# JAN Monthly Webcast Series – February 2021. Requesting and Negotiating Reasonable Accommodations

## [Introduction]

**LINDA BATISTE:**

Hello, everyone, and welcome to the Job Accommodation Network's monthly webcast series. Today's webcast is called Requesting and Negotiating Reasonable Accommodations. I'm Linda Batiste, and I'll be one of your speakers, along with several other JAN representatives. I'm going to let them introduce themselves, starting with Melanie.

**MELANIE WHETZEL:**

Hi, this is Melanie Whetzel. I am the lead consultant on the cognitive neurological team. I was a special educator before I came here to JAN, and I've been at JAN a little over 13 years. So I feel like I have a really good experience talking to employees, employers, doctors, parents, really whoever calls, to offer a wide perspective to answer your questions and to give what we hope will be really good information for you today.

**LINDA BATISTE:**

Alexis?

**ALEXIS POPA:**

Hi, my name's Alexis Popa. I'm also a consultant on the cognitive neurological team. I started with JAN a little over a year ago as an employment specialist and then quickly moved up to a consultant role. Before that I worked at JAN as a graduate assistant. So I've been with JAN for the past two or three years, and I've gotten to learn from working with, like Melanie stated, a range of employees, healthcare providers, and employers. care providers, and employers.

**LINDA BATISTE:**

Anna?

**ANNA SAAB:**

Hello, my name is Anna Saab. I've been with JAN for almost six months now. I primarily help individuals with a variety of different conditions and disabilities to understand employee rights under the ADA. I also help provide accommodation strategies and solutions, And I pretty much just help others sort of become their own advocate so they can get the accommodations they need to help enable them to perform their jobs.

**LINDA BATISTE:**

Alright, great. And again, I'm Linda Batiste. I've been with JAN almost 30 years as a consultant and now as a principal consultant. I also talk to both sides of the accommodation equation, employers and employees with disabilities. And, like Melanie said, I really do feel talking to both sides helps us come up with the practical ideas and insight on how to get things moving.

Our plan for today is to share some of those practical ideas that we have come up with over the years, specifically for employees with disabilities who encounter issues when they're asking for and negotiating reasonable accommodations with their employers. We're going to frame our discussion using JAN's sample interactive process, which Melanie's going to share with you in just a few minutes. For each step of the process, we're going to talk about the general Americans with Disabilities Act rules that apply, share several of the most common questions we get from employees with disabilities, and provide practical ideas and free resources to help answer the questions and resolve any issues that are getting in the way of successful accommodation outcomes. So that's our plan.

Before we jump into the sample interactive process though, I want to start with a quick overview of what reasonable accommodation is under the ADA, just want to make sure that we're all on the same page. The general definition of reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits or privileges of employment equal to those enjoyed by employees without disabilities. And if you listen to that definition, you'll notice that it's very broad.

If you think about the variety of jobs, workplaces, and types of disabilities and limitations that can exist in any given workplace, there's really no way that a law is going to list every specific thing that might be a successful accommodation in the workplace. But there are some categories of things that are typically considered reasonable accommodations that employers need to at least consider. And those include providing or modifying equipment or devices; job restructuring -- and that means changing how or when you do a job or sometimes removing marginal functions that you're having trouble doing -- part time or modified work schedules; adjusting or modifying examinations, training materials, or policies such as attendance policies; providing readers and interpreters; making the workplace accessible to and usable by people with disabilities; and reassignment to a vacant position. We're going to talk more about some of these throughout our presentation.

There are also some things that are not considered reasonable accommodation. Reasonable accommodation does not include removing essential functions. I mentioned on the last slide job restructuring, which might include removing marginal functions. It does not include removing the core essential job duties that a person has. Reasonable accommodation does not include lowering production standards, so if an employer says, for example, that every hour, every employee in this job category has to make five widgets, the employer can hold employees with disabilities to that same standard. Reasonable accommodation does not include creating new jobs or bumping your co-workers out of their jobs, it does not include providing personal need items like hearing aids and wheelchairs that are needed on and off the job, and it does not include providing any accommodation, even the ones that I listed on the previous slide, if they create an undue hardship for the employer.

So there are things that are considered reasonable accommodations, and there are these things that are not considered reasonable accommodations. One thing I want to mention is that employers are allowed to do these things that are not considered reasonable accommodations, they're just not required to do them. So when you're negotiating accommodations, it's very helpful to know what an employer might have to do versus what they just might consider doing, but really don't have to do. It could affect how you negotiate with your employer throughout the accommodation process.

And with that, I'm going to turn it over to Melanie.

## [Step 1: Recognizing an Accommodation Request]

**MELANIE WHETZEL:**

OK. Alright, thank you. So the Americans with Disabilities Act, or the ADA -- you're going to hear us saying the ADA throughout this presentation -- requires that covered employers provide effective, reasonable accommodations for people with disabilities, like Linda was saying, and to help determine what those effective accommodations are, the Equal Employment Opportunity Commission or the EEOC, which is the enforcing agency of the ADA, recommends that employers use an interactive process. And that simply means that employers and employees with disabilities who request accommodations should work together to come up with effective accommodation solutions.

And according to the EEOC, the interactive process is not always required under the ADA. In many instances, appropriate accommodations are obvious, and it's not necessary to go through a step-by-step process. For example, if an employee uses a wheelchair and asks for his desk to be elevated so that the wheelchair arms can sit under the desk, and the employer complies with that, then an appropriate accommodation has been requested, identified, and provided without the use of that formal process.

However, when an accommodation is not obvious, an appropriate accommodation is best determined through the flexible interactive process. And although there's no official process with such steps, JAN offers this sample ADA interactive process as a good illustration.

So the first step there is making a request. The interactive process starts with an accommodation request from an employee with a disability. It's important for employers to be able to recognize what a request is. According to the EEOC, you don't have to ask for an accommodation in writing. It can be verbal, it can be in writing, and you can use plain English. You don't have to mention the ADA, or you don't have to use the phrase "reasonable accommodation." You must let your employer know, though, that an adjustment or change is needed at work for a reason related to a medical condition.

So when an employee indicates that she's having a problem and the problem is related to a medical condition, the employer should consider whether the employee's making a request for accommodations under the ADA. It can be as easy as the employee telling her employer, "I'm having difficulty getting to work on time because of a medical condition. Can I talk to you about that?" If an employee were to say, "Hey, I just can't seem to get to work on time," and leaves it at that, then the employer would have no idea what the cause is and may not automatically link that statement to a medical or disability need. So if the employer is not sure whether the employee has requested an accommodation, the employer should ask for clarification of what is being requested and why.

OK, so now our first question here, and this one is for Anna. What is the best way to disclose a disability and request an accommodation? For example, here we have an employee who has MS (multiple sclerosis) and is having flareups and trouble doing her job. She has never told her employer about her MS and is worried that if she does, she might be fired.

Anna, would you like to tell us what you would suggest?

**ANNA SAAB:**

Sure. Well, what I want to first stress is that disclosing is a very personal choice, so it's certainly up to you how you'd like to disclose, but I do suggest explaining the limitations you're experiencing and how you feel it's impacting your work.

I also suggest requesting accommodations in a documented way through your employer. It can also be helpful to mention what accommodations you think would be helpful, if you have accommodations in mind. It's not necessarily required to request certain accommodations upfront, but if you do have some in mind or you're thinking about some sort of modification that you think would be helpful, it can be beneficial in terms of moving along that interactive process if you mention these up front.

Thanks, Melanie.

**MELANIE WHETZEL:**

Sure. So here we have our next question, and this one's for Alexis. Do I have to talk to my direct supervisor first? Our example here involves an employee with a mental health impairment who does not get along with her supervisor. The supervisor has said negative things about other employees with disabilities. So the employee's concerned about asking the supervisor for an accommodation but is also concerned about going over the supervisor's head.

Alexis, what might you suggest?

**ALEXIS POPA:**

Sure. So under the ADA, you can talk to anyone in management about your accommodation, but I like to remind employees that many employers have their own in-house procedures that detail how they handle the accommodation requests. So what I would suggest first is that the employee check either their employee handbook or, if they have a company intranet, check it for this information and follow company procedures if you're comfortable doing so. In many cases, HR is the designated office to handle accommodation requests.

If the supervisor handles accommodations, something to note is that, in workplace situations where there might already be issues of strife or disagreement, someone with a mental health impairment might feel extremely stressed about meeting with their supervisor. So a possible accommodation for this could be bringing a support person to a meeting. That may help ease any apprehension or tension and allow for a more productive, active meeting. Support persons can include but aren't limited to co-workers, a job coach, or close contacts outside of the place of employment.

And lastly, this is something I suggest with employees that might have that initial nervousness or apprehension about moving forward with requesting an accommodation, especially in the circumstance with the supervisor that they might not get along with or agree with. I at times recommend making a written request and addressing it to the supervisor but copying the HR department. So that way you've covered both ends at once and that they are aware that you've informed the direct supervisor as well.

Alright, back to you, Melanie.

**MELANIE WHETZEL:**

OK, thank you, Alexis.

Our third question here is for Anna, and it asks: How long does an employer need to respond to an accommodation request? And our example here, an employee on medical leave asked to telework as an accommodation over a month ago. The employer said they'd get to it as soon as they could, but they're very busy. In the meantime, the employee is using up leave.

Anna, what might you suggest in this situation?

**ANNA SAAB:**

Well, the ADA requires an employer to process a request as quickly as possible and without unnecessary delays, But it doesn't outline a specific period of time within which an employer needs to respond to that request. If you're concerned about the progress, it's possible that you could write your employer an email or even write up a memo to send and ask about the progress of your request. And sometimes you might even ask if there's anything that you can do to help expedite the process. Thank you.

**MELANIE WHETZEL:**

OK. Alright, thank you, Anna.

Here we have some related resources: we have disability disclosure, requesting and negotiating a reasonable accommodation, how to request an accommodation, and there's an accommodation form letter. We have an employee's practical guide to requesting and negotiating reasonable accommodations under the ADA, and then we have an employee accommodation inquiry letter.

Now, I'm going to hand it over to Linda.

## [Step 2: Gathering Information]

**LINDA BATISTE:**

Thanks, Melanie.

Our next step in the interactive process -- at least in JAN's interactive process -- is providing information. This is a really important step in which your employer can ask you questions with the goal of understanding your situation. If you are being asked appropriate questions, you really need to cooperate so you can make sure that your employer understands what you're asking for and why you're asking for it.

On this slide, we'll see the type of information your employer is allowed to ask for and what information might be useful. So first and foremost, employers need to know that you have a disability and why an accommodation is being requested. If you don't let them know that it's a medical issue that you're dealing with, your employer may not understand that you're asking for an accommodation under the ADA. So you want to make sure you give enough information to prompt the employer to start the ADA interactive process.

When you're providing information to your employer, you want to focus on functional limitations. And that just means what you're having trouble doing at work and what limitations are creating that problem. Be aware that employers can require medical documentation when your disability and your need for accommodation are not obvious or already documented. Melanie mentioned earlier an example of someone in a wheelchair asking for something simple related to the height of the desk. That's pretty obvious. There's no need for medical information to document that. The employer can look and see what you need and what you're asking for.

A lot of issues are not so obvious, and the employer has that right to ask you for documentation. Employers can require that the documentation comes from an appropriate health care provider. And that just means if you're asking for an accommodation, let's say for example related to a mental health impairment, it's probably not going to be appropriate to turn in something from a chiropractor, or at least your employer would have a valid reason to ask you, "Why is the chiropractor providing this documentation?"

So let's look at one of the frequent questions we get related to providing medical documentation, and I'm giving this one to you, Alexis, so get ready. So the question is, what do you do if you think your employer is asking for too much medical information? We talked about some of the things that an employer is allowed to ask for. What if you get a request from an employer that seems to go way over that? And here's your example. An employee with PTSD asked to turn his desk around so he doesn't have his back to people. His employer asked for medical documentation, including his treatment history. Now to me that doesn't seem like it might fall under the scope of what's allowed.

If that's the case, what do you suggest this individual would do, Alexis?

**ALEXIS POPA:**

Sure, so something to remember is, of course, medical documentation isn't required under the ADA, but that employers do have the right to request and require disability-related information when asked to provide accommodations for an employee with a disability whose disability whose need for that accommodation aren't known or obvious, like we previously stated. So an employer may require that an employee provide documentation that is sufficient to substantiate that they have an ADA disability and needs the reasonable accommodation requested but cannot, like we discussed, ask for unrelated documentation.

With that being said, the employer in this situation would most likely not need to know the past treatment history unless there's some reason it's relevant to the accommodation request. So for this specific situation, the employee could look towards turning in documentation that they feel is sufficient and also asking in writing why the employer needs the detailed treatment plan, so that way that there is a paper trail record that the request wasn't just flat-out ignored.

All right, back to you, Linda.

**LINDA BATISTE:**

Great. Thanks, Alexis.

I love the idea of putting things in writing. It's something that we frequently suggest. You're not required to put stuff in writing when you communicate during the interactive process, but I agree 100% that putting things in writing gets you that paper trail and then you have evidence of what you said to the employer. And I don't know if this is true for most people, but I feel like I can express myself better when I'm by myself, writing something out, than if I'm sitting across the table from three or four representatives of the employer. So I really think that's great advice, especially for this kind of situation.

So my next question is -- and Melanie, I'm going to give this one to you -- "Do I have to have my doctor fill out specific forms?" And the example we have is an employee who had her doctor write an accommodation support letter, and she turned that in with her original accommodation request. Now her employer turns around and wants the doctor to fill out the employer's form. But the doctor doesn't want to do that, because the doctor has already completed the support letter.

So Melanie, what might you suggest in this kind of situation?

**MELANIE WHETZEL:**

OK, well, I would recommend that the employee speak with the employer or put it in writing. As Linda said, you know, it is important to put those requests and communications in writing. When you have provided the employer with the documentation, you can ask if all of the required information has been provided, and point out that it's all there, in the letter. It's just not on the form. Is there anything that they need from the doctor that hasn't already been provided?

And this can be a bit tricky as the employers can have their own forms in order to process the reasonable accommodations, but they shouldn't rely solely on those forms if the employee has provided sufficient documentation. Can the information be provided in a letter that then is transferred to the form? They could attach the doctor's letter to the form to show that the doctor authorized those accommodations.

This is especially important considering that the ADA does not require particular forms to even be used. We often say that the employer can require employees to jump through hoops in order to get the accommodations, but that really may not be the best way to do it and just can really prolong things unnecessarily. But if the employer insists on having the doctor fill out the forms, we would suggest that the employee request temporary accommodations until the official paperwork can be completed. The employer may have enough information in the letter to provide the needed accommodations.

We would also suggest the employee talk to their doctor and ask if there is any way to help. Can you fill out the form together, so it won't take as long or to see what the issue is and why the doctor is refusing to fill it out. Because if the employer is insisting that the employee provide the form, the employee might want to try to go along with that as much as possible in order to move the process along.

**LINDA BATISTE:**

Great, thanks, Melanie.

Our last question for step 2 of the interactive process is about how current medical documentation needs to be. And our example is an employee with a learning disability tried to provide proof of disability using documentation that dated back to high school. The employer is questioning whether this documentation is too old and asked for updated medical documentation.

So Alexis, what might you suggest for this one?

**ALEXIS POPA:**

Sure. Certain medical conditions can change, and limitations may fluctuate over time. But in this case, current or relatively recent documentation is recommended when evaluating whether an employee has a disability and what accommodations might be effective. However, because learning and intellectual disabilities are lifelong and static, no updated documentation should be needed if the individual was tested or re-evaluated at or above the age of 18.

Sometimes the accommodations that worked in the educational system setting might be helpful as well in the workplace, but sometimes they don't. New documentation might be justified if an employer needs new information to help explore accommodations. So depending on the specific needs of the individual, as well as the demands of the job, each case should be looked at and decisions made based on each employee's impairment and limitations. But if you think that old documentation is sufficient, you might begin with putting something in writing explaining that your limitations haven't changed and asking the employer to consider the old documentation.

But if the employer still insists, you might consider getting new documentation just to speed up this process. If new documentation is needed, you might be able to get it at a lower cost as well by contacting a college or university that's nearby. At times either a doctor or a psych department can do testing on a sliding scale, which is much cheaper. Or you might contact your state's vocational rehab agency to see if they can help.

All right. Back to you, Linda.

**LINDA BATISTE:**

Thanks, Alexis.

I like what you said that even if an employer is asking for something that really they shouldn't be asking for, in some cases it might be easier to just go ahead and comply with it, because that's faster, and you don't want to get in a big thing with the employer. And that's a choice employees get to make.

Okay. So here are some resources for step two of the interactive process. We have a document that talks about what sufficient means in relationship to providing sufficient medical documentation. We have information about documenting disabilities such as learning disabilities like in the example that Alexis just covered. We have practical guidance for medical professionals to help write support letters. Sometimes doctors have no clue what would be useful to provide to support your accommodation request letter. We have a nice document that helps them understand what would be the most useful. And we also have a sample medical inquiry form in response to an accommodation request. An employer generally would be the one using this one, but there's nothing wrong with an employee using this to give to a doctor to fill out if the employer doesn't have a specific form. So either one of these are useful for you to provide to your health care provider if needed.

And with that, I'm going to turn it back over to Melanie.

## [Step 3: Exploring Accommodations]

**MELANIE WHETZEL:**

OK, so here we have step 3, exploring accommodations, and once the employer has identified the employee's limitations that are causing the problem and has identified what that problem is, then the employer's ready to explore accommodation options. Employers should be open to new ideas and new ways of doing things. This is the time to brainstorm and consider ideas that might work.

One thing to keep in mind is that employers have a right to explore alternative accommodations other than the ones the employee has requested. The employee who requested the accommodation is a good place to start, so the employer should always invite the employee to suggest accommodations. And employees have a duty to participate in exploring accommodations with the employer and should be ready to discuss those ideas.

We often hear from employees who say, "My doctor suggested this, and it's the only thing that's going to work," and they then they dig in their heels. And that really may not be the best solution. It's best to be as cooperative as possible and work along with your employer to make a good faith effort to explore those different ideas. If more accommodation ideas are needed, the employer can ask the employee's medical provider for ideas. In some cases, medical professionals are able to suggest effective accommodations, or they may be able to say whether the ideas that the employers are thinking about will help overcome the employee's limitations.

The employer should consult with outside resources such as JAN, vocational rehabilitation, rehabilitation engineers and disability-related organizations as well. Just a caution, remember when consulting with outside resources, employers must comply with the confidentiality rules of the ADA.

So here we get to our next question, and it's for Anna, and it asks, "Does my doctor have to recommend accommodations?" Our example here is an employee with high blood pressure who is experiencing flareups because of work-related stress. He provides documentation of disability and limitations and tells the employer what he thinks will help. But his employer says his doctor has to say what accommodations he needs.

Anna, what might you suggest here?

**ANNA SAAB:**

I think it's important to remember that the doctor's role is to provide documentation to support a request, and, while it might be useful to have a doctor provide ideas if they have them, it's not required that the doctor provides ideas. In this situation you might consider having your doctor support, in writing, what you're requesting or suggesting And if the employer is really interested, and it's not too difficult, you might consider contacting your doctor to see if they would be willing to make those recommendations. If not, like I said, maybe you get some sort of support in writing from your provider for the accommodation ideas that you believe you need.

Back to you, Melanie.

**MELANIE WHETZEL:**

OK, great.

So our next question here is for Anna as well, and it asks, "What if I don't have any accommodation ideas?" Our example here involves an employee who's blind, works in a call center, and cannot access her employer's new customized database. Her employer says she will have to provide accommodation ideas before they can move forward, but she doesn't know how to fix the problem.

Anna, what might you suggest here?

**ANNA SAAB:**

Well in this situation, it can be helpful to contact your state's AT or assistive technology project. This is something that they specialize in. You might even be able to try technology before your employer decides that they will provide that for you.

This is also something that JAN can help with. We have a lot of accommodation strategies and solutions that we can suggest, and we can even work with you to make suggestions. We have a database with vendor lists by accommodation on our website that can be helpful if you want to browse on your own. In this situation, you could even call organizations for the blind. If you think that your employer is the one that really needs to do this, or your employer believes that they really need to talk to an expert in this situation, they're also welcome to call JAN, and we can work with them to provide some ideas.

Back to you, Melanie.

**MELANIE WHETZEL:**

OK. Thanks Anna.

Our third question goes to Alexis. And the question is what if my employer says that a job duty is essential, but I can't perform it? In this example, a clerical worker is requested to rotate -- is required, I'm sorry, to rotate through phone duty, but answering the phone is stressful and causes her anxiety disorder to flare up. She asks to be exempt from answering phones, but her employer says that it's an essential job duty.

What might you suggest here, Alexis?

**ALEXIS POPA:**

Sure. So, job restructuring, which can be a form of reasonable accommodation, involves removing job functions that are typically marginal functions or changing when or how a job is done. A key area to note is that an employer never has to reallocate essential job functions as a reasonable accommodation, but they can do so if they wish. So, in this situation, if doing phone duty is an essential function, and the employer does not want to remove it, the employer could look towards turning the conversation back to the employee and asking what they will need in order to complete this essential function effectively.

From an employer perspective, we would advise trying to find out what is the most difficult for the employee, as they take those phone calls, to see what accommodations could be provided to assist. Some general ideas of accommodations could include, but aren't limited to, potentially a job coach or support person, a written script to follow along with if they feel that they get stopped up in the middle of talking with someone to keep the conversation flowing, as well as modified breaks for after phone calls. The job coach and the modified breaks can go hand in hand when it involves stress or anxiety. But of course this all depends on the specific areas of difficulty for the employee and what they're experiencing.

And ultimately, as a last resort, if accommodations have been attempted and essential functions still cannot be performed, then reassignment could also be looked upon as an option as well,

Back to you, Melanie.

**MELANIE WHETZEL:**

Alright, thank you for that, Alexis.

Here we have some related resources. The disability A to Z page on our website where you can find all kinds of info. This is probably the most helpful thing you'll find on our website. You can find information by disability, by limitation, by work-related function, by topic, and by accommodation. And then we have a new article on accommodations for difficulties with assisting others on the telephone due to stress, anxiety, and interpersonal communications. We get a lot of questions on our team from people who are unable to use the telephone for these reasons. So that can be helpful.

And now I'm going to turn this back over to Linda.

## [Step 4: Choosing an Accommodation]

**LINDA BATISTE:**

Great, thanks Melanie.

We're up to step four of JAN's sample interactive process, and step four is choosing an accommodation. So we've gone through steps one, two, and three, the employer and the employee have worked together and come up with some options for accommodations, and now it's time to pick which accommodation will be implemented.

In general, the employer gets to choose which accommodation is going to be implemented. The main thing here is that, whatever accommodation the employer chooses, it has to be an effective option. So you just need to be aware that the employer doesn't have to provide the specific accommodation that you asked for. If there are other options that work, the employer can choose one of them instead. However, employers are encouraged when possible to choose your accommodation, the one that you prefer. But there are situations where other accommodations work better for the employer. And you just need to be aware that it's the employer who decides.

Some of the questions we get regarding this step include this question: When choosing an accommodation, does my employer have to do what my doctor says? I'm going to be sending this one to you, Anna. Here's the example: An employee with a back condition turned in a doctor's note that said he needed a stand-up workstation. The employer offered him rest breaks instead.

So Anna, what might you suggest for this kind of situation?

**ANNA SAAB:**

Well, as you said before, employers have the right to choose among effective options. So if the alternative that the employer has chosen is effective, they can certainly choose that. I encourage individuals to have an open mind about the accommodations that have been chosen. I know it can be frustrating whenever you've requested a certain accommodation and it isn't approved, but it's possible that the alternative will be just as effective.

If you're concerned about the effectiveness of it, maybe you could ask your employer to test it out on a trial or a temporary basis before it's decided on as a longer-term solution. If the accommodation is not effective, then the interactive process should begin again to find other accommodations that are both effective for you and reasonable for your [employer].

Back to you, Linda.

**LINDA BATISTE:**

Great. Thanks, Anna.

Our next example follows up on the last thing that you just said. What should I do if my employer offered an ineffective accommodation? Anna, you mentioned that we should go back to the interactive process, but one of the questions we get is how does an employee get to that step? And here's an example. We have an employee with diabetes who asked to telework during the pandemic. Her employer said that safety protocols such as social distancing, masks, and extra cleaning were in place so the employee doesn't need to telework. But the employee doesn't think that this is going to be effective. So what might you suggest?

And I'm actually going to answer this one myself. This is a question that we have been getting a lot during the pandemic, especially specific to returning to work when you prefer to telework. The number one thing you need to do in a situation like this is immediately let your employer know that the accommodation being offered is not going to be effective. And like Anna mentioned, if the accommodation being offered is effective, that's the end of the story. The employer does not have to go any further. If the employer thinks that they've provided an effective option, they don't have to do anything else. So, you need to let the employer know that what has been offered is not effective. And I suggest, again, doing that in writing. I think it's just always good to establish that paper trail. Let your employer know that accommodation is not effective and explain why. Don't just say, "This isn't going to work," and leave it at that. Explain why. Your employer needs to understand the situation.

You could also mention that your original idea is still on the table and try to sell it, explain how it's going to be effective. And very importantly to the employer, explain how you're going to be able to do your job with the accommodation that you prefer. That's the main thing with telework, you still need to be able to do your job. The employer may need to understand how you're going to be able to do that. You may also need to offer to explore other ideas. Maybe telework isn't going to be an effective option the employer can offer. Maybe the safety protocols the employer has in place aren't effective, but maybe there are other things the employer could do. Your goal here is to get the employer back into the interactive process. You show that you're really wanting an accommodation and you're willing to work with the employer. Hopefully that will get the employer to go back to step one and start over with you and try to get something that works for both of you.

All right. The next question is for Alexis, which is What should I do if my employer denies my accommodation? This is another thing that comes up a lot in our work at JAN. And our specific example is an employee with a sleep disorder needs to take 30-minute naps during lunch break and asked her employer if she could take those naps in her car. Simple solution, I'm just going to go out to the car at lunch, and I'm going to take a nap. However, her employer denied the request, because the employer felt there would be safety concerns.

Alexis, what do you suggest to this employee?

**ALEXIS POPA:**

Sure. So if you don't think your employer had a valid reason to deny your request, or if the employer won't tell you why the request was denied, then you could look towards appealing the decision, by going either up their chain of command to HR, looking at filing grievances, or lastly filing a complaint if you feel that all good faith efforts have been exhausted. But whether the employer had a valid reason or not, you could try suggesting other options and, like Linda and Anna stated, going back into that interactive process and exploring alternatives. The employer is supposed to continue the interactive process and explore other options if they can't provide the accommodation that you had asked for, but sometimes they don't do that, so you just need to find a way to reopen that accommodation process if it isn't, like Linda had said, effective.

Alternative options to this situation could be looking at the employer providing a room that's secluded, where the employee could have that rest break and not pose a safety threat of sleeping in their vehicle, requesting modified rest breaks throughout the day to step away from their workspace. That could be helpful as well to really break up that time and let the employee regain that focus and step away from their work. Another idea could be working from home, where the employee is capable of resting in their own space as well.

Back to you, Linda.

**LINDA BATISTE:**

Great. Thank you. Very good advice, Alexis.

Here are some resources for this step. The first one is leave as an ineffective accommodation. This is a publication that Melanie wrote about a very frequent question we get that we didn't include in our presentation, just for time's sake. Sometimes when you ask for an accommodation, one of the knee-jerk reactions for an employer is to kick you out on leave. Leave is not considered to be as effective as other accommodations, so when an employer is choosing among effective accommodations and they pick leave instead of what you wanted, take a look at this publication. It gives you some great ideas about what you can do about that.

The next resource is a new article about the question we included about what to do if an employer offers an ineffective accommodation. I put these in red because they're brand-new, hot off the press, but you can find them on our website. We have an article and a sample letter.

And coming in the near future is an article that Anna co-wrote about what to do if your accommodation request is denied. We're hoping that will be approved soon, so check our website, which is AskJAN.org, for these two articles.

And with that, back to Melanie again.

## [Step 5: Implementing an Accommodation]

**MELANIE WHETZEL:**

OK. Thank you.

Now we're up to step five, implementing the accommodation. So once an accommodation has been determined, it needs to be implemented as quickly as possible. This step is very important to the success of an accommodation. The employer doesn't want to be viewed as holding up an accommodation or grandstanding or anything like that. So, employees must cooperate in the process, regardless of whether the accommodation being provided is the preferred one or not. It is not a good move for employees to dig their heels in for what they want, but rather cooperate.

As an employee, you can certainly talk to your employer again about how you think this accommodation is not going to be effective, but if they're ready to implement it, we'd say, give it a chance, then be prepared to document how it's not helpful if it truly isn't. If equipment is involved, the employer needs to make sure that it's properly installed and that the employee is trained. If it involves a schedule change, the supervisor needs to be notified. You know, if someone's usual schedule is eight to five, and they're going to start coming in at nine, the supervisor needs to be aware of that, that the employee has an accommodation and is not late every day. And then if the accommodation involves an outside service, someone needs to make sure that the service is provided promptly and effectively.

So let's move into our questions here.

Our first one is for Anna, and it asks, "Does an employer have to grant an accommodation permanently?" Our example here is an employee with bipolar disorder who had problems sleeping and asked for a flexible start time. His employer granted the request but indicated that it would be reviewed in three months. The employee is concerned, because the need for the accommodation is long-term.

Anna, what might you suggest in this situation?

**ANNA SAAB:**

Well there are lots of different elements on accommodation that might need to be evaluated. An employer can grant a temporary accommodation to check out the effectiveness or to see if it can be provided without undue hardship. So, it's possible that that's what's happening here. I think it's also important to remember that employers can check in on or review an accommodation at any time to check on that effectiveness, and to see if it's still working. But I also want stress that the duty to provide accommodation is an ongoing duty, even if the employer only okays an accommodation temporarily. So, if they're going to be checking on the accommodation in several months, it doesn't mean that you're no longer going to have access to any accommodations. It just means that maybe they're going to check the effectiveness or see if it's causing an undue hardship.

If you have concerns about that, maybe you bring it up with your employer and just touch base and ask, "Is this why you're planning on checking on it later?" If you have concerns that they might remove that accommodation, but you feel that you can perform your duties to the extent that you need to without accommodation, maybe provide documentation of that while you have that accommodation, while you were working, that you were able to perform the essential functions of your job without accommodation that later on, whenever they do check back, you can say, ''Hey, look. I've been able to do the essential functions, and in fact, the flexible start time or whatever other accommodation has enabled me to do so to a better extent.

Back to you, Melanie.

**MELANIE WHETZEL:**

OK. Thanks. I'm going to add just a little bit here. We get a lot of questions from employers who are just not really sure how accommodations are going to work. And we like to suggest temporary or trial accommodations, because that's an effective, usually quick way to find out if an accommodation is going to work or not. And employers are concerned sometimes too, that if they grant an accommodation, the employee is going to think it's forever. Although no accommodation is ever permanent, they should never just be jerked away from an employee either if they're working.

So in this case, if there were a trial or temporary accommodation, we would suggest that the employer put that in writing and say to the employee, "We're going to review this in three months or six weeks, but allow enough time to be able to evaluate whether it is effective or not." This way the employee understands that this isn't something that's necessarily going to last for two years. We're going to provide it to you and see how effective it may be.

OK, so now, we're going to move on to the next question: What should I do if HR approved my accommodation, but my supervisor doesn't agree? This question is for Linda. Our example here is an employee with memory loss from a stroke who asked to have a supervisor provide written work instructions and to break down large jobs into smaller tasks. HR approves the request, but the supervisor says she doesn't have time to do this.

So, Linda, what might you suggest here?

**LINDA BATISTE:**

I think this is a really tricky situation for an employee to be in. You don't want to anger your supervisor by going over their head to HR, but if HR approved the accommodation, HR is probably going to be the best resource to resolve it. So what can you do? One of the things that we suggest you could try is to put something in writing addressed to the supervisor but copy HR so that HR is brought into the circle. That way you don't ignore the supervisor's role, but at the same time you bring HR into the loop. We mentioned this approach earlier in the presentation for another situation. I think it's just a really good approach for some situations. Another idea is to try talking to your supervisor. Sometimes HR just gives an order to supervisors because of ADA confidentiality rules and really doesn't explain to the supervisor what's going on and why the order was given. So you could offer to discuss the situation further with the supervisor if you're comfortable doing that. You could also offer to discuss other accommodation ideas.

Again, your role here is to show that you're being helpful, you want to resolve the situation, you want to get an accommodation that works for you as well as your supervisor. So, consider putting something in writing. If you ignore it, again, you're not going to get your accommodation, HR is not going to know about it, and you're not going to be able to do your job. So, in this kind of situation where you really need -- This is the kind of situation where you really need to consider doing something rather than just ignoring the situation.

Alright, back to you, Melanie.

**MELANIE WHETZEL:**

OK, Thanks, Linda.

Our last question is what happens if my coworkers notice that I'm being accommodated, and they ask questions? We're going to hand this one over to Alexis. Our example here is an employee with autism who was allowed to bring a service animal to work, but co-workers are asking about it, and some have even tried to pet it.

Alexis, could you tell us about what you might suggest in this situation.

**ALEXIS POPA:**

Sure. So, I'm going to take stances from both the employee standpoint and employer perspective, just so they both have the knowledge. So, from the employee standpoint, he could approach the supervisor or HR, whichever, and discuss the situation that's occurring and try to work on a plan on how to address and inform colleagues properly to not engage with their service animal.

From an employer's perspective, the first step to handle this issue should be to speak directly with the employee who has a disability and uses a service animal. Employees with disabilities have confidentiality rights, of course, under the ADA. And if the employer attempts to educate staff by stating that there is a service animal present, it would basically be telling all employees that the person is using a service animal and has a disability. So, employers want to have a conversation with the employee first to see what sort of language the employee is comfortable with, because an employer does not want to violate those ADA confidentiality rules. Alternatively, the employer could offer to allow the employee themselves to educate fellow co-workers on how to interact with the service animal.

We encourage employees to offer to educate co-workers, so they'll know how to interact with the service animal. However, if the employee isn't comfortable educating those co-workers, the employer may be able to use generic language, such as just saying there's an animal in the workplace. One strategy that could be helpful would be to send a company-wide email or a memorandum that states that employees may run across animals in the workplace, that animals are in the building for a specific purpose, and they are not to be interacted with for any reason.

Alright, back to you, Melanie.

**MELANIE WHETZEL:**

OK, great. Thank you for that, Alexis.

We have more resources here in this section. We have a guide for co-worker interaction with service animals in the workplace, what Alexis has just been talking about. We have confidentiality of medical information under the ADA. We also have providing temporary or trial accommodation solutions -- a very popular discussion topic today. You'll find a lot of good information contained in there. We also have The Manager's Dilemma: "An employee is asking about a co-worker's accommodation. As a manager, what do I say?"

And with that, I'm going to turn it back over to Linda for step six.

## [Step 6: Maintaining an Accommodation]

**LINDA BATISTE:**

Thanks, Melanie.

We're coming down to the home stretch here. This is the final step of JAN's sample interactive process. This is a really important step, but it's often overlooked, and it's maintaining the accommodation once it's implemented. The general rule here is that employers have a duty to make sure that accommodations continue to be effective, but honestly a lot of employers don't revisit accommodations, they don't think about them once they're in place. Employees also have a duty to make sure that they let their employers know if an accommodation stops working. We always recommend, if you're having problems, don't rely on your employer to notice, let your employer know if your accommodation stops working.

So, the first question under step six is what should I do if my coworkers won't support my accommodation? And this is going to go to Anna. An example is an employee with fragrance sensitivity asked her employer to implement a fragrance policy, banning employees from wearing perfumes and colognes. Co-workers complied with this new rule for a while, but then they started wearing fragrances again.

Anna, what might you suggest?

**ANNA SAAB:**

Well, this is a tricky situation to be in. But, if you're having issues with the accommodation, I suggest going to human resources. Report the incident with them. They may need to communicate that policy again to your co-workers. But if that's not working, and it seems as though the no-fragrance policy is really just not going to be effective, then, you might seek other accommodation strategies. So, perhaps telework, if there's no way to keep fragrances out of the office, maybe you could work from home or another remote location or even, you know, maybe there could be a fragrance-free zone in the office. So, maybe moving your office to another part of the office environment where scents or fragrances aren't going to be in your environment.

Back to you, Linda.

**LINDA BATISTE:**

Okay, thanks, Anna.

Next question -- and Melanie, I'm going to give this one to you -- is it OK for my employer to ask me for new medical documentation after my accommodation is approved? So, the example is we have an employee with lupus who was granted a reduced work schedule as an accommodation, based on permanent restrictions. Her employer has a policy that all accommodations must be recertified annually.

Melanie, what might you suggest for this kind of situation?

**MELANIE WHETZEL:**

Well, I think for the policy of an annual recertification, the employer would have to have a reason that would be job-related and consistent with business necessity. If the employee provided sufficient medical documentation in the first place, and it sounds like in this example it was established that she did have a disability, and sufficient information was provided to support the accommodations. And as far as the employer knows, nothing has changed, if they haven't noticed anything or haven't been told by the employee that anything has changed, then they wouldn't likely have a job-related reason to request updated or new medical information and would have no real reason to do that on a routine basis.

So, for this employee with lupus, who has permanent restrictions, the employer would not need to recertify her medical documentation on a regular basis. We would suggest that the employee talk with her employer and put those concerns in writing, stating that, because the impairment is permanent, she's still experiencing the limitations that necessitated that accommodation in the first place, that the accommodation is still needed, and that she'll let the employer know if anything changes.

But, if the employer insists, I think that the employee's doctor could provide information that the accommodation is still needed. But, I really believe a full conversation between the employee and the employer can eliminate this step and the inconvenience it is for the employee to go back to the doctor, pay for a visit, take the time, and probably miss work to do all that. The doctor could reiterate the employee's statement that they'll let the employer know if there's any needed changes to that accommodation, so that the same thing doesn't occur in the next yearly cycle.

And that's it, Linda, back to you.

**LINDA BATISTE:**

Great, thanks, Melanie. Great suggestions.

Alright, our next question is going to be for Alexis. Is my employer allowed to change my accommodation? And here's the example: We have an employee who's been allowed to telework as an accommodation for several years. A new supervisor notifies the employee that she is rescinding the accommodation because she wants all her employees in the office.

Alexis, what might you suggest for this one?

**ALEXIS POPA:**

Sure, a common misconception that employees sometimes have is that, once an effective accommodation is implemented that the decision is final and it's permanent, like we previously talked about. However, the interactive process is, of course, meant to be ongoing, meaning that the accommodations are not guaranteed to last forever, and there are times when a change may be needed by the employer or even the employee.

At JAN, we frequently hear about situations where accommodations were rescinded or changed, such in this situation, whether it's incidentally or deliberately, when new management arrives. For example, in this situation, when a change is made to a telework policy that requires all employees to be present in the office. From the employee perspective, it might be useful to approach the new supervisor or even approach the previous supervisor, if possible, before they leave, to discuss accommodations that are already in place and the overall effectiveness. If necessary, the employee should consider whether there might be other accommodations that are effective if telework is no longer the preferred option. This can show that you're open to communicating and, of course, you can always keep track too by documenting the attempts and progress with the accommodations and continuing that paper trail, just in case it were to be needed in the future.

And once again, going back to what the employee can do, if the employee doesn't feel that there was a valid reason as to why the accommodation was rescinded and the employer isn't giving a definitive reason and alternative accommodations aren't effective, then the employee could also look into what we talked about before, such as going up the chain of command or, as a last resort, filing a complaint.

Alright, back to you, Linda.

**LINDA BATISTE:**

Alright, thank you.

Some resources for the final step of the interactive process, we have a publication on monitoring reasonable accommodations, changing or removing reasonable accommodations, recertifying the need for an accommodation, annual request for medical documentation, and then, a publication related to something Anna mentioned, which is creating a fragrance-free zone in the workplace.

## [Conclusion]

And that concludes our presentation, We hope you found it useful. We really appreciate you joining us today. If you want to discuss anything that we mentioned, you can contact us in any of the ways that are up on this slide. You can also visit our website, AskJAN.org, to find more ways to contact us. Or if you just want to discuss an accommodation situation or you have questions about the ADA, feel free to contact us at any time. And for those of you who are seeking CEU credits, we have provided a link to our certificate of completion on the final slide. If you have any trouble getting that, just contact us and we'll help make sure that you receive it.

Again, thanks a lot for joining us.