations. Temporary accommodations. The employer can put that in writing and say we're doing this as a trial. We're going to see if it works, if it doesn't, we're going to withdraw, we're going to try something else. But that way they can see if it will work or not. And usually in a short amount of time the employer can see with an animal if it's going to work or not.

But I think that if the employer has not had a conversation with the employee, hasn't really determined if it's going to be effective or not that's really something they need to follow through on and it's part of that Interactive Process.

>> LINDA CARTER BATISTE: I love that idea of a trial period or a temporary accommodation. I just think there's so many things you just don't know whether they are going to work. If you deny them outright like your example, Melanie, and it ends up they could have worked if the individual files a complaint then you're in trouble as the employer so I think this is a great way to do your homework and show a good faith effort I really like that suggestion.

>> MELANIE WHETZEL: Oh, I think so, too.

>> LINDA CARTER BATISTE: All right. We're up to Step 5, implementing the accommodation. So once you choose an accommodation, it doesn't usually automatically implement itself. Usually there are steps that an employer and sometimes the employee must take in order to make the accommodation effective.

And we're going to share a couple of examples here related to service and emotional support animals.

The first one is an employer approves an employee's request to bring a seeing eye dog to work and let's the employee know that a notice is going to be sent to other employees so they will know not to interfere with the dog's work. Is this a good approach?

I think this is one of the most challenging issues that we deal with in our calls. The general rule is that employers must keep all medical information confidential. Including the fact that an employee is receiving an accommodation.

So generally, employers should not send out a notice to everybody telling them that Joe Smith is going to be bringing his seeing eye dog or his service animal to work. And don't touch it, don't interfere with it. Employers do this in good faith, thinking that, hey, this needs to happen. Otherwise people are going to want to run up and pet the dog.

Some people may be able to tell that it's a service animal. And they know the rules. But a lot of people haven't been around service animals and may not know.

So if this doesn't happen, if the employer is not allowed to just make this announcement, it could definitely be a problem if people are interfering with the work of the service animal.

So a best practice here is for the employer to talk with the employee about, hey, what are we going to do here? Because we have some employees that may not know how to be around a service animal.

The employer is allowed to talk to the employee about voluntarily educating co-workers and I emphasize voluntarily because the individual should not be coerced to disclose information about the disability or the accommodation. So this needs to be voluntary.

In my experience, most employees are okay with doing this because they want this to be an effective accommodation. They don't want their service animal interfered with. I have had situations where the employee refused to educate co-workers. And then complained about co-workers coming up to the dog. Wouldn't cooperate in the process of trying to come up with a solution to resolve this.

What I suggest to employers to do there is send out your notice that there's going to be a dog in the work environment. And that people are not to interact with it. You don't have to say it's disability related. You don't have to say it's a service animal.

I know, you know, again, it's a little clunky to do it that way. You don't have that opportunity to educate people. But at least you're sending out a notice telling employees don't mess with this animal. It's going to be here. And you're not to touch it.

It does kind of set up a bad situation I think with the co-workers and the employee. But you didn't make the decision. That's the employee's decision.

And again, that's not typical. That's not usually what we hear. But it does happen and that's one way to deal with it, if it does.

All right, Melanie?

>> MELANIE WHETZEL: Okay. In this situation, we have an employee with bipolar disorder who is allowed to bring her emotional support animal to work and requests to modify her break schedule so she can take the dog out for breaks. The employer denies the request because it's for the dog, not the employee.

Is this a good approach?

Well, the ADA would say that employees are responsible for caring for their service or emotional support animals. But that employers may need to provide accommodations to enable them to do so.

So we would say there that the accommodation is for the employee to allow her to work. And the dog will allow her to work so the breaks would be part of that. And the best practice would be that during the Interactive Process to discuss all aspects, care included, you know, ask the employee if any accommodations are needed, related to caring for the animal while at work. They can ask, will it be disruptive? Will it be extensive? How often does the dog need to go out? How long is it going to take? The employer will know -- and these are things to bring up, too, where will the dog go? Is there some place close by? One example just came to mind there of a dog that would not go close. They had to go to a certain spot. And it took a while to go. So they had to modify their break for that person to go there and come back. They took a longer lunch. Sometimes a dog can go all day and not have to relieve itself. So that's all individual. And it depends on each individual dog. So those are conversations that the employee needs -- the employer, excuse me, needs to have with the employee from the beginning and get that. What if something changes. They can always address that as it changes. The dog gets older, it needs more care, needs to go out more often but when thing I'll say here too is I think employers have to be more careful because sometimes they hold employees with a disability to a different standard when it comes to breaks and other people. Other people are standing around talking. People go out and smoke. They will go out and smoke for ten minutes and smoke six times a day but they hold another employee to having a ten minute break twice a day so I think the employer needs to look at how they allow other people to take breaks if they are standing around talking not working is that considered break time.

Is what this employee is asking for in order to take the dog out going to be extensive or not.

And again, like I said, if something changes, they can always discuss that. If it becomes more disruptive over time or it takes more time, then the employer can address that as it happens.

>> LINDA CARTER BATISTE: Good points, Melanie.

All right. We're up to the last step in the Interactive Process. And that's maintaining the accommodation. This is kind of an often forgotten step of the process once the accommodation is working, sometimes it's easy just to forget about it. But there are definitely changes in work environment. Changes in equipment, changes in peoples' limitations that could affect the ongoing effectiveness of the accommodation. So it's good to make sure that you have a process for maintaining an accommodation.

My example here is we have an employee who asks for leave because his service animal is sick. The employer denies the request because the employee isn't sick. It's the service animal and that's just not covered under the sick leave policy.

Is this a good approach?

Well, technically the ADA rules that employers only have to provide accommodations that are needed because of an employee's disability.

But I always suggest employers look to see if this might be something that's considered under the leave policies that the employer already has in place. If the employers let people leave for all kinds of reasons, if they have a general PTO pot that covers just about everything, then obviously that's something that they should probably encourage the employee to use it for anything including this kind of situation. It may not need to be an accommodation. It could just be use of regular PTO. But if not the other important thing to consider here is that the employee may not be able to work without the service animal. I think it's important for employers to think about in some situations maybe having an analysis to someone who uses a wheelchair. If the wheelchair breaks, you wouldn't expect someone who relies on a wheelchair to come to work without the wheelchair. You would probably have leave time to cover something like that.

Same thing can apply to people with service animals. They may not be able to come to work without a service animal.

So the leave that the person needs may not be able to take care of the animal. It may need to be for themselves because they can't function without the service animal.

So that could be one way to look at this. It's not really necessarily just for the service animal. It could be for the individual with the disability. So you want to sort that out. See if it's covered under your existing policies. If not, if it's an accommodation situation, make sure you fully understand why the leave is needed. And make sure you get all of the facts before you decide whether you're going to provide it or not.

Melanie?

>> MELANIE WHETZEL: Okay. Here we have in this situation an employee with PTSD has used a service animal at work for several months when a co-worker reports that the animal growled at him. The employer asks the employee to remove the service animal and not bring it back to the workplace. Is this a good approach?

Well, the ADA would say that employers do not have to allow service animals that are aggressive or out of control in the workplace. But did the employer really know what was going on? Did they take the other co-worker's word for that? Did they have a conversation with that employee herself to find out what was going on with that? Because that's who the employer would need to talk to.

And ascertain what the real issue is.

And the example that we're using here, of course these are all -- excuse me -- real examples. Excuse me. But in this case, they even had the trainer come in to explain that the woman had been attacked from behind.

And the dog was there to warn her when somebody came up behind her. And that's what the dog did that day the co-worker heard her growl. The dog growled because he came up behind her. And I think this is a good opportunity too for the employer to talk to the employee of having an informational or training sensitivity training, whatever we want to call it with co-workers to let them know. So if the dog growls, this is why it's growling. If you come up behind me, the dog is going to growl. But that the dog is not aggressive. That could be aggressive in other situations. Growling.

But that's why the employer really needs to get more information. Because in this case, it was more of an alert system than a sign of aggression.

>> LINDA CARTER BATISTE: Great. You can really tell from what we're saying, how important communication is in this process and getting the facts and following through.

I think it's all of our tendencies to make assumptions about situations. Especially in this topic. When employers have a no-animal policy it's just so easy to say no we can't have an animal here. But I think gathering all of the facts you need and really making an educated decision is important with any accommodation. But I think it's especially important with service animals. That's a great example Melanie the animal being trained to growl it's not being aggressive that's what it's trained to do and how would anybody know that without asking about it.

>> MELANIE WHETZEL: Exactly.

>> LINDA CARTER BATISTE: All right.

We wanted to cover a few other issues. We are getting tons of wonderful questions coming in like we said we're going to try to cover some of them toward the end of this session whatever questions we don't get to we're going to answer after the presentation and put it in a Word document that we're going to post on our website and we'll send an email to everybody to let you know it's available. I've just seen so many great questions coming in. So many questions come up about this topic. We want to try to respond to all of them. Just probably won't be able to in the time we have here.

So the other issues we want to look at include service animals in training. Restricted areas of the workplace. Breed exclusions. And on the job travel.

I want to mention we do have a service animal page on our website.

If you go to askJAN.org. A to Z by topic. You'll find service animals. We've got lots of information there. Lots of articles.

Lots of great information.

So if we don't cover everything you're looking for today, you didn't get your question in, take a look at that and see if maybe your question is answered there.

Melanie, you're going to take the first topic.

>> MELANIE WHETZEL: Okay. In this situation, service animals in training. In this situation an employee is in the final stages of getting a trained service animal. As part of the final steps, the employee needs to bring the service animal into the workplace for orientation and training.

The employer denies the request because the service animal isn't fully trained.

Is this a good approach?

Well, the ADA would say that they don't really address service animals in the workplace so it doesn't really address whether employers must consider allowing a service animal in training.

So we would say best practice would be to consider allowing the service animal if it's not disruptive. And how are you going to know this information? You need to have a full conversation with the employee. And that should be, again, part of that Interactive Process.

What is it going to entail? How much training has the dog had? How disruptive would it be? How much time -- excuse me -- will the employee -- excuse me; I'm sorry. How much time will the employee spend tending to the dog and not actually working? Those are all good questions the employer can ask. If they think it's going to work offer it on a trial basis and say you know let's try it for a week and see what happens. And see if it's going to work. If it's not disruptive. If the employee is still able to get the work done. And if it is disruptive the employee can't get their work done the employer talks to the employee again saying until you get further into training this is not going to be a good accommodation so no we're not going to allow the dog in the workplace.

>> LINDA CARTER BATISTE: Excellent.

So the next thing we want to talk about is restricted areas. And that means places in the work environment that maybe a service animal can't go.

The situation we shared here is a dishwasher in a restaurant asks to be allowed to have his emotional support animal lay near him while he works. The employer denies the request because animals are not allowed in food prep areas and the food prep area is close by. Is this a good approach?

So the general ADA rule is that employers do not have to violate other Federal laws when providing accommodations under the ADA. So if this truly did violate the Food Code, the Federal Food Code then the employer could deny it on that basis. But we always suggest the employer make sure to determine whether it actually does violate another Federal law. You want to try to determine whether you can comply with both laws.

The FDA Food Code does state that service animals may be permitted in areas not used for food preparation even in a restaurant.

So you need to take a close look at what that means. Is the person too close to the food prep area? If so, could you put a barrier there? Would that suffice? Could you move the person's area? Lots of different things you want to look at. Again, go through the Interactive Process. don't automatically deny it unless you have the full facts about the Food Code and whether there's any way that you could accommodate both. All right Melanie.

>> MELANIE WHETZEL: So this is about breed exclusion the situation here is an employee wants to bring a small emotional support dog to work. The employer denies the request stating that small dogs tend to bark and nip a lot is this a good approach and I'm going to say well no, actually it's not. You know, employers can deny an accommodation that's disruptive or otherwise creates a hardship but they also need to look at approaching each accommodation request on a case-by-case basis we say that for every single thing not everybody with a PTSD needs the same accommodations or is affected in the same way. Each case needs to be looked at individually and we would say the same thing about this dog is it a true fact that all little dogs bark and nip a lot has this dog been trained not to is there an exception I think it goes back to the training of the animal, as well. Again you would want to approve that and allow it on a trial period. It won't take long to find out if it's a yapping dog and snipping at everybody. That can probably be found out pretty quickly and then you can assess whether you can continue to allow that as an accommodation or whether you need to find something else that's going to work.

You know, there are local laws and ordinances that do ban certain aggressive breeds but I think employers want to be really careful about that. And not make broad blanket statements about the types of dogs or size of the dog.

>> LINDA CARTER BATISTE: Definitely Melanie I think that's true of any accommodation you just don't want to make those assumptions. We get a lot of questions about big dogs too and breed exclusions like you mentioned. And I love the idea of a demonstration. I think it's just like the temporary or trial period. I think it can be a really good way of finding out the facts.

And some employers say they are concerned, you know if we're afraid this dog is going to nip people we don't want to bring it around a bunch of employees you don't have to do that just meet the employee in the office just you and the employee and see how the dog interacts with you. And of course be careful not to get nipped if it really is a nippy dog but you don't have to expose the whole workplace to the dog to do a demonstration.

All right the last topic we want to talk about before we open it up for questions is on the job travel. And the situation is we have an employee who uses a service dog who has to fly to business meetings and asks the employer to pay any added costs. The employer refuses, stating that the employee is responsible for the cost of taking the service animal on the business trip.

Is this a good approach? I'm going to give this a hearty no.

The ADA rule is that while employees are responsible for caring for their service animals, employers are responsible for any added costs resulting from on the job travel.

And this is true not just for service animals. But for other issues such as personal attendants who have to accompany somebody on a business trip so the employer is not responsible day to day for paying for these personal services. But when there is an added cost because the employee has to travel for work, it's that added cost that the employer has to consider paying. So the best practice here and the requirement under the ADA is to pay for added travel costs related to taking the service animal on business trips, unless the employer can show undue hardship.

And now we're ready for questions. And like I said, there were a lot of them coming in. So I don't think we're going to get to all of them. But we're going to get to as many as we can here.

Melanie, I'm going to throw one to you first.

We mentioned that how to handle situations involving an employee who is allergic. But what if someone's co-workers are afraid of other service animals or even has a phobia to animals; what should the employer do with that?

>> MELANIE WHETZEL: Well I think there are a lot of things that they can look at doing. They can look at can the employees work in different parts of the building. Can they establish different paths of travel? Can they arrange for alternatives to in-person communication? Like emails. Telephones, teleconferencing, videoconferencing, instead of face-to-face meetings.

Can they allow for flexible scheduling so the employees don't -- aren't at work at the same time? Could one of the employees work from home or move to an alternate location? Could they provide a private or enclosed work space for one of the employees? And I think one of the things they want to do, though, is not make either one of them feel like they are being -- we're sending you to the back of the darn corner because you're afraid of dogs. We don't want to do that. But we want to make sure you have the least amount of contact with that dog. Like in my case I would probably be real unhappy with that but I just want to make sure you're not punishing the person because they are afraid of dogs or it doesn't look like you're punishing the person with a dog because somebody else is not -- can't function as well with that dog around.

>> LINDA CARTER BATISTE: We got a follow-up question to that which I'll take unless you want to jump in on it. What if there are no accommodations for the co-workers who are allergic or who have phobias? And I think that's a really tricky question.

But if you have existing employees who would not be able to work if a service animal or emotional support animal came into the work environment, then that can go into your decision to say that that's an undue hardship. Generally under the ADA, you don't have to provide accommodations that are going to interfere with the work of other people are make them sick.

So that may be one of those situations where you're not going to be able to allow the animal into the workplace.

If that's the kind of situation, you certainly want to talk to the individual who uses the service animal or emotional support animal. But other options you might be able to provide and maybe even look at whether telework would work or maybe you could alter schedules so they wouldn't be in the building at the same time.

So that's a really tough situation. But you know make sure you do everything you can to try to come up with solutions. And give us a call if you run up against a brick wall. We may be able to brainstorm some additional ideas.

Another question we got is about someone who has a clean room in a facility. And it's a situation where people have to wear hairnets, beard nets, lab coats very strict hygiene guidelines for this work area. Wanting to know how would a service animal fit into that kind of situation?

Again that's a tricky kind of situation. You could look at whether it would be sufficient to have -- and whether it's possible to have the service animal wear protective gear. There are protective suits, booties. Different things. I mean you could put a hairnet on a dog I guess. Whether that would be sufficient is the question. Because obviously a dog has hair everywhere. So it's going to depend on the situation. And how clean the clean room needs to be.

We usually suggest you just take a look at that and whether you can cover the dog sufficiently to have it in the clean room. It could be one of those situations where the option is to provide a safe place for the service animal to be outside of the clean room while the individual is working in the clean room and you can talk to the individual about whether that's going to be an option or not. You want to do your homework on something like that. But there could be definitely areas of a building -- of an employment situation where the service animal just really can't go. That comes up with healthcare facilities, too. Like an operating room nurse may not be able to take the service animal into the operating room with them.

Okay. Melanie, this is another one about a setting that might not be appropriate.

In a manufacturing setting we're concerned about an emotional support animal being around machinery and forklifts. The employer wants to know whether they can ask the employee about the safety of the animal and maybe about leaving the animal in a safe place while working in dangerous areas. So is it okay for the employer to approach that subject if the employee hasn't?

>> MELANIE WHETZEL: Yes, absolutely it's okay. Because I think safety to the animal is important. The employee would know a lot more about how the animal will react, what the animal does, to loud noises and that type of thing and how it might react in that situation maybe not how it's going to. But it would be good to get that information from the employee and not just make a decision without that.

>> LINDA CARTER BATISTE: Great.

This question is may employers provide information to applicants regarding asking for a reasonable accommodation for engaging in an interview before the interview is scheduled and hold applicants to this?

So to the first part of that question, you absolutely can explain to applicants what the process is going to be for the interview, where it's going to be held.

That's great to do. You want to give people details. And then let them know if they need an accommodation. How to ask for it. Who to contact. That's a best practice. And that's great to do.

You can even give a deadline for making the request for accommodation. But the tricky thing is you don't want to say, we're not going to even consider a request if you don't meet our deadline. You still want to try to see if you can accommodate somebody, even if they miss your deadline. But it gives you a little leeway to say, hey, we just can't get this in place in time. Let's see if we can schedule your interview some other time.

So technically you can do that. But you still want to process an accommodation request, if you get it after the fact.

Okay. And someone just asked just to make sure we don't want to cause any confusion here that we've been talking about both emotional support animals and service animals and the ADA doesn't cover emotional support animals they want to know if we're talking about psychiatric support animals I'm sharing this question now because I want to emphasize what we talked about in the beginning and this individual was late to the webcast so I'm going to repeat it because I think it's important I'm glad you asked for clarification. Again there are different titles to the ADA, we're talking about Title I. The reference to the ADA not covering emotional support animals is for Title II and Title III for public access. Title I doesn't have that same rules, information, regulations, so doesn't specifically exclude service animals or emotional support animals. It doesn't really specifically address it. So yes employers do need to consider whether allowing an emotional support animal as an accommodation would be effective. And would not pose an undue hardship.

You do see a lot of different opinions about this. Our guidance comes from just informal conversations we've had with the EEOC that there's nothing specific that rules that out for modifying a no-animals policy. It doesn't say a no service animals policy. It's a no-animals policy so therefore really strong argument that you would have to consider allowing an emotional support animal into the workplace. We'll probably see more on this in the future as these kind of situations going forward. I think there's been one where the Court did say, yeah, we can't say that wouldn't be something an employer would have to require -- have to consider because there's nothing that rules it out. So just keep that in mind. Safe approach is to process it like any other accommodation request and see what you can do.

Melanie I got one from an individual did you have one you wanted to cover first.

>> MELANIE WHETZEL: Yeah there's a question that says how do you handle the breakdown in communication that sometimes happens when employees refuse to provide documentation under a mistaken belief that the agency cannot request the information. That's a huge issue. We talk to a lot of individuals. One of my first calls, I remember this like it was yesterday. This woman called, she was totally upset. She had quit her job because her employer asked her about her service animal and she knows that's illegal before I could get a word it but yes they can, they can ask this question, we talked about it. If it's in a public place that's a little different. But in a work employment situation, it's like an accommodation. Employers can ask for that medical documentation. And if employees don't understand that, you can explain it that way. You can provide our information. If you want to have our publication handy. And I tell employers to refer the employees to us. Let them talk to us. Maybe talking to a third party will be helpful. Because sometimes they think well the employer is out to get me or the employer doesn't want me to have that accommodation. When that's not true at all. The employer is trying to follow the same procedure they follow for everyone else and they see accommodations, the Interactive Process, compliant, routine across all situations. That's the right way to say that.

And so referring the employee to call here and asking their questions to us might be a little bit more helpful. And they might be able to take that information that they are not correct in their thinking, they might be able to take that a little bit easier from us rather than the employer.

>> LINDA CARTER BATISTE: Great. I'm going to ask this question because I like this question and it's a good question.

If an employee -- we have lots of great questions. I wish we could get to all of them because it's just really good conversations with these questions but this one is interesting because it's about the cat that you mentioned, Melanie. If an employee does want to bring a cat to the workplace for emotional support animal, is it too much to tell the employee they must have a litter box and it gets cleaned out every day?

So no, that's perfect. You can certainly require that the individual take care of the service animal or the emotional support animal in a way that doesn't interfere with co-workers. A stinky, messy litter box is not going to be good in the work environment. So yeah you can require that the animal be taken care of and cleaned up after. And that doesn't sound like it's unreasonable to me.

We do get questions sometimes about employees who are unable to care for the service animal exactly in the way that is required. Like an individual who has quadriplegia can't use their hands, uses a service animal, may not be able to scoop poop for the animal. So we talk about different ways that that might be accommodated. We're happy to talk with you about different options for that.

A similar question came in about what if a dog is shedding a lot. You can again require that the individual clean up after the dog. If the individual is unable to, then you can talk about options. Maybe having somebody else come in for the individual and clean the area, if you can allow that.

So lots of different practical approaches to these things. Contact us on a case-by-case basis with any of these issues. Unfortunately we're out of time now. I really want to thank everybody for joining us. And thank you for the great questions. Melanie and I are going to answer those, as I mentioned earlier. And we will be posting that on our website. If you have additional questions you didn't get in, feel free to send those to us. We're more than happy to answer those.

Thanks again for joining us. We hope this was helpful. There's just so much we could have covered and we had to pick and choose what to cover we also want to thank Alternative Communication Services for providing the net captioning and again contact us any time about anything we talked about today or if you just want to discuss any accommodations, please feel free to contact us. Our contact information is on the last slide.

You can also find us at askJAN.org.

As mentioned earlier, an evaluation form is going to automatically pop up on your screen in another window as soon as we're finished here if you don't have your popups blocked. We do use your feedback. So please take a moment, if you have the time, to complete that form.

And again, thanks for attending.