JAN

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Captioning

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>> TRACIE DeFREITAS: Good afternoon, everyone. And welcome to the JAN Webcast Series, "Get to Work! - Leaveraging Workplace Flexibility to Improve Employee Presence". My name is Tracie DeFreitas. And I'm a JAN Lead Consultant and ADA specialist. And I'll be your speaker today.

Before we get started, we need to go over a few housekeeping items. First if any of you experience technical difficulties during the webcast, please use the pod located at the bottom of your screen to send a chat message or send an email to question@askJAN.org. Second, you may submit questions during this presentation using the Q&A pod located at the bottom of your screen. To use the pod just type in your question and then submit to the question queue. You can also send questions at any time to the webcast to our email account at question@askJAN.org. Time permitting questions received via the chat pod the questions will be answered at the end of the presentation today you'll notice a FileShare pod if you have trouble viewing the slides or would like to download them click on the button that says download file and finally at the end of the webcast an evaluation form will automatically pop up on your screen in another window we really appreciate your feedback so please stay logged onto fill out the evaluation form. Now onto our topic of discussion today. Next slide, working 9 to 5 isn't the only way to make a living anymore and workplace policies related to when and where workplace is -- work is performed continue to evolve to give employees the flexibility needed to be productive at work and to also manage personal and disability-related needs. Workplace programs that allow for this flexibility like telework and flexible work schedules normalize workplace flexibility, making it commonplace and eliminating the need to request this kind of flexibility for disability-related reasons.

The COVID-19 pandemic has forced some employers to view workplace flexibility in general from an entirely different lens than they were before. Once reluctant to allow employees to work from home or flex their schedules, this flexibility is really the way forward as businesses grapple with continuing to operate while also keeping employees and others safe. Now, this JAN training was planned prior to the COVID-19 pandemic when ordinary everyday telework was not as common or necessary. But still people are requesting flexible work arrangements as accommodations for many reasons that are unrelated to COVID-19.

Today we're going to explore some of these accommodation situations from the perspective of improving employee presence. And also address some basic accommodations under the Americans With Disabilities Act and issues related to these types of accommodations. Like modifying policies about where work is performed. Modifying schedules. And attendance and leave issues.

So let's get started with the next slide.

Now, I'm talking about presence barriers today not just attendance barriers. Because we know that employees can be at work and still not be fully present if their personal disability-related needs are not being met. This can impact the ability to perform effectively at work.

So workplace accommodations related to flexibility can improve not only attendance but also presence and in turn performance and productivity. Many businesses are now operating remotely so telework has become almost the norm for some jobs. But as businesses begin to reopen across the job, addressing presence barriers will again become a reasonable accommodation issue. My hope is a positive impact of COVID-19 on many businesses will be the realization that employee presence is improved through flexibility and employers will be more open to making changes related to when and where work is performed in order to accommodate employees with disabilities as well as others.

Presence or attendance barriers, they are barriers that make it difficult for individuals with disabilities to attend or be productive at work due to disability limitations that impact work so I would like to offer some examples of these barriers. So tending to personal medical needs. This is when attending medical appointments affects attendance or a medication regimen maybe the need to eat with medications or maybe a treatment schedule, chemotherapy or dialysis, these things make it difficult to work at certain times. Or maybe the need for personal medical care like wound care or insulin injections is necessary during scheduled work hours and there's not a good place to do this discreetly in the work environment. Or it could be commuting barriers which can result from limitations related to poor stamina and pain when driving for long periods of time or the need for immediate or frequent restroom access due to intestinal disorder also commuting barriers can result from seizure activity or vision loss that restricts someone from operating a motor vehicle thereby limiting their commuter options the effects of treatment compromised immunity resulting from medication can present risks for employees especially during the COVID-19 pandemic and also during ordinary flu seasons.

Other types of treatment might cause drowsiness making it difficult to concentrate or causing light sensitivity, making it difficult to work in some environments.

Personal hygiene needs can impact presence for example someone who is experiencing incontinence may need break time and privacy to adjust personal hygiene needs which may not be available in the workplace.

Of course accessibility barriers can impact presence, as well. Maybe a lack of access to parking that's near to the work location or that's accessible. Or access to a building. Maybe the entrance or maybe the workstation is on a second floor, third floor or somewhere else. Or even the restroom. These can present barriers in terms of presence.

And finally, environmental exposures can impact presence, as well this might include construction that produces respiratory irritants or limits work site usability like elevator access or it could be exposure to chemicals, fragrances or even foods that trigger life threatening allergic reactions like peanuts shellfish or corn products these kinds of disability-related presence barriers can often be addressed through reasonable accommodations provided under the ADA. Before we talk about accommodations, though, we do need to understand some of the fundamentals of the ADA. So I'm going to cover some of that.

Next slide.

Now 2020 is a remarkable year for the ADA. We're celebrating 30 years since the passage of this important civil rights statute that was signed into law by President George H.W. Bush. In July of 1990. The ADA, it's a comprehensive piece of civil rights legislation that prohibits disability based discrimination and affords people with disabilities the rights as everyone else and participate in mainstream life the law is divided into five titles that relate to different areas of public life including public accommodations, state and local Government services. Transportation. And of course of most importance to the JAN organization, employment.

Next slide.

Now, Title I of the ADA amended in 2008 as the ADA Amendments Act applies to covered entity employers and has two essential statutory requirements. First the law prohibits disability-based discrimination in all employment practices. And during every stage of the employment life cycle so from hiring to retiring. The law prohibits covered entities from discriminating on the basis of disability. So this is when an employer treats an individual with a disability who is qualified unfavorably because of a known or perceived disability.

The other statutory requirement is reasonable accommodations. So employers are required to provide reasonable accommodation to an applicant or an employee when it's known that the individual has a disability and needs accommodation. And when providing accommodation does not pose an undue hardship.

Employers of course are not expected to assume or guess that accommodations are needed. So the duty to request accommodation generally falls on the individual with a disability. When it becomes known that an accommodation is needed.

Next slide.

Now, when individuals with disabilities are faced with barriers in performing job duties or meeting productivity standards reasonable accommodation can help. Reasonable accommodation is any change or adjustment to a job or the work environment that enables a qualified applicant with a disability to participate in the hiring process. Or an employee to perform the essential functions of a job or enjoy equal benefits and privileges of employment.

And accommodations, it's essentially a change in the way things are usually done. It's about finding another way. Coming up with alternative solutions to achieve success at work.

Accommodation may be requested at any time during the hiring process or a period of employment. When the individual's disability and/or need for accommodation is not known or obvious, disability disclosure will be necessary in order to receive accommodation.

Also, of course, reasonable accommodation has to be effective for the purpose meaning it must enable the individual to participate in the hiring process or perform job duties and should not cause an undue hardship for the employer I mentioned the idea of disclosure because an individual needs to let the employer know that they have a disability in order to receive accommodation because employers are only required to provide accommodation to someone with a known impairment and only those who have a disability or a record of a disability will qualify to receive accommodation under the ADA.

Also reasonable accommodation need only be provided if it doesn't create an undue hardship for the employer so of course that means that significant difficulty or expense may not result as a way of providing that accommodation. Next slide? Who can receive accommodation when accommodation is requested the employer has the right to determine if the individual is entitled to receive accommodation and this right will depend -- will not depend on whether someone is an applicant or employee because accommodations may be requested at any stage of employment but rather on whether the individual who is requesting accommodation has or has had an impairment that was or was substantially limiting in some way. They must have an actual impairment or record of such an impairment to receive accommodation under the ADA. If this requirement is met then the individual must also be qualified meaning they must meet the standards for the position and be capable of performing the essential functions of the job with or without accommodation and be able to meet the production and performance conduct requirements and conditions as well next slide now a question that JAN receives almost daily is whether or not caregivers of individuals with disabilities are entitled to receive reasonable accommodation. I want to address this because employers tend to receive workplace flexibility related requests from caregivers of individuals with disabilities or people who are caregivers of children or aging parents.

However, caregivers of individuals with disabilities are not entitled to receive workplace accommodations under the ADA. And this is because as I mentioned to be eligible to receive workplace accommodation, an individual must have an actual or record of a disability. So for example the ADA would not require an employer to modify its leave policy for an employee who needs time off to care for a child with a disability however an employer must avoid treating an employee different than others because of their association with a person with a disability. So there's that non-discrimination protection. But not reasonable accommodation. Now other Federal, state and local laws might require employers to allow workplace flexibility typically to provide access to various forms of leave for a caregiver of an individual with a disability and of course it depends on the facts and the situation.

For more information you can go to the JAN website which is askjan.org. We have some resources there. One through our A to Z section of our site by topic. We have a page related to caregivers. And then we also have an article known as parents of caregivers, not qualified employees. That explains these provisions of the ADA.

Now, employers may not treat workers with caregiving responsibilities including caregivers of individuals with disabilities disparately to workers that are not caregivers of individuals with disabilities. Like being permitted to occasionally work at home or work a flexible schedule for personal reasons or taking intermittent leaves that employees with caregiving responsibilities should have access to the same types of flexible workplace opportunity. The EEOC offers enforcement guidance to explain these under which discrimination against caregivers might be unlawful disparate treatment so you might be interested in taking a look at these resources to understand a little bit more about disparate treatment in caregivers so you can go directly to these EEOC resources from this PowerPoint.

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Requests for accommodation don't always come in a tidy easily identifiable package but when an employee asks for having for medical impairment this is a request for accommodation under the ADA there has to be that connection between a medical impairment and a work related issue.

Without this nexus, there's not going to be a request for accommodation. So here are some examples for you. Maybe somebody says that they are having difficulty concentrating because of medication side effects. Or an employee returns to work and they are using a wheelchair and the wheelchair doesn't fit under the desk or a note from a healthcare provider indicates the need for three months of lead for medical treatment of some kind or maybe an employee says they need to go to counseling appointments once a week and would like to flex their schedule those days.

So each of these situations and statements should lead to engagement in the Interactive Process under the ADA to determine if the individual has a disability. And if reasonable accommodation can be provided under the ADA.

Lots of times in situations where there are attendance or presence issues we might hear statements similar to some of these and have to interpret them as a need or request for accommodation. So if you really want to know when you have to -- you really have to know when to recognize that request for accommodation.

Next slide.

Now, it's also important to know what is not considered a request for accommodation under the ADA. Particularly when it comes to workplace flexibility. So if you're not sure of course if an employee is requesting an accommodation, it's okay to ask the employee to clarify what's being requested and why. You want to be aware that a request for workplace adjustments or access to benefits and privileges available to employees without disabilities shouldn't necessarily be treated as a request for reasonable accommodation under the ADA.

So for example if employees are permitted to work a flexible schedule or to telework without a specific reason for doing so, then employees with disabilities should not be required to jump through extra hoops to receive the same workplace flexibility as those without disabilities just because the need for flexibility is based on a disability-related reason.

Now if the individual is requesting access to something that goes beyond this flexibility, that's generally available to other employees, for a disability-related reason then it can be a request for accommodation. So for example if employees are allowed to telework one day a week but there's a request for an employee with a disability to telework three full days a week, for a disability-related reason, then this is a request for accommodation.

Also it's not a request for accommodation when there's a voluntary self-identification of disability for affirmative action reasons.

Like under Section 503 of the Rehab Act. Or when there's a disability disclosure absent a work-related barrier or specific request.

So remember, there needs to be that nexus between the medical impairment and a work related barrier. If an employee simply is identifying as having an disability often for affirmative action purposes this is not a request for accommodation.

Next slide.

Now, when the impairment or need for accommodation is not known or obvious, employers may seek sufficient disability-related documentation to establish the right to receive accommodation under the ADA. This process should be about learning if the employee has an impairment. What limitations are affecting their ability to perform job duties. And why accommodations are needed.

Disability-related inquiries and medical exams of employees must be job related and consistent with business necessity under the ADA. Disability-related inquiry rules. Usually this standard is met after an accommodation request is received from an employee whose disability and/or need for accommodation isn't known or obvious. So you want to determine if the individual has a disability under the ADA. But the important thing for employers to remember is not to ask for too much information. Of course JAN staff can help employers figure out what information may be needed and can share a sample form that can be used for ADA purposes.

Now, in the current COVID-19 pandemic situation, employers are encouraged to use various means for obtaining disability-related information for ADA purposes. This could include something like accepting a telemedicine consult with an appropriate provider. Maybe receiving a form or a stamped note from a clinic or an email directly from the healthcare provider that establishes the person's impairment and their need for accommodation.

It could be accepting information from a personal medical record, from a past visit to a healthcare provider that establishes the impairment.

It might be requesting authorization to communicate directly with the individual's healthcare provider.

Or maybe even approving the accommodation request without obtaining formal disability-related documentation if the employer has good reason to believe that the individual has the impairment for which accommodation is being requested.

The employer can document that disability-related documentation will not be required at this time. Given the current pandemic situation. But it could be requested at a later time, if it's needed.

So this is something to consider during the current time when it might be difficult to obtain documentation.

For more information you can see the JAN blog, the ADA and managing reasonable accommodation requests from employees with disabilities in response to COVID-19 on the askJAN.org website where this practical guidance is outlined. Next slide.

So now that we have established some ADA basics to help you sort through the initial steps of the Interactive Process, let's revisit those attendance or presence barriers and explore some accommodation solutions.

So let's go to the next slide.

Now, employers often worry that employees will take advantage of flexible work arrangements but moving forward we may see a change in this thought perspective. Due to the pandemic need to shift where, when and how work is performed. And focusing on results that matter instead of where, when and how work can be -- work is performed can be an effective way to put performance ahead of presence.

By establishing a work culture that focuses on the results that matter most for the business all employees especially employees with disabilities can be more effective and productive.

Flexibility can improve presence by eliminating concerns related to when and how personal medical needs will be met for example. So this could enable an individual to focus on work when working as opposed to worrying about taking care of their personal medical needs and how they are going to accomplish that through the workday.

So for example, accommodations might include access to leave for medical appointments. A flexible schedule that allows time to be made up or worked in fewer days or reduced work schedule that opens up time for appointments throughout the week.

Also breaks to take medication. To eat or to lie down throughout the day. These could be additional unpaid breaks or a flexible break schedule maybe three five-minute breaks instead of a 15-minute break so there could be some flexibility in terms of how people use the break time so it could be spread across the day in a way that helps somebody meet their personal medical needs.

Privacy or private workstation can be important for employees who need to take medication. Maybe check their blood sugar or inject insulin so having privacy or a work private station can help somebody adjust personal medical needs. While working. And of course work at home can provide this privacy and space for self-care to receive treatment like IV antibiotics for example so it could be the case where somebody maybe needed to receive this antibiotic but is perfectly capable of working but couldn't do that in the work environment then they might be able to do that in a home work environment and still remain productive and present. Service or emotional support animals can assist with taking care of personal medical needs as well they might bring the individual their medication they might divert that person's attention and provide a calming support for that individual or they might alert the individual when there's a drop or spike in blood sugar or the onset of seizure activity so these types of accommodations might help an individual address personal medical needs throughout the workday.

Commuting barriers might be addressed through flexible scheduling to enable access to public transportation or commuting when there's less traffic. Accessible parking may be needed so maybe a space that's designated so that there's always an available space and making sure that that person doesn't have to spend time worrying or wondering whether or not they are going to be able to park in order to get to work.

Making sure that the facility is accessible. So having automatic doors. A working elevator. An accessible and usable work space. So that the person can come to work and be at work and do what needs to be done. Of course working at home to skip the commute can be a great solution, as well. So for example someone who may need to use the restroom frequently due to an intestinal disorder and maybe has a really long commute and this might be an ideal way to improve presence because by taking out that commute and having the flexibility to use the restroom as needed can make a big difference in terms of someone's ability to be present and available for work.

Next slide.

The effects of treatment can impact presence so due to side effects or the impact of treatment on the body or just the time commitment really to receiving treatment. Work at home may be necessary to avoid exposure to germs in the workplace. Or to have the flexibility to work at the individual's most productive time maybe this is at 2 in the morning so you know that might be a way to enable the person to deal with the effects of any treatment that they might receive. Or to avoid the stress and fatigue of commute again here we are again looking at commuting barriers that could be affected by treatment in some way. So working from home takes that commute out of the way.

A modified schedule and modified attendance policy could allow somebody to be present. For example, a window of arrival is a pretty common accommodation that we talk about. It might help those who have limitations getting to work by a certain time each day. Maybe due to grogginess from medication or maybe having regularly scheduled treatment appointments that occur and they can do earlier in the morning, that might help them to miss less time at work.

This allows for flexing the work schedule without incurring points for tardiness for example.

Frequent breaks or an alternative break schedule might be needed to use a restroom or lie down and access to leave to receive treatment, deal with medication issues or receive healthcare related to the effects of treatment can all help with presence because this enables individuals to address their healthcare related needs.

Now, personal hygiene. So disability-related personal hygiene needs can present presence barriers. Incontinence, flatulence or body odor can make it difficult to be at work or may cause worry so frequent breaks or an alternative break schedule to use the restroom or a private space to take care of hygiene related needs like cleaning up or changing clothing might be needed. Working at home of course can help remove some of these concerns or these presence barriers because the person can take care of their personal hygiene related needs in a private personal space.

And of course a personal attendant might be somebody who could also be of some assistance who might come in to help with some toileting related needs to help improve presence. As well, of course private employers do not have the obligation to provide or pay for personal attendant care but access into the workplace might be allowed as an accommodation. Federal employers do have an obligation to provide PAS under the affirmative action requirements under Section 501 of the Rehabilitation Act though. Next slide.

Next, accessibility barriers can of course make it difficult to attend and be present at work. Accommodations can include ensuring that access to the work environment by having an accessible entrance or restrooms or their workstation, providing accessible and/or designated parking to remove the lack of parking as a concern can be very helpful. Providing temporary alternative work space when a workstation cannot be accessed might be something to take a look at so for example as construction is going on and this impacts accessing the work environment, it may be possible to provide an alternative workstation for a period of time. Working at home or an alternative accessible location can also be looked at. Again you're removing the access barrier by allowing somebody to work at home or perhaps at an alternative accessible location. And a flexible schedule could enable someone to access other forms of transportation.

So for example, if accessible parking is not needed, then it may be possible for somebody to access another form of transportation if that's something that's possible.

Environmental exposure issues. So these can also affect presence. If there's something in the workplace that makes it difficult or impossible to be there, obviously this is going to affect attendance. So consider temporary alternative workstation, away from irritants. Maybe working at home or an alternative location could be considered. Or maybe even implementing a policy like a fragrance policy or banning foods that cause severe allergic reactions. These are things that might make the workplace more available and accessible to somebody.

Remote access might be useful for attending meetings or trainings for example so getting that person out of that group environment so that they can limit their exposure to environmental irritants that could pose a problem. Obviously we're all doing this right now. So it might be something that's very easy to implement at the current time.

Next slide.

Now, I want to talk about some ADA issues and practical considerations related to some of these accommodation solutions. Beginning with working at home.

The response to telework as a way to work is rather different now than it has been in the past due to the impact of COVID-19. And of course as a strategy to flatten the curve during the COVID-19 pandemic, state and local governments and employers across the United States have required and requested that employees work at home for what was expected to be a temporary period of time but I think we're going to be working this way longer than we anticipated. During ordinary times the Equal Employment Opportunity Commission has stated that changing the location where work is performed may be a form of modifying workplace policies and may need to be considered as an accommodation under the ADA when requested for a disability-related reason and when it's reasonable and doesn't pose an undue hardship for an employer. This type of accommodation may need to be considered even if other employees aren't allowed to work at home so as long as the employee can perform the essential job duties of the job in this way. It's also possible that an employer might provide alternative accommodations that enable an employee to work in the workplace if effective.

So just because telework is requested doesn't necessarily mean the employer is automatically obligated to provide that as the accommodation.

Employers do have the right to choose among effective accommodation solutions so there can be times where other forms of accommodation might be provided.

Employers would need to consider lots of different things and I'm going to talk about some questions to consider that might help here. JAN does offer detailed information about telework as a job accommodation. If you go to askJAN.org and use the A to Z section again by topic we have a telework page that helps employers work through telework as a possible solution so I would encourage you to take a look at that.

Next slide.

Now, the EEOC does affirm that telework may need to be considered as a form of accommodation for individuals with disabilities who are at high risk for developing severe complications from COVID-19. And I wanted to bring this up simply because this is a question that we are receiving quite a lot at JAN these days. So I just wanted to be able to have the opportunity to talk a little bit about this.

We do know that individuals who may be at higher risk for developing severe complications from COVID-19 may need a way to avoid or limit their exposure in the work environment with employers having allowed telework for some jobs not all of course this may be something that as businesses return to the workplace employers may still need to consider for individuals who are in this sort of at-risk group. If they have a disability. Again, of course, provided its reasonable and doesn't have an undue hardship but the EEOC does offer some information on this on one of their technical assistance or their guidance documents related to employer practices for pandemic preparedness in the workplace and the ADA. Part B Question 10 in that guidance does mention telework as a possible form of accommodation. So this may also be something that's needed in response to state or local stay-at-home orders and other business efforts to control exposure of course.

But here I'm sort of talking about this from the perspective of it becoming an accommodation need for individuals who may be at an at-risk category based on disability.

Next slide.

Now, there are several questions that may need to be addressed before even considering telework as a general accommodation. So for example, can the essential functions of the employee's position all or any be performed away from the workplace? So employers don't have to remove essential job duties in order to provide telework as a form of accommodation. Does the work require in-person interaction with colleagues, clients, patients or customers. And can communication occur in an alternative way? Certainly there are jobs where somebody might be a client facing or they may be providing patient care where you're not able to work from home because that's the function of the job. And so it's not always going to be possible.

Will the employee have access to the general equipment, resources and information needed? So of course you're going to be able to -- need to be able to have access to the information and resources and equipment needed in order to perform certain tasks. So for example, this might include having a laptop that allows you to access a certain database.

It might mean being able to access certain resources in order to do the work, those types of things.

When will the employee be expected to complete tasks and be available to work? Working from an at-home environment may mean also taking a look at when the individual is working and whether it's different than ordinary operating hours or not. It may simply be 9 to 5. But it could also be during other times depending on the type of job. How will the employee be supervised and performance be measured? This is probably one of the bigger questions that comes up. Because when someone is in a remote capacity, you need to set up different ways of providing supervision and performance measurement. But it's important to make sure that those types of questions are asked in order to figure out how those situations are going to be handled.

These types of questions are further explained in the telework page on the JAN website so you can go there to learn a little bit more details surrounding these kinds of questions that might be helpful in exploring telework as a possible accommodation.

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Now, the issue of what equipment employers must provide to individuals who work at home during ordinary times is one that's complex. And one that's not addressed by ADA regulations or informal EEOC enforcement guidance and JAN cannot say if equipment must be provided in general to work at home. So I'm talking generally speaking about things like desks and chairs, that kind of thing.

But in the EEOC guidance on pandemic preparedness in the workplace and the ADA it notes during a pandemic if an individual with a disability needs the same reasonable accommodation at a telework site that was provided at the workplace that the employer should provide that accommodation absent undue hardship so this is something that some employers may want to take a look at. We really can't say more than that. It is something that EEOC has addressed just in this pandemic situation. So I would encourage you to take a look at that pandemic preparedness guidance just to get some more information.

EEOC has also said that if such a request is made the employer and the employee should discuss what the employee needs and why and whether the same or different accommodation could suffice in the home setting.

You know the employer might need to consider whether the current circumstances create some significant difficulty or undue hardship in acquiring or providing certain types of accommodations in the home environment. Of course this would all be fact specific and depending on the job and the workplace. So there is a little bit of guidance there. It's not a lot. But it's a little bit to work from.

Next slide.

So here is some practical guidance on telework as an accommodation. You want to of course define the essential job functions to be performed at home during the pandemic situation. Or any other situation. You want to document the parameters of the temporary telework arrangement and draft an agreement perhaps. So knowing why and when the telework will be permitted. For what duration. What supervision will be provided. Make sure the person has the tools and resources that are needed to do the work.

Provide accommodations if reasonable. And if that's something you're able to do.

Of course providing I.T. support is necessary. And at an at-home environment as well. And of course you want to develop work goals and performance expectations and apply those requirements.

Next slide.

Next we know that EEOC says that modifying a schedule can be a form of reasonable accommodation under the ADA. So when it's feasible an employer must allow an employee with a disability to work a flexible or part-time schedule as an accommodation when needed for a disability-related reason. And when of course undue hardship will not result. If this flexibility is not provided to other employees, even if this flexibility is not provided to other employees. So of course the time and essential function is performed may be critical and could affect the ability to approve this kind of reasonable accommodation, if it's not reasonable, maybe consider reassignment to a vacant position that allows the employee to work during the hours that are requested. Next slide. Now modifying a schedule can involve a lot of different things. These are just some examples. It could be adjusting arrival or departure times. This could be based on individual needs. It could be that window of arrival I mentioned so as long as the person arrives by 9:30 there won't be any penalty and then they make up the time. It could be a reduced work schedule, allowing breaks into the day. Changing a shift. So there are lots of ways to modify a work schedule as a form of accommodation.

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Of course there are questions to consider when exploring this accommodation, as well. For example are other employees in the same position permitted to work a modified flexible schedule or part-time schedule? If so remember that -- that I talked about earlier, is this a request for accommodation? Or is this something that everyone has the ability to access? So just be careful that you've identified whether it's an accommodation situation or whether it's something that somebody already has access to. Other questions so for what frequency and duration is this scheduled modification needed is it only as needed or on treatment days or every day? Is it needed in order to return to work? Maybe just temporarily or is it something that's indefinite in nature and will the accommodation impact how and when essential functions are performed? For example maybe the time a store opens or when customers are served this could affect whether or not you can modify somebody's schedule.

There also may be a need to modify an attendance policy to implement a schedule modification in order to allow that flexibility without the person being penalized. Next step -- I'm sorry; next slide.

If -- and so a question we do sometimes get is around part-time and whether or not part-time is something that an individual would be eligible for. You might want to take a look at that. An employee might be eligible to work a reduced work schedule as a result of the Family Medical Leave Act as well. You want to take a look at what notice might be required so how will the individual inform their employer that they are going to be working a modified schedule or what sort of arrangements will be made.

Something that's important to consider who needs to be informed about this type of accommodation maybe a supervisor may need to know that the late arrival was approved. Maybe parking garage or security needs to know the person has access to the building at certain times.

Next slide.

A question that does arise in these situations is whether other employees may be informed that a co-worker is receiving this kind of accommodation. Of course we know that implementing this kind of accommodation requires a communication. But employers may not disclose to other employees that a co-worker is receiving accommodations for a disability-related reason because of the ADA's confidentiality rules. So employers have to be careful sharing information with others about these kinds of workplace flexibility accommodations. Responding to co-worker questions can be tricky but it is possible to do so without revealing information about disability, accommodation or the law. One tip to consider before questions arise you want to educate all employees about the ADA and accommodations in order to curtail these kinds of questions. Also having a workplace culture that values flexibility can be helpful because then people don't have to ask these kinds of questions.

When implementing accommodations does require communicating an employee's need for accommodation you just want to commit it to essential personnel so those on a need-to-know basis. Next slide.

Now in responding to co-worker questions management could find it useful to point out it has a policy of assisting any employee who encounters difficulties in the workplace. That many workplace issues are personal. And that in these circumstances it is the employer's policy to respect employee privacy. And for more information on this, the EEOC does have a question in their reasonable accommodation and undue hardship guidance Question 42 and JAN also has a blog known as the Manager's Dilemma that you can access so these might be helpful to you.

Next slide.

So the practical guidance here of course is you want to document the parameters of the modified schedule arrangement. What the consequences are of not meeting the parameters of the scheduled arrangement let's say they come outside the level of a-- the window of arrival what will happen then, you want to define break parameters and you can request disability-related documentation to support the need for this type of accommodation and then inform those who need to know.

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I started to talk a little bit about part-time earlier and this is something that comes up a lot. So must a full-time job be changed to a part-time job as an accommodation under the ADA and the answer is maybe. Although EEOC guidance does state that part-time work is a form of reasonable accommodation they also state that employers don't have to create new jobs and there's really kind of an argument that changing one full-time job to two part-time jobs or just reducing it to a part-time job is in essence creating a job so the answer to the question really depends on which guidance you're following because it's not a clear-cut issue employers may want to err on the side of caution and consider a request to change to part-time if it doesn't create an undue hardship if it does they can consider reassigning the employee to a different job when available when they do choose to do this to part-time it's not required as an accommodation under the ADA to retain the same full-time pay and benefits. It may be something that has to be done under other types of law -- other Federal or you know wage and hour laws that could apply. So you definitely want to check into what other laws could apply to that kind of situation.

Next slide.

So providing leave I've talked about that a good bit according to EEOC employees with disabilities must be provided to access to leave on the same base as all other similarly situated employees if a request for leave falls within the employer's leave policy treat that employee requesting the leave the same as you would treat others if protective leave can't be provided under that policy or under the Family Medical Leave Act for example then the employer can engage in the Interactive Process to look at leave as an accommodation under the ADA permitting the use of accrued paid leave or allowing the use of unpaid leave can be forms of accommodation to the extent that it's reasonable and of course doesn't create undue hardship there's no predetermined duration of leave time that's required to be provided as an accommodation under the ADA so it is up to an employer's discretion to determine how much leave is reasonable. JAN consultants cannot say when undue hardship is evident but information gathered during the Interactive Process can be used to analyze whether leave is reasonable as an undue hardship and EEOC actually does offer a good bit of information in their employer provided leave guidance that can help, as well.

Next slide.

Providing leave like I said it can include allowing somebody to use up their accrued leave time it could be providing unpaid leave as needed it could be intermittent or extended leave it could be allowing somebody to take leave and make up time. Modifying an attendance policy that allows for absences related to the person's medical impairment. Providing leave as an accommodation beyond FMLA if somebody needs time beyond what they are entitled to under FMLA, as well.

Next slide.

So of course an employer wants to use their discretion and determine how much leave is reasonable. No specific timeframe is required. It has to be case by case so you have to do an analysis in each individual circumstance to determine when leave is going to create an undue hardship for you basically so I always say to employers keep a log, document facts, not feelings. So you want to be able to accurately and objectively assess and document the impact of absences on business operations in order to determine how much leave is reasonable.

Next slide.

Okay. We're almost finished. Last two accommodation issues. The first is commuting assistance required as an accommodation. So the first question, is, is commuting assistance required as an accommodation? And we know that employers are generally not responsible for transporting employees to and from work. As a form of accommodation. But when an employee's disability interferes with their ability to commute to work, then an employer may have to provide a reasonable accommodation that enables the person to be present.

Now that could be a schedule modification. It could be providing accessible parking. It could be providing an alternative workstation. Working from home. It could also be reassignment to a different location.

So if there are commuting barriers that are in effect and there's a way to make a change that enables an individual to commute to work effectively or to work. So when I say commute to work, it may be that that commute is taken away by providing telework as a possible solution instead. So again that is a way of enabling the person to be present and able to work. But not necessarily getting somebody to and from the workplace.

Next slide.

Finally, PAS so I mentioned PAS earlier. PAS is where someone might be providing Personal Assistant Services as an accommodation this means you're providing some assistance where somebody might need help in performing activities of daily living that an individual would typically perform if they didn't have a disability this is not otherwise required as a reasonable accommodation. So it could be things like providing assistance with removing or putting on clothing, eating or using the restroom. These are barriers for people with severe disabilities or significant disabilities, they may have prevented an individual from being in the work environment or performing a job. But with personal assistance services it's something that would enable somebody to be present and work because they are getting the assistance they need. PAS is not required under the ADA as an accommodation.

But it can be provided. It can also be something that's simply allowed in the workplace. So whereas the employer doesn't have to directly provide PAS assistance by hiring somebody like a personal care attendant, the employer could allow someone to come into the work environment to provide this assistance to an individual and this might be as simple as allowing a spouse or family member to come into the workplace to assist with these activities during the workday. So this could certainly be a way of enabling presence for an individual who needs this type of assistance but maybe didn't have it before.

Next slide.

Okay. So I would just like to finish up and then I might have some time for some questions here. Just to go ahead and refer you to some resources that you can take advantage of. So on the askJAN.org website I have mentioned the A to Z section several times. Of course we have a great number of resources on our site. And whether it be through articles that we have or through specific pages that are set up by topic. What I've done here is pulled out a number of topic pages specific to the types of accommodations that I've referenced today. So if you're looking for more information around commuting issues and accommodations. Providing leave as an accommodation, parking issues. Telework as an accommodation, you can go to these resources for more information.

You can also link up to our sample forms page, which can be helpful when you're seeking information or approving and denying accommodations or creating a temporary or trial work -- trial accommodation situation. So we have lots of forms related to helping you do that.

Next slide.

I'm also -- also make sure you're aware of EEOC ADA enforcement guidances that can be relevant when thinking about workplace flexibility and accommodations, I've just learning disability a few here that can be very helpful so reasonable accommodation and undue hardship guidance the employer provided leave in the ADA guidance can be very helpful especially when looking at undue hardship issues and as an accommodation and kind of helping you figure that out.

And of course EEOC also has a work-from-home telework as a reasonable accommodation publication, too. That was something that was available prior to COVID-19 of course so it's more generally related to telework as a form of accommodation during ordinary times and then of course JAN offers some other resources here that might be helpful. We have an employers' practical guide that touches on a lot of these topics that I've talked about today. An employee's practical guide to requesting and negotiating reasonable accommodation hits some of these issues, too. It guides you through the Interactive Process. And then just an interesting article "Workin' 9 to 5 - Not the Only Way to Make a Living" kind of talks about this concept of workplace flexibility and improving presence.

Next slide.

I did want to throw this in here as far as COVID-19 resources, too, because we're talking about workplace flexibility and that has a lot to do with what we're all experiencing at this time. So I wanted to make you aware of some resources that can be extremely useful. Of course JAN has a COVID-19 resource page. And we have a few articles on there that you might be interested in.

And then EEOC resources, which have been extremely helpful in sort of sorting out issues around how to accommodate and address medical inquiry issues during this time. So pandemic preparedness in the workplace was an older document that the EEOC has updated to address the COVID-19 related pandemic.

What you should know about COVID-19 and the ADA, the Rehab Act and other EEO laws, this is a technical assistance guide that is being updated on a regular basis. So I would encourage you to bookmark that one.

And then EEOC actually put together a prerecorded webinar addressing a lot of the questions coming out of this COVID-19 pandemic. Which does include issues related to workplace flexibility, too. So you might be interested in that. You can view the webinar on YouTube but there's also a link here to the transcript, if you would like to take a look at that and sort through some of those questions.

Next slide.

Okay. That's a lot of information and we made it through with a few minutes to spare.

So let me take a minute here to take a look at some of the questions that have come through during the webcast session. If you would bear with me just a moment.

Okay. Let's see what we have here. Here is a question, how old can a record of a disability be to qualify an individual for consideration for a reasonable accommodation? So keep in mind that it's not always about the date on that documentation. Because you may have somebody who has a lifelong impairment that's not expected to change over time and what you're really trying to do is establish that the impairment exists so it's not -- there's no sort of standard timeframe that we can put on that documentation. You just really have to decide is it sufficient at this time to establish that the person has the impairment they say they have. That it explains what limitations might be involved and how this could affect the person's ability to work or why they might need accommodations. If that information isn't sufficient and doesn't answer the questions that you have, talk to the individual. Gather some more information and then decide whether or not you need to have more current information. So I think there's not really a blanket answer to that question. It really depends on what information is provided there and whether it's sufficient and accurate and current enough to decide whether the person is entitled to receive accommodation and what you can do moving forward.

Next question does record of disability mean that the individual has to be medically documented or does record of disability mean that the employee has a history of the disability?

So remember, under the ADA there's not a requirement to have medical documentation or to request or require documentation to provide accommodations. You have a right to do this. And so when you're looking at that documentation or you're requesting some sort of information, if you're looking at a record of a disability, it may be just asking for some information that does, in fact, establish that the person in fact had an impairment at one time. So let's say for example the individual has a history of cancer. But they are currently not experiencing any limitations from that cancer.

But let's say that they have annual follow-ups. And although they don't have a current limitation affecting their ability to do the job they have a record of that impairment that requires an accommodation moving forward possibly if they need leave time.

So it may mean that you do receive something that indicates that yes the person had cancer at one time. As a way to establish that they have that record of the impairment. Even though they don't currently have limitations.

All right. Let's see.

There's a question here, according to the CDC guidance, the higher risk category includes people over the age of 65.

And so I am going to address this real quickly. Because it's a question we're getting a lot.

And so we're getting questions about people wanting to -- workplace flexibility like telework for example. Or working at times of the day when there aren't as many people in the work environment. Things like that.

So that they can be present. But we're getting questions related to COVID-19 around this. And so you hear higher risk category as being something to pay attention to.

Keep in mind that for ADA purposes, so we're talking about accommodations for persons with disabilities, the person must have an underlying impairment that substantially limits a major life activity that would in some way put them at higher risk for developing severe complications from COVID-19. For ADA purposes, that's the individual that you would be accommodating under the ADA because we're talking about disability related issues. For an individual who is over the age of 65, even though they fall into the higher risk category per CDC guidance, if they do not have a disability, they do not have an impairment that would limit them in some way if exposed, where they might develop severe complications, then it's just a matter of age risk factor. That's not an ADA situation. Because we're talking about an age related situation there. Not a disability-related situation. So if the only factors that the person is over the age of 65 but they do not have a disability, then you're not accommodating them under the ADA. The ADA would not apply in a situation like that.

Now, of course you don't want to treat that person disparately on the basis of age if other people are being permitted that flexibility, you want to make sure that person is treated just like other people have been.

So you do want to take that into consideration. But it won't be an ADA issue.

Okay. Let's see here. Check this chat pod. Maybe there's something else we can do here.

It looks like there might be some questions around -- bear with me for a second there's a question around wearing a face mask when an employee feels it's not necessary. So we could get into that quite a bit here and we only have a short period of time actually just another minute. But face mask issues can be complicated. We do know that employers can require individuals to wear face masks in the work environment during this COVID-19 situation. And it is something where you do want to take a look at if there's a disability-related reason why someone is unable to wear a mask you may need to accommodate through other methods, depending on the situation and the level of protection that is required. This is something that I would encourage you to contact JAN about. Because we don't have the time here to continue with this topic. But you can give us a -- what I would encourage you to do is go to askJAN.org and use the live chat feature you can also email us at JAN@askJAN.org we're operating remotely right now and we are accepting voicemail messages where we can give you a call back so you can still call into the JAN service and leave a message for someone to call you back so you can still get in touch with us, we can still answer all of your questions. So we're still here for you as a service.

So that's all the time I have today. I do want to remind everyone to stay tuned. And complete the evaluation at the end of the presentation. Also thank you to ACS Captions for providing the captions for our session today.

As always, we thank you for participating and attending these JAN webcasts. And we look forward to speaking with you and answering any questions that you may have through the JAN service so everyone have a wonderful day.