



ALASKA SHRM STATE COUNCIL



REASONABLE ACCOMMODATION: CURRENT ISSUES & HOT TOPICS

PRESENTED BY
LINDA BATISTE, JOB ACCOMMODATION NETWORK (JAN)

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Reasonable Accommodation: Current Issues and Hot Topics

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JAN is funded by a contract with the Office of Disability Employment Policy, U.S. Department of Labor.

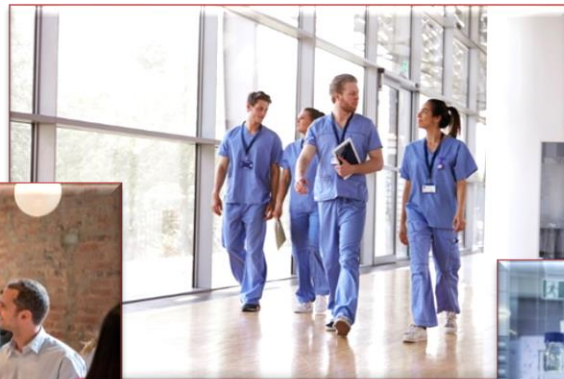
Agenda

- Overview of JAN Services
- Real Life Situations
 - Relevant ADA Rules
 - Best Practices
 - COVID Implications
- COVID-related Accommodation Examples
- Questions and Answers

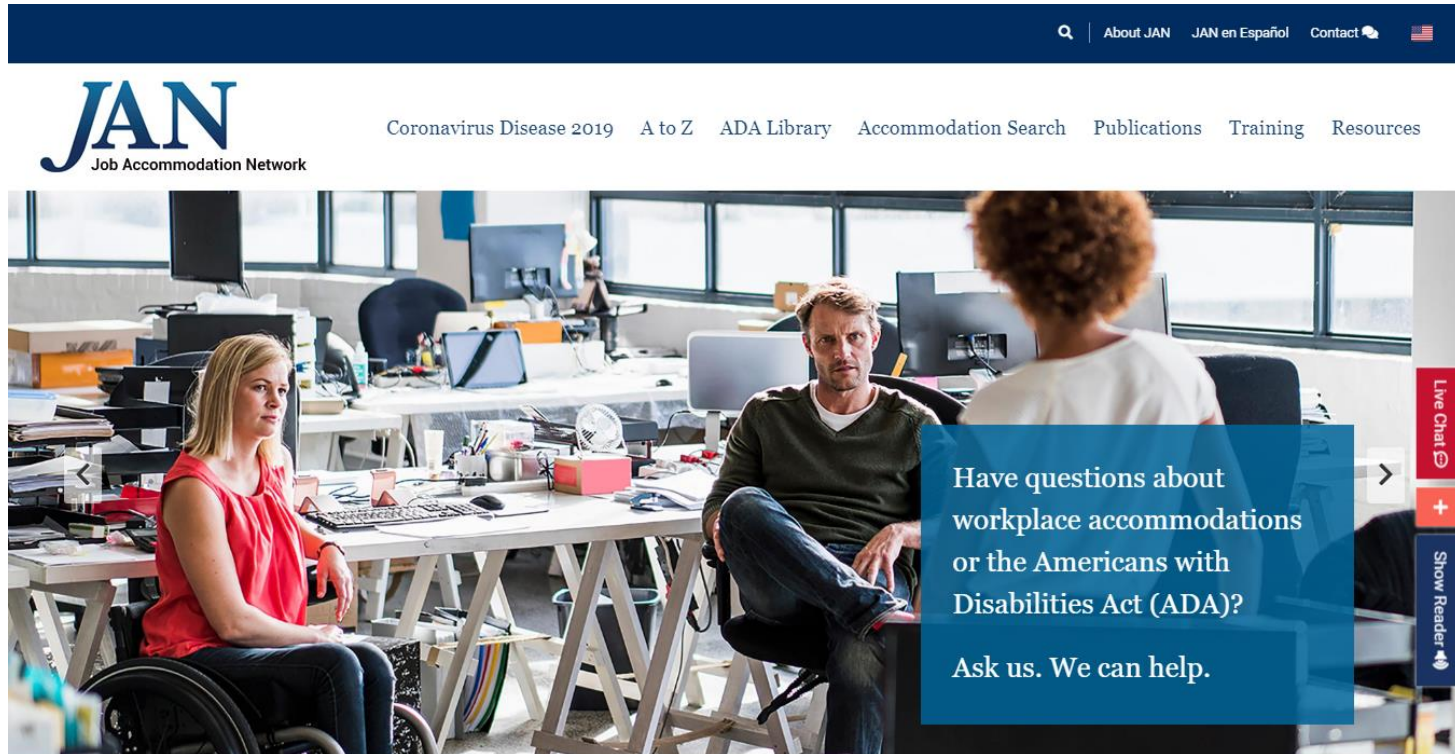
About JAN

Job Accommodation Network (JAN)

- Job accommodation ideas and information
- Practical guidance on the Americans with Disabilities Act (ADA)
- Resources for self-employment of people with disabilities



Home Page



Due to our response to COVID-19, we are asking that you use our chat, e-mail or Voice Mail contact methods to reach the JAN service. You can speak with us directly through chat and e-mail or request a call back through voice mail, chat or e-mail. For more details on these methods of connecting with the JAN service, see Contact Us.

TELEWORK

Telework

Situation:

An employee asks to continue teleworking after her employer calls all employees back to the workplace after mandatory telework related to the pandemic. The employer tells the employee she will need to come into the office until the interactive process is complete.

Is this a good approach?



ADA

Employers do not have to provide an accommodation until the accommodation process is complete.

Best Practice

Allow the telework to continue during the interactive process, especially if the issue is pandemic-related.



Telework

Situation:

An employee who is teleworking asks his employer to purchase an ergonomic chair and wrist rest for his home office. The employer says it's the employee's responsibility to provide at-home equipment.

Is this a good approach?



ADA

EEOC has been unclear about what equipment employers must provide for employees with disabilities who telework as an accommodation under normal circumstances.

Best Practice

Provide work-related equipment unless undue hardship.



Telework – COVID

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship.

From question 14 at:

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

LEAVE

Leave

Situation:

An employee discloses that he is addicted to illegal drugs and wants to get help. He asks for leave time to go to rehab. The employer has a zero-tolerance policy for illegal drug use and terminates the employee under the policy.

Is this a good approach?



Current Issues and Hot Topics

ADA

Current illegal drug users are not covered under the ADA, and employers can apply their usual policies.

Best Practice

Consider allowing leave and a last chance agreement.



Leave

Situation:

An employee asked for leave and then asked to extend the leave three times. The employer denies the latest request and notifies the employee that he is being terminated.

Is this a good approach?



ADA

Indefinite leave is considered unreasonable under the ADA.

Best Practice

Find out why the leave was extended and how likely the return to work is this time.

Talk to the employee about options for return to work.



Leave – COVID

The Equal Employment Opportunity Commission (EEOC) has not directly addressed whether a request for leave “until the pandemic is over” is considered a request for indefinite leave.

EEOC is encouraging employers and employees to be creative and flexible.



RETURN TO WORK

Return to Work

Situation:

After returning to work during the pandemic, an employee with anxiety requests a private office and not to have to interact with the public or coworkers because she fears catching COVID. The employer denies the request stating that sufficient safety precautions are in place.

Is this a good approach?



Current Issues and Hot Topics

ADA

Employers get to choose among effective accommodations.

Best Practice

Discuss the situation with the employee. Try to address the employee's concerns.



Return to Work – COVID

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or PTSD, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

From question D.2. at:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

SERVICE AND EMOTIONAL SUPPORT ANIMALS

Service and Emotional Support Animals

Situation:

An applicant shows up with her service animal for a job interview. The employer refuses to conduct the interview because the applicant did not notify them ahead of time.

Is this a good approach?



Current Issues and Hot Topics

ADA

Employers do not have to automatically allow service animals into the workplace and can go through the accommodations process before considering.

Best Practice

Consider going ahead with the interview.



Service and Emotional Support Animals

Situation:

An employee asks to bring an emotional support animal to work. When the employer tries to discuss whether there might be other options, the employee refuses to discuss other options. The employer denies the request.

Is this a good approach?



ADA

Employers must consider requests for emotional support animals, but employees have a duty to cooperate in the interactive process.

Best Practice

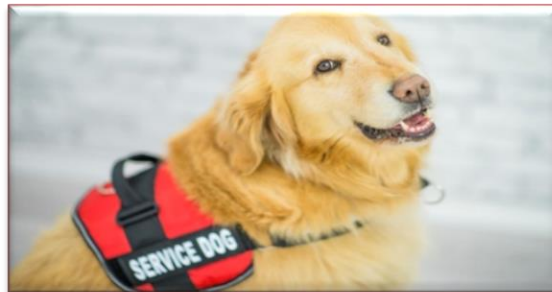
Try to find out why the employee doesn't want to discuss options.



Service and Emotional Support Animals – COVID

CDC recommends handlers keep their service animals a safe distance away from other people and animals.

From <https://www.cdc.gov/coronavirus/2019-ncov/animals/service-therapy-animals.html>



COMMUTING

Commuting

Situation:

An employee with PTSD asked to work an earlier schedule to avoid heavy traffic, which stresses her. The employer denies the request, stating that employees are responsible for getting themselves to work.

Is this a good approach?



ADA

Employers do not have to provide transportation to and from work but might have to consider other accommodations related to commuting problems such as modified schedule and telework.

Best Practice

Treat the request as an accommodation request and consider modifying the employee's schedule.



Commuting – COVID

Employees who rely on public transportation may have difficulty safely commuting to work.

Temporary telework may be a viable solution.



MEDICAL DOCUMENTATION

Medical Documentation

Situation:

An employee with diabetes has been teleworking for months. The employer wants to review the accommodation and asks the employee for updated medical documentation.

Is this a good approach?



ADA

Employers can require medical documentation when the disability and need for accommodation are not obvious or already documented.

Best Practice

Don't ask for new medical documentation unless necessary.



Medical Documentation – COVID

Consider using CDC guidance related to at risk employees and minimize the need for medical documentation.

CDC guidance:

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>



EMPLOYEES WITH COVID-19

Employees with COVID-19

Situation:

An employee returning to work after having COVID-19 asked for periodic rest breaks to help her deal with ongoing fatigue. The employer denied the request after determining that COVID-19 is not a disability.

Is this a good approach?



ADA

Employers only have to accommodate employees with current disabilities or a record of a disability.

Best Practice

Err on the side of caution.
Consider providing accommodations when possible.

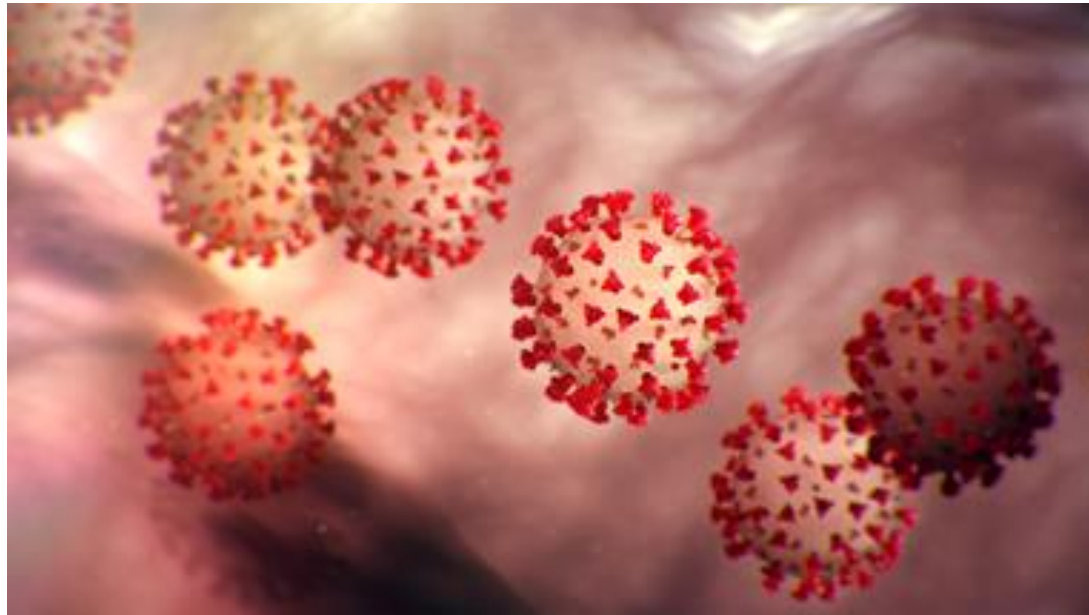


Employees with COVID-19

This is a very new virus, and while medical experts are learning more about it, there is still much that is unknown. Therefore, it is unclear at this time whether COVID-19 is or could be a disability under the ADA.

From <https://www.eeoc.gov/transcript-march-27-2020-outreach-webinar>

COVID-Related Accommodation Examples



Example

An accountant who is deaf usually reads lips to communicate. During the COVID-19 pandemic, all employees were required to wear cloth face coverings as an infection control measure.



ACCOMMODATION:

The employee could read lips if others wore clear face masks. The employer was willing to provide the masks for the coworkers the accountant frequently interacted with.



Example

Roger, an employee with heightened sensory sensitivities is returning to work after being home due to the pandemic. His employer is requiring all employees to wear masks the employer provides. Roger has difficulty with stress and anxiety while wearing the rough and scratchy mask for the full day, so he asked if he could provide his own cloth mask.



ACCOMMODATION:

After some discussion about how to sanitize the mask every evening for the next day, Roger's employer allowed him to wear his own mask while they evaluated its effectiveness.

~~in~~effective

Example

A daycare worker took an immunosuppressant due to a kidney transplant. She had concerns about working around children and not being able to practice social distancing during the COVID-19 pandemic.

She asked her employer to allow her to work a night shift so she could limit exposure from families, children, and coworkers.



ACCOMMODATION:

The essential function of her position, caring for children, requires that she work during the day because that is when the core hours of the daycare operates. Since the employer cannot modify her hours, the employer temporarily reassigned her to a different position.



Accommodations

Example

A help desk employee's main job functions were troubleshooting the problems of other staff members. He was highly competent in solving problems but was now experiencing panic attacks due to fear of COVID-19 exposure.



Accommodations

ACCOMMODATION:

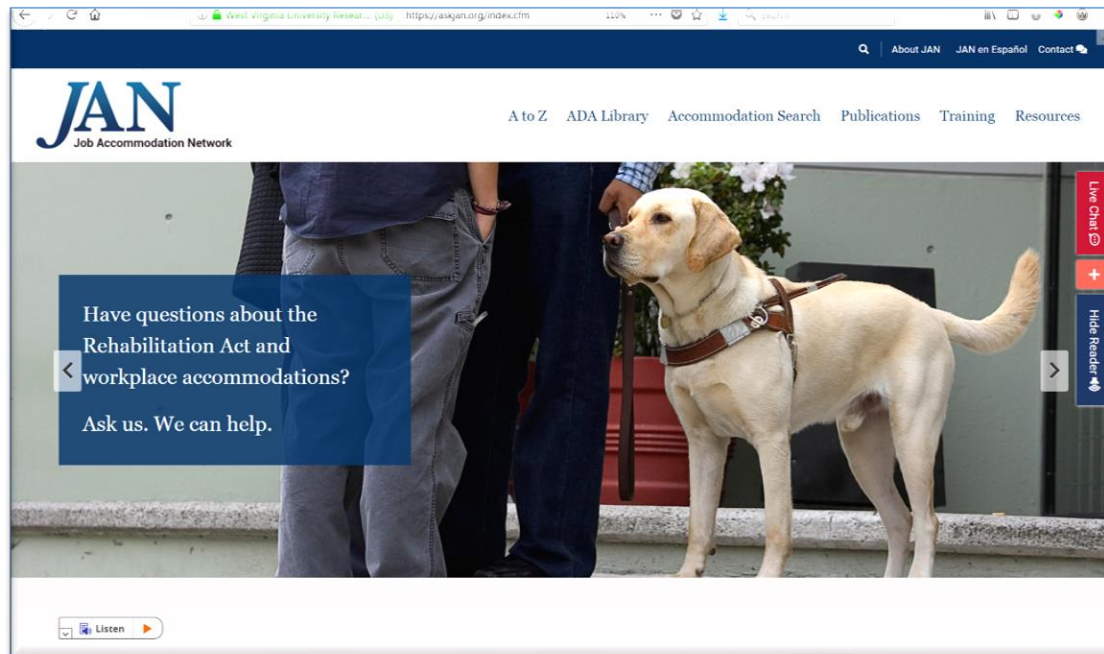
A new policy was instituted that allowed the employee to take requests for help by e-mail or by phone instead of in person, reducing the employee's fear and stress caused by close interactions with coworkers. This enabled him to feel safe while continuing to perform his job.



Current Issues and Hot Topics

Contact

- (800)526-7234 (V) & (877)781-9403 (TTY)
- AskJAN.org & jan@AskJAN.org
- <https://AskJAN.org/topics/servanim.cfm>





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