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>> LINDA BATISTE: Hello, everyone and welcome to the Job Accommodation Network's Monthly Webcast Series. Today's webcast is called "Accommodations for Respiratory Impairments".

I'm Linda Batiste and I'll be your moderator today. Our featured speaker is Brittany Lambert who is a senior consultant on the JAN Sensory Team. Before I turn it over to Brittany I need to go over just a few housekeeping items, first, if any of you experience technical difficulties during the webcast please use the pod at the bottom of your screen to send a chat message or send an email to question@askJAN.org. Second, you may submit questions during this presentation using the question and answer chat pod located at the bottom of your screen.

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And with that, I'll turn it over to Brittany.

>> BRITTANY LAMBERT: Thank you, Linda, and thank you to everyone who is joining us this afternoon.

Before we jump into the presentation, I want to let you all know about a new JAN resource that we're rolling out. It's called the MyJAN Portal. And it allows users to create their own JAN mini site that can hold all of your favorite pages and articles from askJAN.org.

If you find yourself bookmarking and saving JAN links and wishing there was an easier way to keep everything together, the MyJAN resource is going to be great for you.

Just a few quick commonly asked questions, the portal did not collect confidential information. Your MyJAN Portal will automatically update if there's a URL change or a change to a saved publication on our end.

Your MyJAN Portal will add new publications and ask if there are new pages from the JAN resource, if you would like to add them. You can organize and customize your MyJAN Portal in a way that meets your needs.

And importantly, nobody else will have access to your portal, unless you choose to share it.

Here a quick screengrab showing what your portal will look like. You can organize your links based on the type or topic and get recommendations for additional accommodation resources, as well.

The term respiratory impairment refers to a broad category of medical conditions that impact the functioning of the respiratory system.

Examples include asthma, COPD, pulmonary sarcoidosis, cystic fibrosis, emphysema, and reactive airway disease.

There are many medical conditions that can involve symptoms that impact the respiratory system. Even if respiratory impairment isn't always present. Allergies, for example, can lead to difficulty breathing in some cases, but not all allergic reactions will involve this kind of respiratory distress. Some may be categorized by a skin reaction, for example.

Multiple chemical sensitivity and fragrance sensitivity often do impact respiratory function. But may experience difficulty with migraines or nausea in relation to strong fragrances or chemical exposure, rather than difficulty breathing.

Mast cell activation syndrome involves repeated episodes of anaphylaxis. This can include narrowing of the airways and difficulty breathing, as well as gastrointestinal, cardiovascular and skin distress.

Lung cancer often involves respiratory distress but can have other limitations, as well.

So do be aware that just because a person has a condition you might not necessarily associate with respiratory dysfunction, it could still be a symptom.

Many employers wonder whether allergies are considered a disability for ADA purposes. This can be tricky to determine and should be determined and assessed on a case-by-case basis.

Rather than a definitive list of conditions that are and are not considered disabilities, the ADA contains a definition of disability that is used to determine if a particular individual is covered.

According to this definition, an individual with disabilities is someone who has a physical or mental impairment that substantially limits one or more major life activities. Has a record of as much an impairment. Or is regarded as having such an impairment.

Based on this definition, it's possible that some people with allergies will be covered while others will not.

And when in doubt, we often suggest that employers err on the side of caution and focus on whether they can provide the accommodation being requested rather than getting hung up on whether the person qualifies.

Limitations generally associated with respiratory impairment include difficulty breathing. Which could mean coughing, wheezing, and shortness of breath.

And it can also involve limited mobility. This can involved decreased stamina and fatigue. When someone has to engage in physical activity.

There may be environmental factors within the workplace or on the commute that contribute to the exacerbation of respiratory symptoms.

Some common examples include air quality. This could mean that the ventilation throughout the workplace is not optimal. Temperature, especially cold air, can make both indoor and outdoor work functions more challenging for employees with respiratory impairments.

Irritants and allergens are a big concern for a lot of employees. This could be anything from chemicals in cleaning products, dust, mold, pet dander, or airborne food allergens.

Physically demanding job tasks may be especially taxing for some of these employees. Stress can sometimes trigger difficulty breathing, as well. Those who have a concern or fear of having an allergic reaction or breathing difficulty may also experience heightened stress. So this can turn into a bit of a vicious cycle.

How can employers improve airflow and quality in the workplace? If possible, providing an office or work space that has working windows may allow for better circulation of air. Now, with that being said, it's important to note that the introduction of outdoor irritants into the workplace may create problems of its own.

Some people will benefit from access to fresh air from outside. And others may not. So this, like most accommodations, is important to look at on a case-by-case basis.

Maintaining the heating, ventilation and air conditioning or HVAC system can also be important.

When employees have concerns about the quality of air throughout the work environment, I often suggest that employers consult with an HVAC specialist to determine whether changes are in order to ensure optimum airflow and quality.

Testing Indoor Air Quality can help employers to gain a better understanding of whether their efforts to maintain a healthy work building are working. Now, I do want to note that some employees will still react to amounts of irritants that are generally considered safe. So if an employer does air quality testing and the results come back to show something that is generally considered safe for exposure, that doesn't mean that a person with a particular sensitivity to that irritant will be able to tolerate it. Just because it's safe for the general population.

That person may still need accommodations.

Using humidifiers or dehumidifiers as needed can help to ensure adequate moisture levels while also helping to reduce the likelihood of mold development. Using an air purification system throughout the building or in personal workstations could also be considered.

Telework is an accommodation that's going to be coming up pretty frequently throughout this presentation. So keep in mind that that is a very common request when dealing with respiratory impairment.

For individuals dealing with temperature sensitivity, air deflectors to direct air toward or away from an employee can be a good thing to consider.

Job restructuring could mean reallocating or removing non-essential functions that involve exposure to adverse temperatures.

This can be especially relevant to jobs that involve work outdoors during the winter. Do note that employers never have to remove essential functions. But may need to consider modifying the way that they are performed as an accommodation.

Similarly, while it's never required to remove essential functions, employers may do so if they choose.

Modified dress code to allow for protective clothing may also be considered. Employers may need to modify their dress code expectations to allow for the use of additional layers of clothing, scarves or masks. Generally dress codes are considered conduct rules which an employer can enforce as long as they are job related and consistent with business necessity.

Each case should be looked at on an individualized basis.

And again, employers may consider telework as an accommodation during colder months.

There are three basic approaches to accommodating someone who is reacting to an airborne irritant in the workplace. The first approach would be to remove the irritant from the workplace. This isn't always possible, though.

It's something that the employer would of course, as always, need to look at and assess based on the individual details of the situation.

Something that comes up frequently with this kind of concern is the implementation of a fragrance-free workplace policy. While such a policy may seem like a logical solution, it does come with its challenges.

Under the ADA, an employer may not be required to totally ban fragrances from the workplace because of the difficulty of enforcing such a ban, especially when the public has access to the workplace.

The exception is when the fragrance is unique to the work environment, minimal, or the employer has more control over it.

Some employers are choosing to have a voluntary fragrance-free policy, educating employees about fragrance sensitivities and requesting employees to voluntarily refrain from wearing fragrances.

Employers who have concerns about the legalities of implementing a fragrance-free policy as an accommodation should consult with an appropriate legal professional. Other options can include removing air fresheners, candles and other fragrance products from the workplace.

Changing workplace cleaning products to unscented or natural products may also be helpful.

You can also look at the types of soaps that are being used in workplace bathrooms or communal spaces. If these contain harsh chemicals or fragrance, those could be swapped out.

If there is mold in the building, that is something the employer may need to look at and address having removed.

If there are employer-catered events or work-sponsored events that the employer is working through, they would need to choose safe caterers and safe spaces to have these events, as well, so make sure you're doing your research there.

The second approach is to remove the employee from the environment where the irritant is located. This could be accomplished in a few ways.

The employee's workstation could be relocated. This may mean moving the employee to a private workstation or to an area with less traffic.

You could also trade outdoor tasks for indoor tasks during pollen season. Restructuring the job to prevent exposure may also be considered. And again, telework may be something to look at if it is challenging to actually move the person into a space without the irritant.

Engaging in a trial work period to assess the longevity or feasibility of an accommodation can be helpful, as well. I often recommend this strategy to employers who are unsure whether a particular accommodation would be doable.

You can provide the accommodation on a trial basis. And this is going to be really beneficial because it allows the employer to test the waters before making a long-term decision about what accommodations will ultimately be implemented. And if the employer does find that the accommodation cannot be applied on a more long-term basis, they have a bit more of a concrete foundation for denying that accommodation, if it's something that they have already tried and found that it isn't feasible.

Allowing leave or telework during office renovations may be never. An example of this could be a situation where a building is being painted or construction is taking place in a certain area that may kick up dust or other irritants. It may be beneficial to temporarily allow telework or use of leave.

It's important for employers to remember that leave is a less effective accommodation than others.

If an employee makes a request for modification that allows them to continue working. Such as telework or a modified schedule, the employer should exhaust these options before putting the employee out on a leave.

And finally, as a last resort accommodation, the employer may need to look at reassignment. Now, this accommodation is only required under the ADA if the employer has exhausted all other options to keep the person in their current position. With that being said, it can be done at any time in the process if both the employee and employer agree that it's really the best solution.

There are many situations in which it's really not feasible to remove the employee or the irritant from the workplace. And in those cases, the employer must make an effort to reduce exposure whenever possible. And allow for symptom management, if exposure does occur.

This could be accomplished by modifying the employee's work schedule. This could mean coming in later to avoid heavy foot traffic, for example.

Allowing for fresh air breaks again could be helpful.

Employers could consider providing an air purification system designed specifically for the irritant in question.

You also want to ensure that the system provided is capable of handling the area it's placed in.

A small air purifier in a large open space, for example, probably isn't going to provide much benefit.

When feasible, modify communication methods to reduce in-person interactions.

The employer could also consider implementing a fragrance policy, like we talked about earlier. Or consider implementation of a food ban.

When an employee indicates a severe allergy to a certain food, one of the first things to consider is whether the employer can implement a policy restricting others from bringing that irritant into the workplace.

So could the employer put up signs in shared common areas such as kitchens and break rooms requesting that that food not be brought into those areas. If it's not possible to make the entire facility allergen free could the employer instead designate certain areas to implement such a policy.

Physical exertion can exacerbate respiratory distress so employers may need to provide accommodations that reduce movement when possible.

Accessible parking could be explored to help reduce the distance that an employee must travel from their vehicle to the work site.

Now, parking can be a complicated issue. And whether it's reasonable to make parking modifications will depend helpful on the situational details.

Parking is generally considered a benefit of employment. And if employers do not provide employees with parking space as a benefit of employment, there could be an argument that they would have to provide accommodations that make that benefit accessible to employees with disabilities.

With that being said, it could be argued that even if an employer doesn't provide parking in general, they could need to explore providing it to employees who need it for disability-related reasons.

There's been some debate about this in the court system. So when in doubt, I suggest seeking legal counsel.

Ergonomic workstation equipment may help to cut down on movements that could lead to symptom exacerbation.

Providing things like a personal printer rather than requiring an employee to walk to a central hub may be an example, as well, of a helpful accommodation.

An employer could provide anti-fatigue matting, as well as additional breaks for rest when feasible.

There are several accommodations that could be considered for employees with stress-induced symptoms.

The process of identifying accommodations here is generally the same as with a physical irritant. You want to identify the stressors, reduce or remove exposure whenever possible, and help the employee to manage symptoms that do occur, if exposure happens.

Refer the employee to counseling and Employee Assistance Programs if you have them.

Consider allowing telephone calls during work hours to doctors and other support systems as needed.

Allow the employee to take a break as a part of a stress management plan. Utilize apps to track and manage stress. Using products to help monitor and track stress and emotions can also be helpful here. An interesting example of this is the Spire wearable health tag which monitors the psychological and physiological aspects of stress so in this case, with this particular product, it specifically measures individual's respiratory patterns so that could be helpful in seeing if a person is having a stress reaction, how does that impact their breathing.

In addition to preventive and precautionary measures, employers may need to make modifications that allow employees to manage symptoms of respiratory impairment that may develop. This could involve developing a plan of action. Allowing employees to bring and store medication if needed. Allowing the use of portable oxygen tanks or nebulizers and addressing co-worker concerns.

A plan of action is an emergency preparedness tool. It can be used to prepare for or respond to emergency situations that arise when a person has a medical emergency on the job.

A plan of action can be created with the employee and employer and can include information such as emergency contact information. Visual or audible warning signs.

How and when to provide onsite medical assistance. How and when to call 9-1-1.

How to provide environmental support. Who to designate as emergency responders. And who to go to for help.

I do want to stress that even if an employee would benefit from a plan of action, there are certain limitations that must be considered.

For example, employers still have an obligation to maintain employee privacy regarding disability.

That means if the employee is not comfortable providing the plan of action to their co-workers, the employer probably shouldn't force or pressure them to do so.

An employer is also not required in most circumstances to administer what could constitute medical intervention.

Nor would this be something employers could force co-workers to do.

This could be something like providing medication or an EpiPen.

Doing so incorrectly could have detrimental consequences for the employee with the medical emergency. So in most cases, it's best to do what's possible to ensure the employee's immediate safety and contact someone who can administer such treatment.

Employees may need to store and take medication at work to manage symptoms.

If this is the case, employers may need to consider providing a private area for the use of medication or medical equipment.

This helps to protect the employee with the disability as far as privacy is concerned, as well as ensuring other employees are not subject to potentially invasive medical treatment.

Allow for appropriate storage of medication when necessary.

Does the employee need to store their medication in a refrigerator, for example? If so, are there safety concerns regarding shared and communal office fridges? Would providing a mini fridge address these concerns?

Modifying break schedules to allow employees to take medication, either as scheduled or as needed, based on the situation, could also be important.

Portable oxygen tanks may be a cause of concern for some employers. Questions commonly arise regarding the safety of having such equipment in the workplace. So how should employers navigate these situations?

Employers must assess the risk. Does this situation constitute a direct threat?

Is there a specific threat present?

And can that risk be identified?

And are these concerns rooted in assumption rather than situational facts?

Concerns regarding safety would need to rely on relevant information about the particular work setting. So for example, in a typical office setting, there's probably very little cause for safety concerns.

In an industrial environment with open flames, however, there could be significant risk. So it's important to look at each situation and make decisions based on the facts.

Employers should also explore accommodations.

Could an existing risk be mitigated by an accommodation? Consider job restructuring or moving an employee's workstation or reassignment.

Employers should also utilize available resources when in doubt to help talk through these situations.

So if in doubt, give JAN a call.

If you have questions about the safety concerns of a particular type of oxygen tank, for example, you could also contact the manufacturer and talk about those specific safety risks with them.

Respiratory impairments may include symptoms such as persistent cough or expulsion of phlegm that can raise questions about workplace hygiene and disruption to co-workers or customers.

Conduct standards may be enforced, but should be utilized uniformly.

If an employee's persistent coughing or wheezing has gotten to the point of being genuinely disruptive, employers may be justified in addressing this with the employee.

With that being said, they should address this issue with sensitivity and avoid treating this employee more harshly than someone who has an occasional disruptive cough.

Accommodations should also be considered, such as a private work space, modified break schedule, or telework.

Speaking of telework, we're going to talk about this a little bit more in-depth because this is a very commonly requested accommodation for employees with respiratory impairment.

Working from home can eliminate issues related to the commute or parking as well as allergens or irritants that are specific to the work environment.

Working from home is something that many employers feel hesitant to allow, especially on a long-term basis. So let's explore this idea a little bit more.

Does the ADA require employers to have a telework program or policy for all employees?

The answer is no. Employers are not required under the ADA to offer telework to all of its employees as a benefit of employment.

With that being said, the ADA does require that employers consider allowing employees with disabilities to work remotely as an accommodation. Absent undue hardship.

So what does this mean for employers? Even if an employer does not typically allow telework or does not have a formal telework policy, they would still need to consider whether it's possible to provide it as a reasonable accommodation for an employee who requests it due to a disability.

How can employers determine whether a job can be done remotely?

First, identify essential job functions. Even when working remotely, employers can insist that employees be able to perform essential functions of their position.

Determine whether some or all essential functions can be done outside the workplace.

Now, keep in mind, telework doesn't have to be all or nothing.

If there are some essential tasks that do require the employee to be physically present in the workplace, assess how often those activities occur. And consider whether the employee can come in and perform them when necessary. And do all other work from home.

Assess the need for face-to-face interaction. One of the biggest hangups employers tend to have about telework is the impact that it will have on collaboration and teamwork.

It is often possible, however, to communicate effectively and collaborate in other ways such as over Zoom or a chat.

May employers explore alternatives to telework?

Yes. Employers may choose among accommodation options, as long as the alternative they choose is ultimately effective for the employee.

In general, employers are not required to provide the exact accommodation being requested. As long as they provide something that will meet the employee's medical needs.

This is the same case with telework requests. If an employer can modify the work environment, eliminating work site barriers, this may also eliminate the need for telework.

During the global COVID-19 pandemic, things have definitely changed drastically for both employers and employees. Individuals with disabilities, including certain respiratory conditions, may be at increased risk for illness due to COVID-19.

High-risk employees may come to their employer with requests for accommodation when they have never needed them before.

Employees with existing respiratory impairment may also have difficulty wearing facial coverings, which are current required in many work settings.

During the global pandemic, employers should be prepared to address unique accommodation concerns.

In order to promote a healthy work site, as well as to ensure the safety of employees with disabilities, the employer should consider taking efforts to reduce exposure to COVID-19.

This could include encouraging employees to stay home and offer flexible leave and attendance policies.

If you want employees to stay home when they have concerns of infection, it's going to be crucial to assess whether your current leave policies allow for that.

Provide and encourage the use of hand sanitizer and disinfecting wipes. These items could be placed in individual workstations to encourage frequent use as well as in common areas.

Increase efforts to clean and disinfect high traffic or communal areas. And you can also install germ guards or barriers for customer-facing workspaces or between employee workstations.

You would also want to consider taking measures to encourage physical distancing in the workplace. Create directional paths of travel. Some hallways or aisles could be designated as one way, for example.

Note that this may make insight navigation a little bit slower and be flexible when possible.

The employer could stagger workstations to increase distance between workers.

Limit the number of people permitted in communal spaces.

Consider whether it's feasible to modify breaks and lunch schedules to reduce the amount of people using a shared space at a time.

Modify schedules to limit the density of people in the workplace. Allow for flexibility and scheduling for commuting needs.

Job restructuring to eliminate or reduce face-to-face tasks.

Accommodations may be needed to ensure effective communication can still be implemented. Offer electronic or remote communication whenever possible. This could be by phone, video, chat, email, there are a lot of ways to do this, especially now.

Conduct group meetings and events using remote and virtual formats. Do note that when you're using these formats, you may get accommodation requests to ensure that they are accessible for individuals with other disabilities, such as hearing and vision.

In light of the COVID-19 pandemic, many employees, both with and without disabilities, are wearing facial masks to help prevent the spread of infectious disease. This can create new and challenging accommodations.

According to the EEOC, an employer may require employees to wear protective gear such as masks or gloves, and observe infection control practices. However, where an employee with a disability needs an accommodation under the ADA, an employer should discuss the request and provide the modification or an alternative absent undue hardship. As an example would a facial shield or visor be sufficient to meet the facial covering requirement? This may pose fewer challenges to the employee than a traditional surgical style mask, while still providing a barrier between the wearer's face and others.

Now, it is important to note, however, that this alternative may not provide adequate protection, depending on the situation.

Other accommodations include providing a flexible schedule to allow for breaks from a mask.

Moving an employee to a private workstation, where it's safer for them to remove the mask when necessary.

Job restructuring tasks that require a mask such as those involving face-to-face contact could be considered.

Do keep in mind that laws regarding masks are very complex. And vary from state to state.

So if you have questions about mask use, the ADA and local laws and how those can come into play, absolutely seek legal guidance.

Now, I want to go over a few examples of accommodation situations involving respiratory impairment.

A nurse at a hospital had experienced anaphylaxis when exposed to chlorine fumes even at low concentrations. The hospital had already made a number of accommodations, including the following: Providing safe paths of travel from the parking lot to the employee's immediate work area and from her work area to the cafeteria; alternative cleaning products for her at-work location; developing an emergency plan of action; removing the function of patient transport; providing a parking space on the same level as her work area to avoid elevators; and attempts to reduce and eliminate chlorine in the cafeteria area, which was a challenge in an area open to the public.

Working together, the nurse and employer developed paths of travel that allowed her to avoid elevators. The employer and employee have explored the use of masks and respirators, but after consultation with the employee's medical team, it was determined that neither option would reduce chlorine to an acceptable level.

This is something that I often do suggest in situations where an employee and employer are looking for certain alternatives and different types of safety gear.

If possible, try to consult with the employee's medical provider for input on what alternatives might be effective.

There may be some cases where the medical provider could tell you, this type of protective equipment might not get the job done. But this alternative would probably be effective.

Or another thing we see frequently with masks is a certain type could be contraindicated. Whereas another type might be fine.

So when it's possible, do try to get that kind of input.

A worker responsible for licensing child care settings for a local Government had an office in a very old building. She said that the air in the building had irritants that triggered allergy symptoms, including a change in her voice. This and other symptoms flared up during forest fires, volcanic ash plumes and other times when outdoor pollution was high. She was considering requesting telework or work in a different building.

The employer explored solutions including buying a product or piece of equipment such as an air purifier, changes to her work schedule, providing work from home, as well as a private office for onsite work that allowed her more control.

An employee at a junior college was experiencing symptoms due to a mold and mildew allergy as well as chronic fatigue syndrome. The employee was told that testing had shown mold in the building but that it was at safe and legal limits. The employee felt that the air quality in the building had become poor.

The college agreed to allow the employee to change workspaces.

This is another good example of what we were talking about before that just because the results of your air quality testing show that something is within safe or legal limits, doesn't mean that it's not going to pose problems for a person with a particular sensitivity.

A local Government employer contacted JAN following a request for an engineer with asthma, sinusitis, allergic rhinitis, who had asked for a sealed space and had also applied for FMLA. The employer was not able to provide this, as they were temporarily renting a space while the office's permanent space was undergoing renovation. According to the employer, all employees must be in one cube. The employer wanted the employee to stop smoking in the hopes that this would improve his condition.

The employer provided a modified work schedule using flex time. The employer was not able to grant the employee's request for his own space. Following consultation with JAN, the employer did not attempt to get the employee to stop smoking but instead focused on what accommodations they could and could not offer.

This is something that I often stress with employers. You don't want to make the focus of the accommodation how could the employee change their medical regimen? Or how could the employee change routines in their own personal and private life? Because that's not necessarily related to the specific workplace barrier. Instead, the employer should focus on what they can and cannot do to resolve the issue.

A supply technician in the Federal Government had been working in a warehouse for about ten years. She had developed allergies to dust and mold and could no longer work in the warehouse. She asked to give her warehouse duties to another employee, leaving her to do office tasks.

The employer countered that this would require removing essential functions of her job. The employer also noted that there were no other available employees who could take on the duties in the warehouse.

In this case the employee was assigned to a new position as a last-resort accommodation.

A social service worker with allergies and asthma had difficulty meeting with their clients in their homes, especially clients who smoked.

To accommodate this, the employee was allowed to meet some of her clients in a neutral place without smoke.

An educational career counselor with asthma and allergies typically did her charting in an office in the basement of one of the buildings where she worked. Something about that particular building exacerbated her breathing problems and gave her headaches.

She submitted an RA request for an air purifier. However, the employer initially declined to purchase it because they thought it was a personal use item.

After further discussion, the counselor was given permission to buy a desk air purifier and the employer reimbursed her. It is important to consider in cases where an employer gets a request for a certain type of equipment whether that is something that is needed both on and off the job for activities of daily living, or whether it's something that's really more specific to the job at hand. And if it is specific to work, it might be something the employer needs to consider paying for.

Whereas if it's a situation where the item is needed for personal use, the employer may need to consider allowing the employee to bring in that personal use item. But they might not have an obligation to actually purchase it.

To wrap things up I just want to give a reminder that JAN consultants can be reached Monday through Friday 9 a.m. to 6 p.m. Eastern Standard Time. We can be reached by phone at 1-800-526-7234 for voice, 877-781-9403 for TTY. You can email us at JAN@askJAN.org. Our Skype is JANconsultants you can send us text messages at 304-216-8189. And chat is available at askJAN.org. And I should note due to COVID-19, JAN customers may experience a different process than they are used to when contacting us.

For the time being our entire staff is working remotely. While we still offer our full range of services, the process is a little bit different. You can still get live help by using our online chat feature as well as our JAN on Demand email service.

Using our telephone number however will not take you to a live receptionist as it has in the past. Rather you'll be prompted to leave a message and your call will then be routed appropriately and returned by one of our consultants.

While we typically do this within 24 hours it's probably best to use the chat function if you're in need of immediate assistance.

Now, I want to take the rest of our time to address some of your questions and concerns.

>> LINDA BATISTE: All right, Brittany thank you so much for that great presentation. We do have a lot of questions coming in. We'll try to get to as many as we can here.

This one is not really related to your presentation exactly but I want to address it because we've been getting this question a lot lately.

Can JAN be used as an advocate during the ADA accommodation request process?

>> BRITTANY LAMBERT: We can be utilized as a resource for information. But we don't necessarily take on an advocacy role. So if you would like to receive neutral information about the ADA's requirements as well as accommodation suggestions based on limitation and job functions, we can absolutely help with that. But we don't necessarily provide any type of mediation or advocacy services.

>> LINDA BATISTE: All right, thank you.

We got a couple of follow-up questions related to your suggestion that employers consider providing additional breaks. This was on Slide 14 related to reducing physical exertion. One of the questions was related to how do we figure out how many additional breaks and the other one was related to whether those have to be paid breaks.

>> BRITTANY LAMBERT: This is going to depend on the situation as with any accommodation request. But I think it's important when trying to make those determinations to look at what type of activities caused this individual to become more fatigued. How often does the individual have to engage in those activities. And how long does it generally take the employee to recover from that?

So there's no clear-cut formula. One thing that I would often suggest is, if possible, see if you can get some information and input from the individual's medical provider. Sometimes it might be something as clear-cut as maybe a ten-minute break once per hour. Sometimes it might be a little bit more fuzzy and up to the situation.

So for example, it may be after something like spending 15 minutes lifting things over 20 pounds, the employee may need to take a break.

Unfortunately there are going to be times when that is not necessarily easy or possible to pin down ahead of time.

In some cases it might be something you just need to look at on an as-needed basis.

So the accommodation may be when the employee is feeling fatigued. When the employee is experiencing an exacerbation of symptoms, can they have the flexibility to ask for an additional break? And when determining whether that's something that can be provided, the employer would need to look at, does that ambiguity, does that lack of concrete information on when the breaks may be needed, cause an undue hardship.

Now, as for the paid breaks, this is something that depends on the structure of the employer's break system.

So if the employer provides a certain number of paid breaks, the employer can insist that the individual utilize and exhaust that amount of time first. And anything that goes beyond what the employer typically provides, they can probably insist be an unpaid break.

So the accommodation in and of itself is going to be the flexibility, the time away. It doesn't necessarily have to be additional paid time. Just as if an employer is providing leave time to someone who has exhausted their paid leave options. The employer doesn't have to provide additional paid leave. But they may need to consider additional unpaid leave time.

>> LINDA BATISTE: All right, great.

The next question is related to what do you do when you don't know specifically what chemical somebody is having an issue with? For example, in cleaning solvents, that somebody has to use or that is in the work environment, what can you do to try to figure out what specific chemicals are the problem or should you just try to find other types of products such as other cleaning products that meet environmental or health and safety standards?

So what's the best approach when you don't know what the chemical is that the person is having issues with.

>> BRITTANY LAMBERT: This is a very common issue there will be times when employees will not be able to pinpoint exactly what it is that they are reacting to. But they may know, it's this particular cleaner. I can't necessarily tell you what ingredient in that cleaner. But I know I'm having trouble with this particular one.

Or if someone has multiple chemical sensitivity, they may be reacting to a lot of different chemicals. And it may be impossible to pinpoint exactly what it is they are reacting to.

When possible, it's certainly helpful to identify specifics. But do be aware that there are going to be times when it's just not possible.

And if you find yourself in that situation where you're really unable to pinpoint one specific thing, it does make things more challenging. But that's not to say that the employee can't be adequately accommodated.

You can at first look for things that are generally labeled or marketed as less harsh or things that are kind of derived with more natural ingredients. Again, it's important to point out that the fact that it's marketed this way doesn't necessarily mean that it won't contain something that is a potential irritant to someone.

But that can be a good place to start. And ultimately if you find that you make these swaps, you find that you make these changes, and the person is still reacting the challenge you can find here is ultimately the employer probably does have to use some kind of cleaning agent. The employer probably does have to have some kind of soap available to employees.

And so at that point it just becomes a matter of looking at if we cannot completely remove all potential irritants, what can we do to help reduce exposure and mitigate any symptoms that may emerging.

>> LINDA BATISTE: All right. We got a couple of questions related to addressing co-workers. For example, if you provide an accommodation such as fragrance-free policy, or you remove certain chemicals from the workplace that affects how people do their jobs, how do you explain these things to co-workers who are not happy with the changes and are asking questions?

>> BRITTANY LAMBERT: This is something that can be very tricky for employers to navigate. Because you don't necessarily want to disclose that this is being done to accommodate a particular individual. You don't necessarily want to make this a medical issue. And sometimes that does feel like it can make the situation more challenging. Because it seems like if employees knew that this was because of someone's medical impairment, it may be a little bit easier to get people to comply but unfortunately that's not really something that employers are going to be able to do in most circumstances.

Because that could constitute identifying and disclosing that somebody has a disability.

So we actually have some sample fragrance ban accommodation policies on our website. And I would suggest using those.

I know one of the publications where we have that is in our publication on accommodations for fragrance sensitivity, but in general, you want to use language that is simply stating this in the same way that you would talk about, for example, a dress code policy.

So you don't necessarily want to say, you know, because of particular individuals in the workplace who have a medical condition or disability. But rather say, you know, in the interest of creating a healthy and safe work environment, we want to implement these policies.

>> LINDA BATISTE: All right. Great. I think we have time for at least one more here.

This is an employer saying we have a number of hospitals and centers as an employer. Social distancing is not possible with patient care. If an employee submits a doctor statement saying they cannot wear a mask due to underlying condition like asthma while things are reviewed individually they want to maintain a consistent policy is it okay to deny this particular request due to the need for masks to carry out essential functions?

>> BRITTANY LAMBERT: If an employer has legitimate reasons to require the use certain safety equipment, certain protective gear, such as masks, facial coverings, gloves and things like that, and it truly is something that is necessary for safety, which, you know, I think a lot of employers can argue is the case given a pandemic situation, the employer can probably buckle down on that policy and insist that, you know, unfortunately we are going to have to require that employees be able to adhere to this policy.

Now, that could involve looking at alternative types of masks. That could involve looking at other types of accommodation.

But at the end of the day, if there is that legitimate safety need, the employer probably can insist that the employees be able to meet that standard. And if they cannot for reasons due to a disability and you have exhausted all other accommodation options, that could potentially put the individual in a situation where they may no longer be qualified.

Now, of course before coming to that kind of conclusion, the employer absolutely needs to exhaust all accommodation options and be sure that they can substantiate why this is essential. So that's where it can really be important to make sure you're looking into state and local laws regarding mass usage and things like that.

But at the end of the day, if there is that legitimate need, the employer can probably enforce those kinds of policies.

>> LINDA BATISTE: All right, thanks so much, Brittany. Unfortunately that's all of the time we had. We do have a lot more questions. For anybody who didn't get their question answered, please give us a holler. As Brittany said right now the phone isn't the best way to get us, you can certainly use that method. But a quicker method is to use our chat or email. Just go to askJAN.org and you'll find all of the contact information so please contact us after the webcast if you still have questions. And we'll be happy to talk with you one-on-one. I would also like to thank Alternative Communication Services for providing the net captioning today. And thank you for everybody who attended today. Very timely issue that Brittany talked about. And lots and lots of good information.

If you need additional information about anything we talked about today or any accommodation situations, please feel free to contact us at any time. We hope the program was useful.