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**JAN**

**DISABILITY INCLUSION & ADA COMPLIANCE DURING THE HIRING PROCESS**

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>> BETH LOY: Hello, everyone and welcome to the Job Accommodation Network's commodity compliance audio Web Training Series I'm Beth Loy and I'm here with Tracie DeFreitas who will be presenting today's program called "Disability Inclusion and ADA Compliance During the Hiring Process".

But before we start the program I want to go over just a few housekeeping items.

First, if you experience technical difficulties during the webcast call us at 800-526-7234 for voice or for TTY call 877-781-9403 second toward the end of the presentation we'll have a question and answer period which you can send in your questions at any time during the webcast to our email account question@askJAN.org or simply use our question and answer pod located at the bottom of your screen. To use the pot just type your question then submit it to the question queue also on the bottom of your screen you'll notice a webcast download pod that you can use if you have difficulty viewing the slides or would like to download them and finally I want to remind you at the end of the webcast an evaluation form will automatically pop up on your screen in another window we really appreciate your feedback so please stay logged onto fill out the evaluation form.

Now, let's start today's program. Tracie?

>> TRACIE DeFREITAS: Thanks, Beth, I'm glad to be here today our goal today is to offer practical guidance and ADA information that will enable recruiters and hiring managers to build their ADA confidence and competence by learning best practices and ADA compliance related to disability related inquiry roles and accommodating candidates with disability and so let's get started talking about disability inclusion and recruiting in hiring.

There are a number of practical strategies that organizations can implement to create a work environment and a culture that's not only open to but also pursues the diverse talents and skills of qualified individuals with disabilities. So what better way to communicate the message that your organization is welcoming than to demonstrate this through business practices like with your Web sites your job postings your applications, interview sites, your job fairs are all accessible to people with all abilities you may want to include EEO and accessibility statements on Web sites and be proactively about -- proactive about leading people -- letting people know how to request commodities also letting your brand know that your business is a welcoming environment can also be a way to communicate this disability inclusion. In this way you're kind of putting out the welcome mat and inviting job seekers with disabilities to become a part of your organization also by making a commitment to hire qualified talent with disabilities organizations can have a diverse workforce so top C-Suite executives can drive the inclusion agenda to drive recruiters and hiring managers to seek out top candidates with disabilities.

And when we challenge biases and beliefs about what people can do and focus on diverse abilities and contributions they can make to productivity goals this inclusion can lead to innovation and development of better products and services because employers are really willing to hire and retain from a wider pool of talent also informing the entire workforce about the ADA and reasonable accommodation can also demonstrate and foster disability inclusion. There's not an exhaustive list of what an employer can or must do to provide reasonable accommodation under the ADA. It's really an individualized process. But employees and in turn employees can benefit by asking for accommodations, especially if they believe they will not be treated differently for doing so.

So educating the workforce and making it okay to ask for help creates a supportive workplace culture.

Along the lines of being welcoming, organizations that adopt facilities and I.T. access for all or universal design can reduce the need for accommodation because forethought make it so people with all abilities with access information and facilities without having to ask for accommodations or something different to accessibility basically becomes a non-issue because it's already available. In general, though, fostering a work environment in which employees feel comfortable asking for accommodations and creating a safe space for disability disclosure and requesting accommodation, it's critically important. Because it enables people to feel that they can bring their whole self to work and can be especially important for workers with invisible disabilities or hidden disabilities who are hesitant to disclose due to potential bias in some way. Also creating an inclusive culture and safe space requires training so hiring managers and frontline supervisors need to be open and supportive and need to be trained to know how to recognize a request for accommodation.

And to be prepared to act on it in a solution-focused way.

So a practical approach is to train these individuals to ask, how can I help when it becomes apparent that there may be a workplace barrier due to a disability related reason. Another approach is keeping workplace flexibility in mind for all workers this creates a place where people can focus on getting the job done without feeling uncomfortable asking for flexibility to manage disability-related needs. Implementing work-life programs like allowing telework and flexible work schedules can help all employees balance work and non-work responsibilities. And essentially this normalizes workplace flexibility which in turn can help create an environment that's inclusive for everyone.

Also you want to be creative when you're identifying accommodations, accessing accommodations and ADA resources like JAN can help so resources and consultation can be a catalyst for moving accommodation forward so we encourage you to look at askJAN.org to help you with that. There are a number of inclusion resources that I just want to make you aware of for example we have Inclusion@WORK that offers information policies and practices for recruiting hiring advancing qualified individuals with disabilities there's TalentWorks is an online resource that helps employers and HR professionals make eRecruiting technologies accessible to all job seekers including those with disabilities. There's Building an Inclusive Workforce which is a four-step reference guide on recruiting hiring and retaining employees with disabilities and that's offered by the Office of Disability Employment Policy or ODEP and JAN also offers workplace accommodation and best practices in our toolkit building on a strong foundation there are a number of resources available these are just a few for your consideration but I would encourage you to take a look at those to help you in developing a disability inclusive workforce.

Now, while we know we can't legislate attitudes related to disability inclusion there are some things that employers can do during the hiring process to communicate disability inclusion. Through compliance with the Americans With Disabilities Act. And while I assume that most who are listening today probably know what the ADA is I do want to set the foundation with a few ADA basics so what is the ADA? So Title I of the ADA it's a Federal civil rights law that was amended in 2008 known as the ADA amendments act to many applies to state and local Government employees of 15 or more employees as well as employment agencies and labor unions basically the ADA has two essential requirements. The law prohibits disability based discrimination in all employment practices 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 employee treats a qualified individual with a disability unfavorably because they have a disability.

The other statutory requirement is reasonable accommodation. So employers are required to provide reasonable accommodation to an applicant or employee when it's known that the individual has a disability and needs an accommodation.

And when providing accommodation does not pose an undue hardship employers of course are not expected to assume or guess that accommodations are needed so the duty to request accommodation generally falls on the individual with a disability. When it becomes known that an accommodation is needed and much of what we'll share today will center around when this disclosure becomes something that's important and when an employer can ask questions about disability and when they can't.

So who is protected by the law so Title 1 the employment provision protects qualified individuals with disabilities so whether they be applicants or employees. So the full measure of the law applies during hiring in the same way that it does during employment. Of course our focus today is going to be on the pre-employment process or the hiring process.

How is disability defined? Well there's no exhaustive list of covered impairments that are considered disabilities under the ADA so each situation must be evaluated on a case-by-case basis. An individual with a disability is someone who has a medical impairment that substantially limits one or more major life activities this is someone who meets the actual disability prong of the definition. Next someone who has a history of a medical impairment that substantially limited a major life activity at one time this is known as the record of a disability prong.

And individuals who meet both of these prongs for the actual disability and record of prong can both qualify to receive reasonable accommodation under the ADA and then the third prong is the regarded as prong. This is used when an employment action is taken based on someone's impairment or their perceived impairment.

So to satisfy the regarded as definition an individual needs to only show they have been subjected to a prohibited discriminatory act so termination or failure to hire based on disability.

This could be because of an actual or perceived impairment.

Under the third prong, reasonable accommodations is not required to be provided to an individual.

So to be considered qualified under the ADA, an individual with a disability has to be someone who meets the job's general requirements so they must have the certifications, the skills, the education necessary in order to be considered for the job and they must also be able to perform all of the essential functions of the job they desire or hold. And that's with or without accommodations.

So they must be qualified for the position.

Now, when individuals with disabilities are faced with barriers in performing job duties or meeting productivity standards reasonable accommodations can often lead to success in getting the job done. So what does reasonable accommodation mean?

Well, this is any change or an adjustment to a job or the work environment that permits a qualified individual with a disability, an applicant with a disability in this case, to participate in the job application process. Or an employee to perform the essential functions of the job and also to enjoy benefits and privileges of employment that other individuals would enjoy as well. An accommodation is essentially a change in the way things are usually done. It's about finding another way or coming up with alternative solutions to achieve success.

So it's about sort of thinking outside the box a little bit a lot of times.

Accommodation can be requested at any time during the hiring process or during the period of employment and as a general rule the individual is responsible for informing their employer when an accommodation is needed when the disability and need for accommodation are not known or obvious that's when disability disclosure is going to be necessary in order to receive accommodation under the ADA and that's because only those with a disability will qualify to receive accommodation and employers are only required to provide accommodations for a known disability as I mentioned they are not expected to guess when accommodation is needed.

Also finally a reasonable accommodation must be effective for the purpose so it must enable participation in that hiring process or the individual to perform their essential job duties and shouldn't cause an undue hardship for the employer which essentially means significant difficulty or expense to provide.

Now, with those basic ADA requirements and definitions established, let's move to ADA compliance and disability inclusion.

Employers really can cultivate disability inclusion during the hiring process by communicating compliance with the ADA. So for example by distributing an Equal Employment Opportunity policy statement and reasonable accommodation statements using all of the channels they might have available including online, on their applications, in job postings, internally and externally and even by distributing reasonable accommodation procedures to all managers and supervisors and other personnel responsible for processes reasonable accommodation requests.

And frankly to the entire workforce.

So if all individuals are educated, people are going to know that the employer is open to and able to provide reasonable accommodation. And inclusive -- and is inclusive of people with disabilities.

Also an organization's commitment to Equal Employment Opportunity for qualified people with disabilities can also be affirmed by ensuring that universal access is a standard practice so for example if you're designing Web sites, design them as accessible from the start.

Be certain that employment offices, interview locations and Testing Centers can be accessed by everyone. So again, the issue of accessibility becomes a non-issue because it's already been taken into consideration.

Also training recruiters and hiring managers and Testing Centers on the ADA and compliant hiring practices is important. So make sure that these frontline people know how to receive and respond to requests for accommodations from applicants with disabilities and that they have the authority to also provide reasonable accommodations for hiring without having to go through an extensive process to do this.

They should be well aware of the ADA's restrictions on medical inquiries during the hiring stage to avoid unnecessary and unlawful requests for disability related information, as well.

So educating recruiters and hiring managers on the ADA can address some of the most common issues and concerns we hear related to pre-employment and hiring individuals with disabilities. At JAN we hear from many employers who need guidance on how to address a variety of pre-employment issues.

So the ask -- they ask questions around whether or not they may, must or should ask if an accommodation will be needed for the hiring process.

What responsibility employers have to provide accommodations for hiring, like when an applicant requests an interpreter or extended time for testing. If disability-related documentation can be sought when applicants request accommodations and to what extent. They also look for practical guidance on whether or how to respond to applicants with obvious impairments or who disclose a disability during the interview and also have response to an accommodation that maybe wasn't made before meeting the applicant for the remainder of the session I'll talk about practical ways to address many of these issues, particularly related to disability-related inquiries and disclosure during hiring.

So let's start with some information about disability disclosure.

So at JAN we find that sometimes employers have the opinion or the belief that applicants should disclose their disability or the need for accommodation during the hiring stage. Some employers do not know that this disclosure isn't required under the ADA or others believe that applicants are not being honest if they don't share this information upfront.

Sometimes employers say that if they had knowledge about a disability or had known about that disability, they wouldn't have hired the employee, which is exactly one of the reasons the ADA was enacted.

So to provide disability discrimination during hiring.

We also sometimes hear that accommodations shouldn't have to be provided to employees who do not disclose a disability and ask for accommodations before being hired because again employers feel that failing to make it known that accommodation will be needed is hiring under false pretenses.

But consider how many talented and qualified employees never would have been employed if this information was shared before their non-disability related skills and qualifications were used to determine whether they were the right fit for the job so the Equal Employment Opportunity Commission they do make it clear that under the ADA individuals with disabilities need not disclose their disability unless and until reasonable accommodation is needed. And then accommodations may be requested at any time during the application process or during the period of employment. There can be many reasons why an applicant doesn't disclose a hidden disability during the hiring process they may have had a bad experience with a previous employer who discriminated against them when they disclosed. They may not be aware that accommodations will even be needed because maybe they have never done the type of work before to know if their disability would impact performance or they may just be uninformed about their rights under the ADA and the ability to request accommodations so these are just some things to keep in mind during pre-employment.

For many people it's not always obvious if it's -- when it's safe or necessary to disclose disability or request accommodations so deciding if and when and how to share disability related information with a prospective or current employer can really be overwhelming and it's a very personal decision to be made. Generally there's no obligation to disclose disability related information to an employer until the need for reasonable accommodation becomes apparent.

Disability disclosure can occur at any stage of employment as I mentioned so whether it's during pre-employment or post-offer or while employed whether that person has been with the company for days or months or years of initially being hired.

So generally that individual with a disability will have to determine the right time to disclose the information given their particular circumstances. So the need to disclose a request will become apparent usually when that person knows that there's a workplace barrier related to their medical impairment now JAN does offer resources related disclosure that can be useful to individuals and employers alike so if you visit askJAN.org and go to A to Z section and search by topic we have a disability disclosure section that has some useful information also the EEOC offers a fact sheet that's helpful called job applicants and the ADA which covers a lot of different disclosure related issues as well as medical inquiry related issues, as well.

So let's delve into disclosure during pre-employment a little bit further by clarifying whether applicants are required to disclose disability related information at a particular time this addresses the issue of whether or not there's a duty to disclose during hiring so the answer is generally no. Applicants are not required to disclose a disability at a particular time but there can be exceptions to this.

So while generally an employer cannot require an applicant to did I see close information about disability prior to a legitimate offer of employment, so during that pre-employment stage, there is an exception to this rule when an accommodation will be needed for the hiring process. So for example, if an accommodation is needed to complete an online application or to participate in a job interview or maybe to take an employment test. And in these circumstances an individual will need to disclose their medical impairment in order to receive an accommodation if the disability and need for accommodation are not obvious in some way and again this is because only individuals with disabilities are going to be entitled to receive accommodations under the ADA and so the entitlement to receive accommodation needs to be established via that disclosure.

So when a candidate makes it known to the employer that an accommodation will be needed for the hiring process, then that interactive accommodation process is triggered.

Now, there can be situations when employers may have reason to ask applicants if they wish to voluntarily disclose their disability status. And employers may ask applicants to voluntarily disclose their disability status during pre-employment without violating the ADA's restrictions on medical inquiries providing certain rules are followed for example employers are required -- employers who are required to undertake affirmative action based on Federal, state or local laws and those who use disability related information to benefit individuals with disabilities they are able to invite applicants to voluntarily self-identify as having a disability but in requesting this information, employers do need to state clearly in writing or otherwise that the information is being requested voluntarily. That it will be kept confidential. And that refusal to self-identify won't subject that person to any adverse treatment it will only be used in accordance with the ADA and other Federal laws that might require affirmative action like Section 503 of the Rehabilitation Act for example.

This law requires certain Federal contractors to invite applicants with disabilities to disclose they have a disability during the hiring process as well as during employment now there's a specific form that the Voluntary Self-Identification of Disability Form that these Federal contractors are required to use when inviting applicants to disclose this information.

The forms ask individuals to simply check one of the boxes as shown here as an example the form states that the individual has -- has or had a disability, does not have a disability or does not wish to answer.

It makes it very clear that the request for this information is entirely voluntary.

So now I mentioned earlier that times employers are not aware of the need to provide reasonable accommodation during hiring or maybe they are not sure how far they must go to accommodate during this stage of employment.

But the ADA does require employers to provide reasonable accommodation during hiring when the applicant has made it known that it's needed so where we know the onus falls on the individual to make it known what accommodations are needed the cost of and arrangement of accommodations will fall on the employer once they are aware of the need.

So for example if an applicant makes it known that an interpreter will be needed for an interview, the employer would need to then decide if that's a reasonable accommodation. And then arrange for and provide and pay for that service as a reasonable accommodation if it's -- it doesn't create an undue hardship.

Accommodation is required unless it creates an undue hardship for the employer but accommodation can't be refused simply because it would entail some costs in fact cost should rarely if ever be a factor in assessing undue hardship ultimately the employer can choose the accommodation to be provided if a specific accommodation isn't reasonable or let's say one accommodation is less burdensome or less costly than another the employer can certainly choose that as long as the alternative accommodation is effective and would enable that individual to participate in the hiring process.

Now, there's no comprehensive list of accommodations that are required during hiring or any other time for that matter. Remember providing accommodation again it's essentially about changing the way things are usually done that enables an individual to participate in that hiring process. And it can include a number of different ways of doing things. Here are just some examples. For example modify application policies and procedures there could be accepting a paper application instead of an online application or it could be providing materials in large print.

Maybe modifying interview methods like sharing certain interview questions in advance for written response. Maybe providing a reader or an interpreter. Modifying tests or training materials.

For example allowing additional time to complete a test.

It can also be providing equipment like screen magnification software to access testing on a computer. It can be allowing a support person to attend an interview or even allowing access for a service or emotional support dog during the hiring process. So these of course or all examples these of course are some of the most common accommodations that are often considered during the hiring process but JAN can certainly help in addressing these types of accommodations and provide more information should you need that.

It's important for recruiters and hiring managers to recognize when an applicant is requesting accommodation. So when an applicant asks for an adjustment or a change in the hiring process due to a disability-related reason this is a request for accommodation under the ADA so there must be sort of a connection between the disability and the hiring process or hiring issue.

Request for accommodation do not have to include terms or phrases like ADA or reasonable accommodation.

Also accommodation requests are not required to be made in writing but of course at JAN we do suggest this to those who we are guiding on writing requests for accommodation. It's always useful to document accommodation requests in the -- if there's a dispute on when an accommodation was requested. When requesting accommodation an individual should inform someone who can act upon the request during hiring this will be somebody who is involved in that process maybe it's a recruiter maybe it's a hiring manager or maybe it's just someone who is in Human Resources.

So to ensure that the request is coming through someone who can act on it and then of course the Interactive Process is triggered once it's recognized that that accommodation request is received.

It's also important to know what is not a request for accommodation. So sometimes employers aren't sure or individuals think that they are putting the employer on notice but they maybe aren't doing so in a sufficient manner.

So voluntary self-identification of disability or disability disclosure absent a work-related barrier or specific request, these aren't requests for accommodation. There needs to be that nexus between the impairment, the hiring process, or the work-related barrier if an applicant is simply identifying as having a disability, maybe for affirmative action reasons for example this is not a request for accommodation necessarily if it's just a disability disclosure.

Also a request for workplace adjustments or access to benefits available to employees without disabilities is not necessarily a request for reasonable accommodation.

So what I mean by this is if applicants are let's say generally permitted to submit answers to interview questions in writing and that's a process that you do allow, then an applicant with a disability who requests to do this for a disability-related reason really shouldn't have to jump through any extra hoops to provide disability-related information. To receive that same flexibility as those without disabilities because it's something you allow all other employees -- or I'm sorry; all other candidates to do so just make sure that you're not requiring people with disabilities to jump through extra hoops to receive flexibility in the hiring process or otherwise simply on the basis of disability.

Now, a question we sometimes receive related to the pre-employment pre-offer stage is may employers ask applicants if reasonable accommodation will be needed for the hiring process. And the answer is yes. According to the EEOC employers may tell all applicants this is the key all applicants what the process involves and ask whether reasonable accommodation will be needed for the hiring process the inquiry may only be related to the hiring process and not related to accommodations that might be needed to perform the job duties or position that's desired however I often suggest another approach to this situation.

So instead of asking if accommodations will be needed for hiring, I suggest that employers simply inform all applicants about how to request accommodations to participate in the hiring process.

Rather than asking -- to participate -- rather than asking applicants if accommodation will be needed for this process this can be part of what I call creating an informed hiring process.

So using this method, the employer places the burden of requesting accommodation on the individual and alleviates any concerns about asking tricky questions of applicants and it also puts the applicants at ease but not forcing them to respond to a question they may not have been prepared to receive in the first place. Creating an informed hiring process is about educating candidates about what to expect during this stage of employment, and it also makes it clear how to go about requesting accommodations, if needed.

This process can include mention of the stages of employee selection. So interview expectations. Job related testing requirements, drug testing, physical exams, et cetera.

These kinds of things that someone might need to know about as they are going through hiring.

It can be explained what to expect of the interview process. So it will be a -- will it be a phone interview, video interview, onsite will more than one person be available to have this interview. Maybe who will actually attend the interview things like that.

If testing is required where the testing will take place and when and what format of testing is required, if a computer will be used.

How long it will take to receive information about hiring. And importantly how to make a request for accommodation for hiring, who to contact and by when, as well. So all of this information will also enable applicants to determine if accommodations will be needed because they will know better what to expect of this process and gauging what they know about their particular abilities and any accommodations they might need, they will be able to decide whether or not accommodations might be needed to go through this hiring process. And again, now that burden falls on the individual to make it known to the employer instead of the employer asking the question.

Now, let's be clear, the hiring process is really about getting to know each other. The employer and the applicant are taking the time to ask questions to figure out if the fit is right.

And it really should be about figuring out if it's right for both parties. Not just the employer.

So during this stage, we tend to ask a lot of questions. Typical questions, like why did you leave your last job or what are your strengths, what interests you about this job or what do you know about our company?

But sometimes employers also want to ask questions that are a little more personal in nature and this is where it can be critically important to educate hiring staff about disability inclusion and ADA compliance.

So it's important to know that the ADA restricts employers from asking disability-related questions or requiring medical exams during three stages of employment.

And this can impact decisions about what to ask applicants during hiring.

The pre-offer stage of employment is most restrictive. This is the hiring period. Application, interview, testing. This is when no job offer has been made. And during this stage we can't have -- we can't have non-voluntary disability related inquiries or medical exams being asked or required of applicants until after a conditional job offer is made for the most part.

Next is the post-offer stage, which is the least restrictive stage. And during post-offer disability related inquiries can be asked and medical exams can also be required as long as they are required of all candidates entering into a job category. The same job category. And also the information must be kept confidential.

Now, the job offer can be made contingent upon the results of post-offer inquiries and exams so that's something to be aware of and I'll talk more about that.

After a candidate is hired we're back to a restricted stage. This is where an individual has started working. And disability related inquiries and medical exams of employees must be known as job related and consistent with business necessity.

Let's cover the pre-employment stages in some detail as I mentioned the general rule is no disability related inquiries can be asked during pre-employment generally. A disability related question is a question that's likely to elicit information about a disability or medical impairment.

Of course you know an exception is when an applicant asks for an accommodation to participate in hiring and the disability and need for accommodation are not obvious. Also medical exams may not be required during pre-employment before an offer of employment is made.

Now, during the pre-employment stage, there are some questions that may be asked that are not likely to yield disability related information so I want to cover some of those things that might be pretty typical.

Employers can ask things about ability to perform job functions. Including whether applicants can perform job functions with or without reasonable accommodations. This is because an employer is entitled to know if the applicant can perform the functions of the job. So for example, an employer may state the physical requirements of a job such as the ability to lift a certain amount of weight or the ability to climb ladders and ask if an applicant can satisfy these requirements with or without accommodations. The answer to that question should simply be yes or no it shouldn't be asking that person to say whether it is with or without reasonable accommodation I'll cover that in a little bit more detail in a minute. Of course during this stage employers may ask about non-medical qualifications and skills. Like education, experience, certifications, that kind of thing.

Also questions about the ability to meet an attendance policy are permitted. So questions about how many Mondays and Fridays were taken off can be asked because this question is not specifically disability related. But it can be used to detect abusive leave.

Some employers do ask about drinking habits like do you drink alcohol. This is permitted as long as the questions don't probe into drinking habits like frequency for example that could lead information to -- lead to information about alcoholism and questions about current and legal drug -- current illegal drug use is acceptable because current illegal drug use isn't covered under the ADA. Here are some topics employers may not ask about during pre-employment so during -- before post-offer because these topics are likely to elicit disability related information for obvious reasons questions about disability cannot be asked unless an accommodation is asked for interviewing. No questions about lawful drug use like what prescription medications are you taking. This is different from illegal drug use. So -- there can be an exception. So an exception to this rule may be if let's say an illegal -- a drug test reveals a drug that's used illegally and maybe that needs to be validated by the individual for example some legal drugs may produce a positive result during drug testing and giving the applicant an -- able to disclose legal drug use can validate they aren't using illegal drugs in general an applicant may not be asked general questions about major life activities just generally can you sit, stand or lift unless these functions are specifically related to the applicants ability to perform an essential job duty I mentioned earlier if the job requires an individual to be able to lift a certain amount of weight that might be a question that could be asked provided it is strictly related to the essential functions of the job.

Also questions about workers compensation history are not permitted because these questions will elicit information about medical impairment and in the past this information was often used to screen out applicants.

And of course previous employers cannot be asked questions about disability or accommodation that cannot be asked of an applicant directly.

Now when accommodation is requested for hiring sometimes employers ask if applicants for -- sometimes they want to know whether they can ask applicants for disability related documentation. When the accommodation is requested for hiring. And so yes, reasonable documentation may be requested when the disability and the need for accommodation are not obvious. Again the information may be requested to verify that the applicant has the disability that they say they have and they need that accommodation.

And that documentation may be provided by an appropriate professional. It could be a healthcare provider. It could be a rehabilitation counselor. Simply it's going to be somebody who is familiar with the fact that that person has the impairment and the limitations they say they do.

So it's going to be sort of basic information we're not talking about extensive information at this stage.

Now a question we sometimes receive is may employers ask applicants if accommodations will be needed to perform the functions of the position they desire if they are hired. This is a different question than one related to the hiring process and accommodations.

So while the answer is generally no because the question is likely to elicit information about a disability, because someone who says they will need accommodation to perform the job duties will be someone who has a disability or limitations that would affect job performance. Right? So for example an employment application may not ask can you perform these functions with/without reasonable accommodation check one. Either with or without.

This kind of question will reveal information about a disability if a candidate is forced to check with or without.

However, an application may ask, can you perform these functions with or without reasonable accommodation? Yes or no. This question doesn't require the applicant to indicate if the accommodations will be needed to perform job duties instead it allows the individual to simply say yes or no so if that person knows that they may need accommodation to perform the job duties they can answer that with yes. Because they know they can perform the duties of the job.

Now, from can be limited exceptions to this rule when an applicant has an obvious disability or discloses a disability during hiring.

So when an employer has a reasonable belief that a known disability or limitation will affect performance of job duties, it can be possible to discuss the future need for accommodation during this pre-employment stage.

Really what you do in this case depends on the applicant's limitations and maybe the job that they are applying for.

So before asking any questions about the applicants disability the interviewer really must have a reasonable belief based on objective evidence that the disability will potentially interfere with job performance before you start asking these questions.

When might there be such a reasonable belief? Usually it's because of an obvious disability or hidden disability if the applicant has voluntarily disclosed that the employer believes will affect performance of job duties or because the applicant has already voluntarily disclosed the need for accommodations to perform the job.

Now, in many cases an applicant's obvious disability won't be relevant at all to whether they can perform the job for example let's say in the case of an applicant who is blind, who must be able to access information from a computer screen, that might be a situation where it is something that an employer needs to know about.

An employer may need a better understanding as to whether or not an accommodation would enable him to access the information and how.

So whereas there would not need to be detailed discussion about the applicant's medical impairment other than to know maybe he doesn't benefit from magnification, there could be discussion in this type of situation about the employee's need for accommodation and how he can access information from a computer maybe using screen reading software so that might be a scenario where based on knowing the impairment and the limitations and what the job duties require, there may be a reason to discuss the possible need for accommodations to determine if that person is qualified.

Another question we sometimes receive at JAN is may a particular applicant be asked to describe or demonstrate how they perform job duties if other applicants are not asked to do this employers may ask applicants to describe how they will perform job functions as long as all applicants in the same job category is asked to do this but here we're talking about a situation where the employer doesn't ask it of everyone and just wants to ask it of a particular applicant there can be some situations but only when there's a reasonable belief that the applicant can't perform job duties because of a known disability it doesn't mean just because the employer is aware of a disability they can ask the individual to describe how they would perform the job functions if there isn't a good reason to believe the am cannot would be limited then the threshold hasn't been made to ask this of a particular applicant now we'll move on to the post-offer stage of employment which is the least restrictive disability inquiry stage this is the green light stage where employers can ask pretty much anything they want and they can also require medical exams there are some rules to follow though mainly 2 so while any disability related question may be asked or exam required the same questions or exams have to be required of all employees entering into the same job category and all information needs to be kept confidential in this stage and meet those requirements under the ADA. During post-offer sometimes applicants are excluded from employment based on medical information obtained so when an applicant is excluded on the basis of medical information and a job offer is rescinded the reason for the exclusion must be job related and with business necessity we're back to a standard again basically that means that the qualification standard the employee hasn't met has to be a legitimate measure or a qualification for the specific job not just a class of jobs.

The requirement should also reflect what's necessary to perform these specific jobs. Being consistent with business necessity means that it also must be related to the ability to perform essential functions of the job not marginal functions so it comes down to whether they can perform the essential duties or not with or without accommodation even if a standard is found to be job related consistent with business necessity if it screens out an individual with a disability on the basis of that disability then the employer also needs to consider whether the person can meet the standard with reasonable accommodation.

So for example if it's found that there is a lifting restriction for a position that does require lifting is there an alternative way to move whatever must be moved that would enable that person to complete the task so reducing the weight, obtaining assistance, using a compact lifting device these are the kinds of things you might look at as far as deciding if the person is qualified and able to do the job. So the employer can't just exclude somebody based on the fact that they have information about a disability or the lifting restriction in this case.

Now as you might expect at the post-offer stage a candidate -- if a candidate requests accommodation to perform the duties of the job, that they have been hired for but not started yet, information about disability and limitations may be requested to engage in that Interactive Process under the ADA. Again, if the disability need for accommodation aren't obvious however you may want to simply focus on having a conversation about the reasonable accommodation instead of requesting extensive medical documentation at this early stage in the employment process.

So kind of take a look at what might really be needed and whether it's going to be possible to provide the accommodation instead of getting too bogged down gathering additional medical information.

If an employer asks disability related questions during the post-offer stage sometimes the employers wonder if an individual is required or an individual may be wondering whether an individual is required to disclose disability related information at that time.

So what I'm talking about here is a lot of employers ask for maybe they will have a medical inquiry during post-offer they ask everyone to complete maybe an individual is wondering whether they have to share information at that time so deciding what and how much information to share is really up to the individual applying for the job.

But employers are able to condition employment offers on the satisfactory completion of a medical questionnaire or an examination that's conducted during the post-offer stage.

So if a questionnaire is not complete or if an individual refuses to participate in an examination during post-offer then an employer would be able to rescind that job offer which does mean that it essentially requires an individual to disclose information about disability even perhaps when an accommodation wouldn't be needed to perform the job duties so what we sometimes suggest is that it may be possible for an individual who has to complete this information to maybe limit the type of and -- the type and scope of information that's shared at this time but it's very important to be truthful with what's shared during that post-offer medical inquiry stage.

Now, sometimes post-offer examinations do reveal information that can lead employers to believe that additional disability related information is needed to determine if an individual is qualified and able to perform the essential functions of the job.

So according to EEOC, additional information may be requested as long as the follow-up examinations or questions are medically related to the previously obtained medical information.

So the idea here is to obtain clarification or maybe a medical history that is relevant to the individual's ability to safely perform job functions.

So employers shouldn't use this as an opportunity to seek unrelated to medical information remember you want to stay focused on what you have, try not to get too detailed. And just stick to the information that's been provided and maybe seeking some clarification on that information.

So we have learned a lot today about disability inclusion and ADA compliance during the hiring process. I do want to round out some of the training with some practical tips that we can offer before we head into some questions that have been sent through.

You can make knowing what to do and not to do relatively uncomplicated if you keep some of these ideas in mind.

So you don't want to focus on an applicant's disability. Remember this is really about figuring out is the individual qualified and able to perform the job duties. Do they meet the skills that are necessary that -- do they have the education, do they have the experience you think they need in order to be qualified without staying too focused on disability.

You don't want to ask unnecessary medical questions or require unnecessary medical exams or documentation.

I will say that I encourage employers not to ask for a lot of medical information unless it's absolutely needed. I think a lot of times when you're in that post-offer stage employers tend to look for that information. But I would say you want to be prepared to -- how are you going to deal with that information once you receive it? What will that mean as far as figuring out if that person is qualified and what you're going to do next.

So use some caution there.

Of course you don't want to base all of your hiring decisions on myths, fears or stereotypes about people with disabilities. Look at people as individuals. Don't get hung up on the myths or the fears or the concerns that you have based on things that you have heard or experiences that you've had. Look at the individual.

You do want to focus on an applicant's qualifications. Look at that paper, look at that resume look at the information they are offering you sit down talk with them get to know them a little bit. And figure out whether they have what it takes to be the right candidate for you.

You also want to -- you also want to get the information needed to determine whether the applicant is qualified and able to perform the essential functions of the job I always say that it is very important for the employer to be very clear about what the requirements are for the position so exactly what are the essential functions? What are the expectations that you're putting out there? And communicate that to the individual I think that can be very helpful to the individual, as well because I think too many people go into a job not really knowing what's going to be expected of them or what they can expect for that organization's performance requirements or what the job really entails.

So part of that interview process, that hiring process, is about both parties gathering as much information as possible about the requirements of the job. And that individual will then have a lot more information to work with in deciding whether or not they are going to need reasonable accommodation.

Also you do want to base hiring decisions on the skills, qualifications and experience, I can't say it enough. Let's really just take a look at whether that person is the right fit for the job. Do they have what it takes to be employed by your organization. So stay focused on those sorts of things.

We'll leave you today with some resources that you can access through the askJAN.org Web site any time. So we would encourage you to visit the A to Z of disabilities and accommodations section and search by topic. Our topic section keeps growing as do all of the A to Z sections so keep looking for updated I information in that. So you can find information on disability disclosure, on the Interactive Process, on medical -- asking medical exams and inquiries, sorry asking inquiries and providing exams on the application process, making online applications accessible. We also offer a number of sample forms that can be customized to meet your needs. There's information related to testing accommodations.

Also within our publications and articles section we have information on accommodation scenarios for the interviewing process and job application and interview stage DOS and don'ts, as well. So as I mentioned, these are just some examples of the topics that we have to -- topics we have to offer within each of the topic pages you'll find other resource available to you so take advantage of that Web site. Finally these other resources from the EEOC and ODEP will also be useful EEOC offers enforcement guidance on pre-employment disability-related questions and medical examinations so if you're really needing a primer on what can and can't be asked during the pre and post employment stage this document really lays out the guidelines for what you can and cannot ask for the most part now if you get hung up on some of the information in that documentation JAN consultants can walk you through it and ask for guidance how to apply it so certainly ask for information on that. I mentioned the job applicants and the ADA-Fact Sheet earlier again some useful resources related to disclosure and what kinds of questions can be asked it's geared toward applicants but I find it can be a useful tool for employers, as well and then of course ODEP offers some tips for ensuring access for applicants with disabilities that can be helpful, as well so check out that publication, too.

So now I think we do have actually some time for some questions. So let's take a look at what we have here.

Beth, what do you have for me?

>> BETH LOY: Okay. Let's see here.

Here is a good one, what if there's a difference in opinion between the employer and employee on what is reasonable for an accommodation? You talked a lot about communication.

>> TRACIE DeFREITAS: That's a good question. And you know that actually has been coming up more lately.

Because I think -- so there are two things there that I need to mention. There's a difference between what's reasonable and what's effective. So ultimately an employer decides what's considered a reasonable accommodation.

A reasonable accommodation is one that is plausible, is possible. So think of it as something that the employer is able to provide. An effective accommodation is the duty. So an employer has to provide an accommodation that is reasonable but also effective for the purpose. Meaning that it should enable that person to participate in the hiring process or to perform job duties in an effective way.

Now, keep in mind that the employer has the right to choose among effective accommodation solutions. So whereas there might be two possible what might be reasonable accommodations and that might also be effective accommodations, the employer might choose one over the other if it's something that's less burdensome or easier to provide. As long as it does let's say address the particular limitations and difficulty in accessing the hiring process or performing the job duties that's something the employer can choose.

So I think it's important to have an open dialogue with the individual. So if somebody says that they feel as though a certain accommodation is one that they want so let's say they have a preference, find out a little bit more about why. Is there something specifically about that particular accommodation? So for example providing an interpreter for an interview, an individual might have a preference of a particular agency. So you might want to find out why. Maybe they have had a good experience with the agency in the past and they found them to be very effective communicators so it's really just a process of working with each other to negotiate and decide on what's going to work. Because remember ultimately it's about ensuring access to that hiring process or ensuring access to perform essential job duties so the goal should be about making that successful to the extent that it's possible.

>> BETH LOY: Okay, Tracie, here is a question about timing. Getting medical information. Can an employer ask an applicant to provide medical substantiation for the interview process?

>> TRACIE DeFREITAS: Yes so if an individual is going to need -- this kind of comes back to that informed hiring process again. If an individual is informed about how to request accommodations they can take the steps to do that, that then enables the employer some time to ask for that justification that verification of disability before you meet the candidate. Now, the employer is entitled to some time to determine whether or not that person is entitled to receive accommodations. There are a couple of ways to go about that from a practical standpoint I think employers sometimes maybe need to request whether that documentation is absolutely necessary.

Especially if there's a time crunch between when the accommodation has been requested and the interview needs to take place for example so a lot of times I would say from a practical standpoint do you really need it in order to provide the change that they are requesting.

The ultimate thing is you are entitled to it if the disability and need for accommodation aren't obvious but I think sometimes we get hung up on the compliance piece of things. When really it's about the practical side of things.

So really think about whether it's necessary. But the bottom line is that, yes, the employer could say you have such-and-such period of time to provide this verification that you have this disability and need accommodation before we'll proceed with the interview so there is some -- the ability to do that there is no standard timeframe under the ADA so when an employer requests documentation of disability, there's not a standard timeframe that is required under the law so it's really up to the employer's discretion. Again my practical guidance would be that if for an individual if you know you need accommodation ask for it as soon as possible. Give the employer the time to get that in place for you. As an employer, make sure that you're informing your candidates well in advance about how to go about requesting accommodation as well as providing them a timeframe for when things are going to take place. So if you have been selected to interview, how quickly will that interview happen or how quickly will the testing happen so again it comes back to that communication.

>> BETH LOY: Okay. Next question, is reading the employment test question to a job applicant an appropriate accommodation? This could come into play when somebody asks for an accommodation but there isn't enough time to get it implemented.

>> TRACIE DeFREITAS: That's a good point yes it could be an accommodation now remember there's no comprehensive list of accommodations there's no list of accommodations that are reasonable it's really something that's individualized it's case by case.

Now, I think in that situation to Beth's point it could be a situation where let's say you have an individual with a vision impairment who showed up to an interview you might normally offer a sheet of paper with questions well now you are on the fly trying to determine how to accommodate one way to accommodate that person so they can access the information is to read the job applicant's -- the test questions in that situation.

So that's sort of an on the fly what do we do now kind of scenario but it could also be a situation that makes sense when maybe you can't provide a certain type of accommodation like technology.

So -- that might not be an on the fly situation perhaps you just weren't able to get what was needed in order to accommodate in one way but you can still provide an effective accommodation in a different way like reading the test questions.

>> BETH LOY: Tracie let's take one more here.

>> TRACIE DeFREITAS: Okay.

>> BETH LOY: When is it advised for an individual to disclose their disability during the hiring process? And why?

>> TRACIE DeFREITAS: That's an excellent question.

And again, it comes back to remember as I said before disability disclosure is something that's very personal. There's no sort of end-all be-all to that. To answer that question. Because what's right for one person isn't going to be right for somebody else. But what I can say is that it's important to disclose their disability during the hiring process if they feel it is necessary to determine or to communicate whether they are qualified and might need accommodations. So if you know that let's say it's a post-offer scenario and now you have a better understanding as to what's going to be required on the job you have a good understanding of the essential duties. And you also know that you have an impairment that could limit your ability to perform those duties. But you also know that an accommodation might negate that so that post employment period might be a good time to address that. You have already secured the job. But now you want to make sure that when you do start the job, that you can have those accommodations in place in order to get the job done and to start off successfully.

So bottom line is it comes down to an individual's circumstances. It's always good to disclose and request accommodation when it becomes known to the individual that an accommodation will be needed.

>> BETH LOY: Great info, Tracie and that is all of the time we have thank you Tracie for all of your work.

>> TRACIE DeFREITAS: Thank you.

>> BETH LOY: If you need additional information or you want to discuss an accommodation or ADA issue, please feel free to contact us. We thank you for attending and thank you also to Alternative Communication Services for providing the net captioning we do hope the program was useful as mentioned earlier an evaluation form will automatically pop up on your screen in another window as soon as we're finished that is if you don't have your popups blocked we do appreciate your feedback so we hope you'll take a minute to complete the form this concludes today's webcast.

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