# Ask JAN! Q&A: Cognitive/Neurological Team Edition

**[Introduction]**

**TRACIE DeFREITAS:**

Welcome, everyone. Thanks for joining us for this JAN — the Job Accommodation Network — Accommodation and Compliance Series webcast "Ask JAN! Q&A: Cognitive/Neurological Team Edition."

I'm Tracie DeFreitas, and I'm a Program Leader and the Director of Training and Outreach. Today I will be the moderator in the webcast, because I'm joined by my colleagues Melanie Whetzel, JAN Principal Consultant and Cognitive/Neurological Team Lead, and Bill McCollam, Consultant on the Cognitive/Neurological Team. Melanie and Bill, thanks for offering this Q&A today. It should be a great opportunity to hear a lot of burning questions on this topic.

This webcast is designed to be an interactive discussion about trending job accommodation and Americans with Disabilities Act topics. The team will field questions related to cognitive/neurological health conditions such as mental health conditions, attention deficit/hyperactivity disorder, learning disabilities, seizure disorders, and neurodiversity. And we will discuss topics related to communication, reducing stress and anxiety, and executive functioning difficulties. The webcast will be 60 minutes in duration.

Let's get started with the training. Melanie, I'm turning it over to you.

**MELANIE WHETZEL:**

Thank you, Tracie. Bill and I are going to be real brief today with what we talk about. We have some slides provided. We want to make sure we have plenty of room left for questions, because that's what we promised, and we want to deliver on what we promise. Bill's going to talk a little bit about JAN for those of you who may not be as familiar with us and what we do and who we are. We're going to give you a Cognitive/Neurological Team overview. The accommodation topics that Tracie mentioned, that's what the slides will be about, and then we're going to have plenty of time for the live Q&A.

All right. Next slide please.

All right, this is Bill. Thanks, Bill.

## [About JAN]

**BILL McCOLLAM:**

Sure. The Job Accommodation Network, that's us, AKA JAN. We're the leading source of free, expert, and confidential guidance on job accommodations and general disability employment issues. We're a national service established in 1983, so JAN's getting old. Just turned 40. So we even predate the ADA. We serve customers across the US and even sometimes around the world with international companies.

For 40 years our mission is to help employers recognize the contributions that qualified workers with disabilities add to the workforce. We do this by consulting on accommodations solutions, best practices and process strategies, practical guidance on title I of the ADA, which are the employment provisions of the ADA, and related legislation such as the Rehab Act that covers the accommodation process for federal employees, the FMLA, Pregnant Workers Fairness Act, which is a relatively new law. We know here at JAN that effective accommodations on the job play a critical role, a vital role in making workplaces inclusive, advancing the goals of the ADA, and then ultimately increasing opportunities in the work world for people with disabilities.

We are a service provided through the US Department of Labor's Office of Disability Employment Policy. We're small. There's only 15, give or take, of us consultants, probably less. But federally funded. We operate through West Virginia University in Morgantown, West Virginia. Total staff of about 25 people. So that's JAN.

Next slide, please.

## [What does JAN’s Cognitive/Neurological Team do?]

**MELANIE:**

All right. Thank you. So you may be wondering what is it we do. Well we consult on all things cognitive and neurological, and I will get to that in just a minute. We consult with individuals. Lots of those. Employers, medical professionals, service providers, job coaches, parents and other family members, coworkers, supervisors and managers, HR people. Adult children will contact us for help with parents who might need help. I even had a contact from a neighbor who was trying to help her neighbor, and I thought that was pretty interesting. Although our mission is to talk mainly to employers, we answer questions, those that we can, from whoever does contact us.

So I'm going to give you here a fairly exhaustive list of the conditions that our team consults with, and you will understand why we're so really crazy busy most days. We do all mental health, which includes anxiety, bipolar disorder, depression, eating, personality disorders, phobias, OCD, PTSD, substance use disorders, seasonal affective disorders, schizophrenia, epilepsy and seizure disorders, sleep disorders, autism, ADHD and neurodiversity, Alzheimer's disease, dementia, learning and intellectual disabilities, Tourette's, stroke, TBI and postconcussive syndrome. And then also we consult with people who may have MS, multiple sclerosis, cerebral palsy, fibromyalgia when there are cognitive issues involved. Sometimes we don't know what the disability is, we have no idea what the medical condition or disability is, but because of the limitations, fall under our expertise.

We get a lot of calls that are based on memory. Let's see. Concentration and focus, time management, executive functioning difficulties, which we're going to talk about here later, and a big one is stress and anxiety, which Bill's going to address here later. We answer a lot of questions about stress and anxiety. Before the pandemic we — our mental health calls were increasing on our team, and during the pandemic it really kind of exploded. A lot of that was anxiety, and since the pandemic we've had a steady increase in that as well.

Okay. So enough about that. Here on the next slide, these are the topics we are going to cover. Tracie mentioned them earlier. Mental health conditions, learning disabilities, seizure disorders, neurodiversity, attention deficit/hyperactivity disorder or ADHD, reducing stress and anxiety, huge issue, something we talk about multiple times daily, the whole team. Executive functioning difficulties, which involves a lot of different medical conditions and disabilities, and communication.

All right. Next slide please.

## [Common Cognitive/Neurological Accommodation Topics]

And these are — The next couple slides are going to be our common topics.

All right, next slide.

### [Mental Health Conditions]

I'm going to talk about mental health first. All right. And I said we are going to be brief. Accommodations are always provided on a case-by-case basis based on the limitations that a person has. We can have a lot of people with the same disability. They're going to have similar limitations, but they're going to be different. They're going to be different levels of severity, and it depends a lot on the job and what the difficulties they're having on the job.

So there can be a really wide range of accommodations available. Some of the most common ones we see are needed for memory, for concentration, for reducing stress and anxiety, and then flexible scheduling. Flexible scheduling is one of the most commonly requested accommodations. That can mean about anything that helps the employee as long as it works for the employer. We do have our publications linked at the bottom of the slides. We have one that's on mental health conditions. That's a general publication on general mental health, and if you look there when you link up to the A-Z of disabilities, that will give you the page of all disability publications that we have, and there you can find specific ones on bipolar, depression and anxiety, phobias. You can also find there epilepsy and learning disabilities. All of those that we have mentioned.

And each slide we're going to answer a question. A common question to get us started. So the common question that we get is we get a lot of questions about the interactive process, how that's supposed to work. What does that really mean?

So the question is how can the interactive process be as stress-free as possible? And I'm going to say there's mainly one word I could say would be "communication," and the second word would be "communicate quickly." I think a lot of questions we get from individuals is that they've heard nothing back from their employer. And if you have a mental health condition, if you have anxiety and you hear nothing back, that's going to exacerbate your anxiety, because you don't know what is going on. So if the employer can get back as quickly as possible to the employee and say, "Hey, we got your request. We're working on it." "Hey, we got your request. We're sorry to hear you're having difficulty." Go ahead and talk about your process. Even if you have your process written somewhere and you expect people to know what that is, you can go ahead and reiterate that to the employee to ease their stress or their discomfort or just to help them know what's going on.

You know when an employee discloses, they give out that confidential information, which can be very difficult. They don't know really where it's going, who's looking at it, or what's happened to it. Sometimes we hear it has been four, six weeks, and they've not heard back from their employer, and that's really way too long. The employer should get back as quickly as possible. I don't know why that can't be done in a couple days, maybe, and just say, "Hey, we did get your request. Our policy is to meet within seven business days and start the interactive process." And then that way the employee is aware of what's going on and they're not thinking things like, "They haven't responded. Did they get it? Are they ignoring me? Are they going to fire me?" They don't have a chance to think those thoughts because nothing's happening. This way they know for sure.

All right. Next slide please.

### [Learning Disabilities]

All right. So I'm going to talk a little bit about learning disabilities. Learning disabilities are when there's difficulty with thinking and processing information and remembering and of course learning. People with learning disabilities have average to high-average IQs and abilities, and so sometimes it takes an employer by surprise, because they may have gone through an interview, they may have talked a lot to a person, and they have no idea that the processing difficulty is going on until there's maybe some work product going on, and it can be very surprising to an employer.

So there are different issues with learning, with executive functions, which involve memory and concentration, organizing, prioritizing, multitasking, and there can definitely be issues with reading, writing, and spelling, and mathematics. There are different diagnoses of learning disabilities. People will say, "Well, I have dyslexia, and you don't have that on your website." Well dyslexia; dysgraphia, which is writing; dyscalculia, which is mathematics; disabilities in those areas, they're all listed under our publication of learning disabilities, because that's the big umbrella, and then there's specific reading disabilities as well. We have a publication there on learning disabilities.

Our question in this category is how is a documentation of a learning disability different than that of a medical condition? I had a question just this morning. The doctor — the employee's primary care physician would not give them documentation for a learning disability. That's because he can't. Learning disabilities are diagnosed through testing, and it's extensive testing, and that's done by an educational or a neuropsychologist, and they write a big report. A lot of that information's not necessary to the employer. But the employee, the individual who was tested, will get that report. They test IQ, they test achievement, they look at the discrepancy between the two to figure out what's going on. There'll be a page that will have strengths and weaknesses. There'll be a page that has recommendations. And that's the medical documentation. You can't just go to your doctor in a 15-minute appointment and say, "Hey, I think I have a learning disability. Can you verify that and write me a note?" It's not how that works.

Another thing about it is if the testing was done when a student was 18 or a senior in high school or done in college, that's considered current medical documentation, because a learning disability is static. It's not going to change over time. They don't need to be tested every year. Some employers will say, "We need updated information. That's three years old." Exactly, and it's not going to change. So sending somebody to get another test done, that extensive testing — It's very expensive. Insurance doesn't always pay for that. So that information should be considered current unless there is something that the employer sees that doesn't mesh with what is in that report or the information that they have. And in our learning disabilities publication, if you go down to the bottom of that, we do have a publication specifically on medical documentation for a learning disability. And all of our publications, if you go down you'll find all kinds of related articles and publications that will be very helpful.

## [Q&A #1]

All right. Tracie, what questions do we have?

**TRACIE:**

All right. Give me one second to take a look here. Let's get to this next slide here and see what we have.

Okay. So here's one, Melanie. When requesting an accommodation, does the employee need to understand how the disability affects their work? And there's a second question with that. How can a service provider help to determine this for them?

**MELANIE:**

Well, I would say it would be ideal if they know how their disability affects their ability to do their job. But people don't always know that. When we're talking about mental health conditions, whether it's the condition itself or the medication, the side effects of medication, possibly learning disabilities, cognitive disabilities, people aren't always aware of their own thinking, their own cognition. They're not aware they might not be doing the whole job. I try to talk about this every presentation, because that cognitive disability keeps them from knowing sometimes that they're not keeping up with the work. They don't know the whole scope of the job. "There's a part over here I haven't been doing." And so they might need help with that.

I think medical providers that are specialists or who know the employee might be able to really help with that, with having a discussion with the doctor, "Here's what I'm having trouble with," and the doctor can look at that. The doctors can't always provide detailed information about that, because they don't really know the job. So I think it really is — should be the employee who knows themselves and knows their disability. Talking with the employer, specifically the manager and the supervisor who knows the job, to help figure out "What can we do? How can we help this employee?"

If you are going to do a performance evaluation or a performance improvement plan, you would have specifics on where the employee is not doing the work, where they're not up to speed, and you can start with that. You know, "Here's where you are. Here's where you need to be. Let's talk about how we help you get there. What are your difficulties?" And help draw that out of the employee, because they may not really be able to see that on their own.

**TRACIE:**

Okay. Here's another one. This is related to learning disability paperwork, so it's related to what you were just talking about.

What if the learning disability paperwork is from when an employee was in school and only applies to school-related activities such as testing? In that case shouldn't we request updated medical information as it relates to the job?

**MELANIE:**

If there is only information about testing, and that was probably the only modifications that that student needed in school. I can't say for sure — I was a special ed teacher before I came to JAN. I couldn't say for certain. but yes, you might be able to request new information if there's nothing that relates to the job. Now if an employee needs extra time for testing because of reading difficulty, you can translate that they're going to need extra time or need some assistance with reading on the job. If they need extra time because of distractions. Sometimes it's listed like that. Then that helps you understand that they have distractions that could affect them in the job, too. It could be enough to go on and kind of start with and draw the employee out.

In our publication we do have ways for people to get the testing done through VR possibly at no cost or through a university at a sliding scale fee. Sometimes — I had a question earlier this week about an IEP, which is an Individualized Education Program — Plan that has a lot of information about modifications. And that sometimes is enough, because it might give you details about what they need for reading, what they need for writing, but it may not give you a complete picture.

**TRACIE:**

Okay. Very, very helpful. All right. Let's see here. Here's something else.

Can you talk a little bit about training accommodations and how long an employer would have to provide that type of accommodation?

**MELANIE:**

Okay sure. That's a question we get a lot — we get frequently, too. Because people with disabilities — I'm thinking particularly learning disabilities — have trouble learning. A lot of people say, "I need a little extra time. Once I get it, I'm good to go." And that could very well be true.

Employers may have policies where they'll say, "Well we only provide two weeks of training, then you're out there. We throw you in on the sales floor or on the telephone or whatever the task is." But they really need to look at modifying that policy for someone with a disability and say, "How much time can we allow for some extra training? Do we have to have the person right out on the sales floor today? Can we give them an extra week? Can we give them two extra days?" And then you need to talk to that employee too to find out what is it about the training that may not have been as successful. Are there alternate forms that could be helpful to get them up to speed? Then you would determine from your own business need how much time you could allow for them to have extra training or time with a trainer, different types of materials.

Like I said before, I remember talking to an employer one time, and they had been training for 18 months. That's a long time to have an employee not do the job. Another thing to do is look at how much progress the person's making. If they are making progress, that's promising that if we give more training they're going to progress more, but if they're making no progress and you've given a lot of extra training and a lot of accommodations with it, that may be indicative that "How much longer are we going to do this and still not have any progress?"

**TRACIE:**

All right. So helpful. Let's see here. I think we'll do one more, and then we'll continue with the presentation, because we'll still have lots of time to answer questions. So let's see.

If an employee has requested reasonable accommodations and they've not been provided those accommodations, can they be written up for failure to perform the work duties?

**MELANIE:**

Bill, would you like to take that one?

**BILL:**

Sure. Yeah. With performance issues obviously the goal of the accommodation is to allow that individual to work up to expected performance standards. Employers generally do not have to eliminate or lower expectations of performance or production. So oftentimes, employees do not disclose until there is a performance problem. At that point an employer doesn't have to rescind any previous action or rescind a performance improvement plan or whatever it might be. Guidance urges employers to maybe put a plan on hold until you can see what accommodations might be effective and allow that employee an opportunity to work with accommodations in place before action is taken that may be punitive or otherwise set the employee back in some way. So really, the employers are urged to act with some expediency. There is no timelines established. But you do want to at least make a good-faith effort to implement accommodations and try those before there's punitive or other measures taken against employees who have requested an accommodation.

**TRACIE:**

All right. Very helpful. Thanks, Bill. Let's get to the next slide, and I'll keep looking for questions.

**MELANIE:**

All right. Bill's going to start in on the next two slides here.

### [Epilepsy/Seizure Disorders]

**BILL:**

Our team often gets referred to as the mental health team, but obviously cognitive/neurological conditions encompass other things like epilepsy and seizure disorders, which is a pretty wide-ranging condition. There's various types of seizures. A lot of folks typically think of seizures in the form of someone on the floor seizing in convulsions and whatever, but there's other types of seizures that I'm sure many of you are aware of where maybe it's just the person sort of phases out for a minute. We get a lot of epilepsy/seizure calls.

Obviously one of the primary concerns for employers in particular is the safety issue. What are the risks if this person has a seizure on the job? And obviously that depends on the type of job it is. In some work situations there's no immediate risk except for maybe that employee's health individually. So safety concerns are — we get a lot of questions about that.

Attendance. Often times for treatment, oftentimes people who have a seizure, the cognitive effects of that may linger for anywhere from a short period of time, an hour or so, or maybe for some people we talk with it could be a couple days. So they tend to miss a lot of work in some of those situations. So attendance issues. Employers are not required to eliminate all time requirements, but they're certainly urged to have some flexibility around attendance policies and need for whether it would be intermittent leave or short-term leave.

Stress management. You know, stress of different kinds is often a trigger for seizures, so managing the stressors that might trigger someone's seizures. Sometimes it could be lighting. Changing fluorescent lights. There's a number of different ways to do that. Sometimes it is the schedule. You know, we get — there is a lot of calls in this category we get about shift work and how someone with a certain seizure condition might need a more regular schedule. They may not be able to work night shifts or whatever that might be. You know, so those are accommodations to consider.

And then driving and traveling obviously. You know in many cases people with this type of condition can't drive a vehicle, so accommodations around the commute like maybe changing someone's schedule to make use of public transportation or carpooling more available to the person. And then you know of course if the job requires operation of equipment or vehicles that's oftentimes an issue.

So what is the best timing for disclosure related to epilepsy and seizures? Really as with any accommodation need or any condition, the moment an employee knows that the seizure is an issue and might cause a problem they should disclose. Or if their seizures are of such a nature and severity that it's important for people that they work with to know so they can have a plan in place. You know, it just depends on the condition itself. And I think I always urge people who call about epilepsy and seizures to really get good medical documentation because — about the nature, the frequency, the range of seizures can be very dramatic. Some people hardly ever have seizures and they're treated and it's under control. Some people have frequent seizures. Sometimes it just comes on suddenly. So disclosure is very personal decision, but if there is any safety risk or you know that you're going to need some leave time or attendance flexibility, that's the time to disclose and not wait until there is a problem, to where there is some risk to yourself or others or to the individual or others. And to be sure that you are not going to get maybe written up, quote unquote, for attendance issues or whatever. So the time to disclose that is before the problem happens.

**MELANIE:**

And I like to look at it — As a teacher before I came to JAN, when we had a fire alarm or fire drill, if we knew ahead of time it was very helpful. Sometimes when didn't and it just happened it was very scary, because you didn't know if it was real, you're responsible for these kids, so I think for an employer to know ahead of time and have that plan of action so they know what to do, they know what to expect, they know what kind of care to give the person or not is very helpful. And I know a lot of individuals have been discriminated against because they have disclosed, but I really feel, Bill, exactly what you were saying. If there's any kind of a safety issue or accommodation that's needed, it's really helpful to have that employer know so that they're prepared.

**BILL:**

And part of that is why it's probably good practice for employers to generally let all employees know about their right to accommodation so an employee who may need to disclose feels a little safer in doing so. Because there is often a reluctance because of the fear of being discriminated against. You know unfortunately probably because it happens.

I had another piece I wanted to mention — So one of the common issues we have with epilepsy and seizure disorders, obviously like Melanie mentioned because of the safety concerns, and we encourage people to have a plan of action in place, but employers often want to know, "Who can I disclose this to?" in terms of colleagues, coworkers, whatnot. That gets tricky because employers are not — under the guidance, they're not to disclose an individual's receiving accommodation of any kind, because obviously that puts some privacy and confidentiality at risk in terms of their health. Their health conditions and health information. So, you know, you consider it on a need-to-know-type basis, and sometimes it's okay for first aid or safety personnel, if that is a resource available at an employer's worksite, that they know a person has this condition, and of course the individual themselves can always disclose it to coworkers, which is not uncommon. But that's always an issue, tricky issue, is how do you — Because I had a call recently that was a small law firm, and the woman who I was speaking with felt like, "Other people need to know, because I'm not always here." But that is kind of up to the employee to disclose that to coworkers or colleagues. And of course sometimes the employees themselves will say something like, "If I have a seizure, don't call an ambulance or don't call whatever," and that gets tricky, too, because you as an employer don't want to take the health risk just trusting what the employee said if you feel like there is a need for emergency medical intervention. There probably is an obligation to reach out for treatment if necessary.

**TRACIE:**

Bill and Melanie, we have a question kind of around this topic. If you don't mind, I thought I would throw it out here since you're on this topic.

So here an employee with seizures and narcolepsy requests they're not left alone for longer than five minutes, and they request that coworkers call 911 if a seizure lasts for longer than five minutes. So sort of the opposite of what you just said. Somebody's asking for this. So the question is asking is this something that is a reasonable request?

**BILL:**

I guess I would say we can't really say specifically what's reasonable or not in a given situation, and in many work situations that may not be at all feasible in terms of staffing resources for the employee to never be alone. So again that's an assessment the employer would have to make based on specific job-related reasons in that case. Is it at all feasible for that person to always be in the presence of others? That will vary depending on the work environment and resources the employer has. Certainly if an employee requested specific medical intervention, obviously an employer should keep that in mind. But I go back to the good medical documentation and maybe getting good information from the employee's medical provider that gives you some framework of how to set parameters around when the emergency intervention may be required and confirm that with their individual provider.

**MELANIE:**

I think it depends on what the other employees are doing, because you don't have to use other employees to accommodate a coworker. And are they going to be busy? Are they going to be able to keep vigilance on the employee every couple minutes to check and check and check? And what happens if they don't? What happens if they get busy at work and they don't see something? That's a lot of responsibility to put on employees.

**BILL:**

Yeah. I guess you would want to be careful about — obviously assuring someone is not alone is one thing, but putting the burden, like Melanie said, you can't use other employees to accommodate someone. So employers would have to be careful about putting some kind of burden on those other employees for monitoring or even providing intervention, because there are a lot of risks there. There's a difference between that and making sure the employee's not alone.

**TRACIE:**

Are we ready to move to the next slide?

**BILL:**

Sure.

### [Neurodiversity]

So "neurodiversity" is probably a term that you're hearing more and more. All of us are. It's sort of a concept to describe the range of brain function and behaviors, behavioral traits that humans experience. The concept is meant to argue that this is a normal range of the human condition, these varieties of how our brains function and respond to stimuli. Certain behavioral traits. It's typically often used to refer to folks who are on the autism spectrum, you know, and often with people with ADD or ADHD. But it does also encompass — whether it's developmental or intellectual disabilities, some mental health conditions, learning disabilities, which Melanie discussed. So it's just about that whole range of human cognitive/neurological response to life and living.

So often a lot of the common challenges are usually related to a lot of social interaction, ability to organize, just general cognitive issues. But also a lot of management of stressors and triggers in the environment. Melanie likes to use the phrase "If you've met one person with autism, you've met one person with autism." Because the range of how the condition, that diagnosis is a whole different ballgame than the range of different behaviors and different functionality of how people who are neurodiverse operate.

So you know, some types of effective accommodations often are mentoring. Basically kind of coaching someone through whatever problem might be, whether that be social skills and communication skills. Sometimes it's telework because a neurodivergent individual may want to have better control over their environment. Could be job restructuring to where an employer alters how and when an employee does certain functions. You don't have to eliminate essential job functions, but sometimes redistributing or changing marginal job functions or even changing how essential job functions are done is often effective. And then of course modifying policies, whether that be scheduling issues again, or maybe it could be operating procedures and changing how maybe tasks are assigned or how people communicate certain needs or in the workplace. So modifying how things work in that regard is often helpful.

So you know, we got a question on there "What are some common accommodations for hiring and interviewing?" That is often a challenging and very anxiety-laden issue for neurodivergent folks who may have autism or other disorders. So different things that can be done during the interview and application process is perhaps oftentimes employers will have multiple people in on interviews. I've been on interviews where there's been anywhere from four to seven people. So one solution might be to limit that. You know, if that four or five people are interviewing this one individual can be overstimulating and create some issues, so maybe reducing the number of people present in the interview. Maybe an employer allows for a phone interview to take place before a face-to-face interview, so that might help ease the anxiety and stress that the individual feels, or sometimes an employer might provide some potential interview questions in writing so the person can prep and feel less anxious when they enter the interview. So these are some different ways you know — Sometimes just presenting things in different formats is also — which Melanie mentioned with training and learning disabilities. So often, that's a pretty common accommodation at times.

So I think we're ready for any other questions.

## [Q&A #2]

**TRACIE:**

All right. This hour is flying by, so let's definitely try to get some other questions in here. Let's see.

An employee stated they need to work from home due to overstimulation, and the healthcare provider note says the same with no details. How do we proceed with that type of situation?

**BILL:**

There is a standard and guidance for what EEOC describes as "sufficient documentation," and that's not just to confirm the need for an accommodation, but it also — good information helps you find an effective solution. So we get this telework question a lot. And if telework is not possible or at least 100% remote work not possible, an employer would want to get more sufficient documentation that describes the type of stimuli that might create a problem for that employee to be overstimulating. People with autism, it is often issues like noise or lights, but it is also often interpersonal communication or interpersonal interactions.

So if telework's not possible, you need more information to get an idea of, "Okay. Besides being able to control your home environment, what stimuli are you trying to control that's interfering with your ability to function effectively in terms of your work-related tasks?" So you would want to identify, target those things so maybe an individual, if they can't work from home, their workstation is moved to a place that helps reduce or diminish the stimuli that creates the problem. And oftentimes it is things like mentoring and coaching and training to help a person get more comfortable and work through things that might disrupt their ability to function.

Anything else you need to add there, Melanie?

**MELANIE:**

Well I just always say — Bill is going to talk about this later with stress and anxiety, same thing, people say they have too much stress, what does that mean exactly? Because the employer can't accommodate what they don't understand, and just saying, "I have too much stress" or "I'm overstimulated" can mean a lot of things. So in order to reduce those things as accommodations, the employer has to know what they are.

**BILL:**

And oftentimes you don't necessarily need to go back or have the employee go back and get information from the provider. This goes back to the beginning where Melanie was talking about good communication in the process and making an employee feel comfortable. You might just need to have a more practical conversation with that employee about the things that sort of trigger a stress response or cause anxiety for them or just otherwise interrupt their executive functioning or other general cognition.

**MELANIE:**

Right. The EEOC always says never overlook a full conversation with the employee, because if you have to get that medical documentation, the doctor has to get it from the individual, it's just easier to get it from the individual. They're the ones who experience that; they're the ones who should know.

**TRACIE:**

All right. How about another question, this one here.

Do you have a recommendation to accommodate an employee who's requesting to use a voice recorder to help with memory issues? In this case the person has a concern of a voice recorder being used when a client's private and confidential information is being discussed. I feel like this is something we often hear.

**BILL:**

Yeah. I mean, that's a specific job-related concern that you would have to address if recording conversations is potentially a violation of client or customer confidentiality or puts their personal information at risk, obviously that's a concern an employer has to address. So certainly with any accommodation an employer can put some rules and parameters around an accommodation. So maybe the voice recorder is only used in a certain manner.

But also with assistive technology — which I'm far from an expert on, but I'm learning more and more as I read through things — there's always new things available. New tools, new apps for smartphones or computers. So it's worth exploring, maybe with JAN. You could call us, and we could help you explore some of the options that are out there. Also every state has an assistive technology project that should help match individuals with assistive technology tools. And sometimes they'll have loan programs where things can be tested to see if it would be effective for that person or not without having to invest in the cost of something that you buy, and then it doesn't really help.

So certainly if there's concerns about how recording certain things, an employer might be able to look at that under the undue hardship standards because of potential violation to customers or clients. I'm not sure I hit that dead on.

**MELANIE:**

The only thing I would add is I call it an advanced organizer, and that is just a tool. It is an old-school low-tech paper. You could have it on an iPad or something like a little form, but you could even have it personalized for each different meeting or client where you have as much information on a paper going into a meeting so that when you fill the information out, you have to fill in the least amount of information, and that could be what you do if you can't use a recorder in a highly confidential situation. And maybe you can't write information down at all. I don't know. Some information you'd have to be able to use. But I think if the employee can have some assistance working up a form where they have for meetings with clients or just meetings within their own company, team meetings or whatever, where they have as much information on a page and then they can just fill it in, if that's not overburdening to be taking a bunch of notes all the time. That's very difficult. Executive functioning skills. You're trying to listen, you're trying to write, trying to hear what's coming next, and that can be very taxing. So that's a low-tech suggestion.

**BILL:**

Technology doesn't have to be high-tech all the time. Basic technologies like paper are often good.

**TRACIE:**

All right. We have about seven or eight minutes left or so for content, so I will skip over to the next slide, but if you all would like to skip to questions that's okay. You just let me know how you want to do this.

**MELANIE:**

I say if we have questions let's just skip to the questions. Is that all right with you, Bill?

**BILL:**

That's fine.

**TRACIE:**

Okay. Let's do that, then. All right. So here we go. Here's one related to leave.

So if a person has both a chronic mental health condition and episodic fluctuations in their ability to attend work without proper healthcare, are they able to request extra leave to attend medical appointments such as regular mental health counseling?

**BILL:**

Yeah. I mean, leave is a recognized form of accommodation, generally speaking. And unlike laws like the FMLA, there is no established amount of leave that employers are required under the ADA to allow an employee in terms of an accommodation. So, really again it comes down to analyzing things case-by-case and determining what amount of leave ultimately would create a hardship for the employer. And leave as an accommodation doesn't have to be paid leave. Obviously if the employee has paid benefits in the form of leave available to them they can use that, but if they've exhausted that leave, exhausted maybe FMLA leave if they were eligible, then employers do have an obligation to consider additional leave.

And again maybe some flexibility around attendance requirements like flexing someone's schedule so they don't have to use or take leave to attend appointments. Obviously again, that depends on the type of work. You know, if the person's a receptionist and the phones are open 8 to 5, there's not much flexibility in that time, but of course there are a lot of jobs where there is some more flexibility, that if an employee misses an hour here or half hour there that they can flex their schedule to make up that time. And obviously that will depend on some of your policies and making sure they're applied consistently. We can't tell you what amount of leave is a hardship, but some things to consider are how many employees do that same job? Is it a specialized position? But then consider what's the cost of recruiting, hiring, training a new employee in that position. You know, factor that into how long you think you might be able to allow leave. But again, it's just about that case-by-case analysis.

**MELANIE:**

You can always provide it on a trial basis and see, if you're not sure, is it going to create a hardship or not? "We're not sure. Let's try it and see." If it doesn't, continue it. And if it does, then convene back and figure something else out.

**TRACIE:**

And just to kind of follow up on that, Melanie.

If someone were to have an accommodation for intermittent leave for flareups of anxiety or depression, there's a question about whether that should be FMLA or whether it should be FMLA and ADA. Can you speak to that a little bit?

**MELANIE:**

From what I understand — We're not FMLA specialists. FMLA provides more protection, and employers are encouraged to use FMLA first if somebody qualifies for that. If they don't, then they apply the ADA. And then if they qualify for FMLA, then they use the ADA leave when the FMLA has been exhausted. We get a lot of calls about "I don't want FMLA. I want ADA." I don't understand that, because FMLA does provide more protection, because an employer can't take an action against FMLA use, but they can determine under ADA if it it's too much, it's a hardship, and they can't provide that anymore. So that's the way I understand that. It should be FMLA first if they qualify, then ADA once they exhaust that or if they don't qualify for FMLA.

**TRACIE:**

All right. Here's a question around neurodiversity.

So for the purposes of neurodiversity, how would an employer know in an interview process if an applicant doesn't disclose they may have autism? How might they handle that?

**MELANIE:**

Well likely, it just depends. They're likely not going to know. If there are clues to the employer, the interviewer, that something's going on, the employee is having difficulty, they can ask. "Hey, how do we help you? What do you need?" They can go that route in an interview if somebody is looking like they're having some kind of distress or having difficulty, they can slow down the process, give the person time to answer questions. That's sometimes — you know, if you have any kind of anxiety, like Bill mentioned, an interview is going to create a lot more stress I think for all of us, but it can cause you to freeze up and not be able to answer questions as quickly. The interviewer may be able to see that in the applicant and kind of slow down the process, give them time, say, "Take your time." You know, even if somebody's struggling, maybe try to rephrase the question so it comes across in a different way so that the applicant then has a different kind of version of that question maybe.

**TRACIE:**

Okay. I think —

**BILL:**

Employers get reluctant because the concerns around medical inquiry in the ADA. You don't always have to directly ask. If there's something you feel is going on, you can just take the broad approach of it. "Is there anything we can do to help you or assist you?" That doesn't really ask for any medical information, but it might invite that employee to disclose something that could be helpful to both parties going forward.

**TRACIE:**

Okay. Here is another question.

What can we do for an employee with ADHD who cannot work in an open environment, but everyone works in an open environment?

**MELANIE:**

That's a really good question. Because there for a while we saw a lot of that. It seemed like everybody was going to an open environment. That doesn't work for a lot of people, disability or not.

So you want to look at what is it about that open environment that's most problematic? Is it the sounds? Are there distractions? Is the person facing the middle of the room? Is everybody moving around? And I think to have some guidelines in place that even though it's an open environment, there's still work going on. People need to kind of be quiet, not just carrying on all the time. I hear that a lot. "It's in an open environment. I can't control the next person over, and they're talking all the time, and it’s not work-related."

But look at the employee's difficulties. Can you turn the desk around so he's not facing that? Can you put up a partition? And they say, "We don't want to draw attention to them." Okay, but I think having that conversation with the employee. "What is it you need? Let's talk about how we might be able to do that." Can we move this employee someplace else? Not to isolate them, but have that discussion. "Would this work better if we moved you over here near the stairs where it's very quiet? You're not going to be with everybody." Because most people who want that, they don't care if they are isolated. They want that, because it reduces those distractions of noise and movement.

Sometimes it is just a lot of movement, and reorienting a desk can help kind of with that. Or moving them further away where there is no sound or the sound is reduced. Headphones, you know, anything. White noise machine or something like that can help. An app on their phone might be able to help. One earbud where the other ear kind of hears what's going on. For some people that works. Music.

But I think you want to talk to the employee, because you don't want to assume that "If we move them clear down under the stairs that's going to be best for them," because they might feel like, "Well, gee, that's not exactly what I meant, I don't want to be that isolated." But the employee themselves may have a lot of ideas on what would work in the workplace that the employer hasn't thought of.

**BILL:**

We get a lot of questions, "What are some good accommodations for this?" ADHD or PTSD. But it's like Melanie was speaking about there in the type of open environment situation, for some individuals, even two individuals with the same condition, maybe want their desk oriented, their workstation in a position where there are no visual distractions. Other people with the same condition might want to be able to see and be aware of everything in their surroundings. So it can be highly individualized. So that's why it's important to have good, practical conversations with the employee and try to get into what exactly is causing the stress or the anxiety or the lack of concentration.

**TRACIE:**

Okay. This has been great. We still have questions rolling in. We don't have time to get to everyone's question, but I do need just a couple of minutes to close things out today.

## [Conclusion]

I will remind everyone: You do have a copy of the slides, and there's some great information there you can certainly take advantage of. But also most importantly you can certainly contact JAN if you still need your questions answered.

That is all the time that we have today. Melanie and Bill, we thank you so much for answering questions and offering this great information. We do appreciate you.

Attendees, if your question was not answered today, remember you can contact us. Ask JAN! You can do that by receiving that direct free and confidential consultation. Use the AskJAN.org website. You can use the Live Chat feature on our website. You can call us at 800-526-7234 or email us at JAN@AskJAN.org. And if you're not already following us on social media, we ask you to please do that. Find the Job Accommodation Network on Facebook, LinkedIn, and YouTube, and @JANatJAN on X.

So just a reminder again you can use these slides for some additional information. The purpose of this great Q&A webcast was to certainly answer lots of questions, and we had plenty coming in. So we appreciate everyone for being here with us today and joining us. So enjoy the rest of your afternoon, everyone. This concludes our training.