# Accommodating Public Safety Workers with Disabilities

## [Introduction]

**TRACIE DeFREITAS:**

Welcome, everyone, and thank you for joining us for the JAN Accommodation and Compliance Training Series titled "Accommodating Public Safety Workers with Disabilities." I'm Tracie DeFreitas, and I'll moderate this training.

Before we begin, we have some housekeeping items to share with you. First, if you experience technical difficulties during this training, please use the question-and-answer pod option at the bottom of your screen to submit a question or use the live chat at AskJAN.org. That's AskJAN.org. We also offer an FAQ that might answer some of your questions at the link provided here. This FAQ is linked in the email you received with the event log-in information.

Next, questions for the presenters may be submitted during the event by using the Q&A option located at the bottom of your screen. Questions will be gathered into a queue, so don't be concerned if it appears as if your question was deleted or dismissed. Time permitting, questions will be answered at the end of the presentation.

To access the PowerPoint slides, see the link included in the webcast chat or download them from the webcast archive on our training page linked at AskJAN.org on the homepage. To access captioning use the closed captioning option at the bottom of the webcast window. A copy of the captioning transcript will be available with the archived webcast. This presentation is being recorded and will eventually be available on the AskJAN.org website.

And finally, at the end of the presentation, an evaluation will automatically pop up on your screen in another window. We really do appreciate your feedback, so please stay logged onto complete the evaluation.

Now I'm going to go ahead and turn it over to our Motor Team. I'll introduce Lisa -- Lisa Mathess, Tatum Storey, and Matthew McCord. Lisa?

**LISA MATHESS:**

Thank you, Tracie. So getting right into the meat and potatoes of this presentation, what are public safety workers? Well, according to the CDC, the public safety sector includes over 2.86 million employees -- That was in 2015 -- that are organized into 5 subsections: Fire service, wildlife firefighting, law enforcement, emergency medical services, and corrections.

For the limited time we have here today, we have condensed those into three major players being fire service, law enforcement, and then lastly EMS. On a daily basis , these workers respond to emergencies that occur which threaten peoples' life, well-being, property, peace, and security. and may be putting their own health, safety, and even lives on the line. Public safety workers are exposed to a variety of risks and stressors and sometimes experience serious injuries from motor vehicle incidents, workplace violence, and musculoskeletal injuries.

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So wanted to get into ADA versus other federal laws. So the ADA recognizes an employer's obligation to comply with the requirements of other laws that establish health and safety standards. However the Act does give greater weight to federal laws than other state or local laws. So the ADA doesn't override health and safety requirements established by other federal laws as long as that standard in establishment is required, not just suggested. or recommended. However, an employer still has an obligation under the ADA to consider whether there's an accommodation consistent with the standards of other federal laws that would prevent the exclusion of qualified individuals with disabilities who can perform those jobs without violating the standards of those laws.

When it comes to ADA versus local and state laws, again, the ADA doesn't override state or local laws that are designed to protect the health and safety of individuals, except when those laws conflict with ADA requirements. This means if there's a state or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, you still must assess whether that person poses a direct threat to the health and safety under the ADA standard. If there is a direct threat, you'll have to consider whether it could be eliminated or reduced below the level of direct threat via accommodation. You cannot rely on the existence of a state or local law that conflicts with ADA requirement as a defense to a charge of discrimination. So for more for on the overlap on ADA and other laws we linked here the technical assistance manual.

And now I'm going to pass it off to Tatum for the fire and wildland fire section.

## [Firefighters and wildland firefighters]

**TATUM STOREY:**

All right. Hi, everybody. Thanks, Lisa. So I am going to get us started by talking about fire services and the ADA. This section of the presentation will focus on many of the nuances, rules and regulations related to the ADA and firefighting. We'll also discuss some of the specific products and ideas that are frequently used as solutions for such demanding jobs.

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So as we know, firefighters are trained to be prepared and ready for duty at a moment's notice. Physically and mentally demanding, firefighters have a unique role in keeping communities safe and responding to public safety concerns and needs. Following are some of the topics we're going to discuss over the next few slides and in relation to firefighting and reasonable accommodations under the ADA.

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Okay. So jumping right in, I want to start by talking about volunteers versus employees under the ADA. According to the National Fire Protection Association, 67% of firefighters are considered volunteers. Volunteers usually are not protected employees under the ADA however an individual may be considered an employee of a particular entity if, as a result of volunteer services, they receive benefits such as pension, group life insurance, Workers' Compensation, and access to professional certifications, even if the benefits are provided by a third party.

I would also like to note that the inclusive definition of disability of the ADA restored and the ADA Amendments Act of 2008 extends coverage to many individuals who may not have previously been covered, so because the definition of disability is to be interpreted broadly, requiring little analysis, employers are required to err on the side of caution and process accommodation requests without placing too much emphasis on determining disability and rather on determining if reasonable accommodations can be made and provided.

Next slide, please.

Okay. So now on to accommodation and practical solutions Let's take a look at frequently questioned topics such as modification to a schedule. Under the ADA it may be necessary to consider modifying a schedule as an accommodation for qualified employees with a disability provided there is a disability-related need for the schedule change and if reasonable accommodations do not create a hardship. This can include a change in when an employee and how an employee or how many hours an employee works. According to the EEOC, a modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain functions are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave. An employer must provide a modified or part-time schedule when required as a reasonable accommodation absent undue hardship, even if it doesn't provide such schedules for other employees.

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So in relation to modification to a schedule, the EEOC goes on to say that, for certain positions, the time during which an essential function is performed may be critical. This could affect whether an employer can grant a request to modify an employee's schedule. Employers should carefully assess whether modifying the hours can significantly disrupt their operations -- that is cause undue hardship -- or whether the essential functions may be performed at different times with little or no impact on operations or the ability of other employees to perform their jobs. If modifying an employee's schedule places an undue hardship, an employer must consider reassignment to a vacant position that would enable the employee to work during hours requested. Now, this can be tricky for aspects to handling a request for modification to a schedule when it comes to time-demanding positions where you have to be ready on the fly. This is frequently seen in a firefighter position, as being called for duty is not something that can be expected. It is important to note and consider that each request should be considered on a case-by-case basis to determine if it is reasonable and if it poses an undue hardship to business necessity.

Next slide, please. Okay.

One common and general accommodation many employers and employees consider is job restructuring. Under the ADA, employers have to consider job restructuring as a reasonable accommodation, unless it creates an undue hardship. Job restructuring includes modifications such as reallocating or redistributing marginal functions that an employee is unable to perform because of a disability and altering when and/or how a function, essential or marginal, is performed. There's no requirement under the ADA to remove essential functions as a form of reasonable accommodation. However, an employer may do so if they choose. Firefighters and wildland fighters frequently work as teams. Teamwork oftentimes is a great atmosphere for job restructuring for an individual with a specific disability-related need. A firefighter with limitations may be able to request restructuring their job so that they reallocate certain tasks to a teammate, thus enabling a strong team with great abilities.

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**TRACIE DEFREITAS:**

Tatum, I'm going to jump in just a second. If you wouldn't mind slowing down just a little bit.

**TATUM STOREY:**

Okay. Sorry.

So now on to policy modification and the dress code. The ADA generally gives employers with – wide latitude to develop and enforce conduct rules. The only requirement imposed by the ADA is that conduct rules be job-related and consistent with business necessity when it is applied to an employee whose disability affects their ability to adhere to the rule. Certain conduct standards that exist in all workplaces and cover all types of jobs will always meet the standard such as prohibitions to violence, threats on violence, stealing, or destruction to property. Employers may also require that employees observe safety and operational rules enacted to protect workers from dangers inherited in certain workplaces. So, for example, factories with machinery, with accessible moving parts. Employers may also require employees to wear certain articles of clothing to protect themselves, co-workers, or the public. A dress code also may be prohibited -- may prohibit employees from wearing certain items as a form of protection or to promote a certain image. Example not allowing employees to wear jewelry or baseball caps or requirements that workers wear business attire.

If an employee's disability makes it difficult for them to fully comply with the dress code, an employer may be able to provide reasonable accommodation. If the employee can't meet the dress code because of the disability, the employer may still require compliance of that dress code if it is job-related and consistent with business necessity. An employer may also require that an employee with a disability meet dress standards required by Federal law. If an individual with a disability cannot comply with a dress code that meets the business necessity standard or is mandated by Federal law, even with reasonable accommodation, they may not be considered qualified.

In terms of dress code and safety requirements with firefighting, an employer might consider focusing on the employee's specific need and assess whether alternative clothing can be provided that meet that safety standard in relation to the conduct, policy, and safety requirements. Modifications to consider are reducing weight, balancing protection versus dexterity, and eliminating heat.

So while exploring and researching products for firefighters, I stumbled upon an interesting article about the future of firefighting uniforms. Researchers at MIT recently developed a fabric-like material that automatically contracts and expands with temperature changes, and another group developed a similar product called bioskin using bacteria to create fabric that opens and closes based on heat. Researchers suggest that some day similar technology may be available for firefighting gloves that increases and decreases the thickness of thermal protection based on heat. This technology may find its way into bunker coats and pants to lighten the weight, improve body heat removal, and respond to whatever level of protection is needed and that such a material may expand and contract within firefighting boots to alter levels of protection as well as to adjust the user's foot as swelling during prolonged activity.

Other researchers are developing shoes that stop wearers from falling, although this product is currently being tested on seniors. Scientists have also developed material that can change its shape and remember its original shape. So the writer of the article that I read asked, "Can you imagine a helmet that can shift between American style and European style based on the operation?" There are also -- there's also work being done on fibers that can extend and recoil with a touch and lift 1,000 times their weight. This type of product may produce or prevent -- may reduce or prevent back injury in the field. The future of technology and products seem great for firefighters across the globe. I included this research article in the resources page, so feel free to check it out whenever you receive that link.

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So next we have some products crafted for firefighters and wildland fighters. I must note that there's no exhaustive list and that employers and employees are encouraged to get creative when considering solutions. JAN is not able to recommend or endorse one product over the next, but we are happy to explore solutions with an employee to find effective accommodations. If you have any specific questions about any other products you see in this presentation, please contact the manufacturer or vendor directly.

So here we have some products, examples, and solutions for fine motor-related needs: Grip tape for tools to enhance handling and gripping, extra grip gloves to enhance a grip, proper hose handling techniques to ensure the employee's foundation is set and ergonomically assisted, and hose handling techniques which are standing with a hip grip or holding the hose with your hips and hands. So being sure to check your stance, as this can ease weight and prevent injury. The stance should be an aggressive 45-degree belayed stance, almost like a fight stance, with hips in position to catch the nozzle reaction, keeping the hose above the hip while pushing the hose into the hip flexor and ensuring that the nozzle is within comfortable reach.

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Next we have some products that work to reduce the carrying or lifting loads for firefighters. The products moving from left to right work to hold and handle a hose and assist with grasping and holding. The left is a firefighter tool that can assist with carrying and holding up to 400 pounds and can be found on Grainger.com. The S-shaped tool is called a snagger and is used for holding as well as can be found -- is used for holding and can be found on many sites including firehosedirect.com. The yellow belt-looking tool can be connected to a firefighter's uniform so that the weight of the hose or tool can be shared with the shoulders or hips.

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Next we have a product called the hose hook. This product reduces the need to bend, stoop, or squat for firefighters. Whereas this tool was developed to -- and created for firefighters specifically, the options do not end there. Reachers or DIY products can also be used to limit these work-related functions as well as reduce injury. We also wanted to include a manhole cover lift to this page. We know that firefighters are called for so many things beyond just fighting fires, and so I thought that could be helpful. This product can be used in a variety of ways, and they work to limit bending and lifting for firefighters depending on the duty for that day.

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Many concerns JAN users inquire about are overnight accommodation needs under the ADA. Many of the scenarios we hear about relate to policy modification and sleeping arrangements. So for firefighters this may look at considering an employee's disability-related need and how it relates to sleeping arrangements within the firehouse. There are countless scenarios where an employee may need accommodations for sleeping. Employers should assess an employee's need on a case-by-case basis and make sure modifications come as needed. If seniority rules are in play, an employer must consider accommodating an employee regardless of a seniority rule and barring undue hardship, of course.

Some common types of sleep disorders that may constitute accommodations for sleeping arrangements may include insomnia, which involves difficulty falling asleep or staying asleep throughout the night; sleep apnea, in which you experience abnormal patterns in breathing while you sleep; restless leg syndrome, which is a type of sleep movement disorder; narcolepsy, a condition characterized by extreme sleepiness during the day and falling asleep suddenly at any time during the day. Each case and disability-related need should be assessed on a case-by-case basis like I've said.

Plans of action are a common accommodation solution and can go hand in hand with sleeping-related accommodations for some employees. What this may look like in a firehouse is having a plan of action for an employee with narcolepsy so that a co-worker checks on them to make sure that they're awake when duty calls. Another example may be having a plan of action where a co-worker checks on an employee who uses a CPAP machine to ensure that they are awake and preparing on a moment's notice. We know that CPAP machines can be loud, and so having such a plan may ensure effectiveness of an accommodation solution for an individual.

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So here we have a case study to review. Robert works as a firefighter and has developed arthritis along his spine. Robert has difficulty bending for prolonged periods of time and would like to request accommodations to limit bending, when possible, to reduce pain. Robert also requires a CPAP machine to sleep at night, and this can be loud and intrusive.

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So Robert's Fire Chief works with Robert through an Interactive Process and offers a hose hook and job restructuring on the field. Robert is assigned to alternative tasks in the field instead of working on clearing the way for the hose when possible. Robert's chief also offers Robert a corner spot in the sleeping quarters so that Robert can use his CPAP machine and not disturb others. Co-workers who enjoy sleeping to white noise agree to sleep closest to Robert to limit disruption to other firefighters who are light sleepers. A plan of action is also developed so that if any other firefighter sees Robert sleeping when duty calls they can tap on his shoulder and make sure he's awake and ready to go.

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So this one-time cost was $88, and the benefit is, by making these accommodations, the employer maintained compliance with the ADA and made their employee and managers happy. I would also -- I would like now to hand the presentation off to the Motor Team lead, Lisa Mathess, who will discuss law enforcement and the ADA. Thank you.

## [Law Enforcement and Corrections]

**LISA MATHESS:**

Thanks, Tatum. So like she mentioned we are going to kind of pivot and get into another subsection of public safety. Like I said earlier, we did combine law enforcement with corrections just for time.

Next slide.

Starting us off with general ADA rules, we know that medical exams and inquiries have various rules based on where someone is in the employment stage whether that's pre-employment, you've gotten the job offer or you're on the job physically working. So lucky for us, EEOC and the Department of Justice has some pretty solid guidances online. And from those resources, JAN has developed our own publication, which you can see linked first on that slide. I like to push out the Department of Justice one specifically when employers are looking at hiring police officers because it has a lot of good question/answer format for the hiring and application stage specifically for cops.

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And I did want to have these two slides in here about medical exams, because I think with public safety jobs, but law enforcement specifically, we get more questions about what is appropriate, just because the nature of the job. So in most instances, an employer's need to make disability-related inquiries or require medical exams is going to be triggered by current performance problems or observable evidence suggesting that a particular employee will pose a direct threat. However, there are situations in which disability-related inquiries and medical exams of employees could be permissible absent such evidence.

So directly in the EEOC medical inquiry guidance for employees, it states that there are certain jobs that it would be job-related and consistent with business necessity to require an employee to report when they are taking certain medications that may affect their ability to perform essential functions or to have those employees agree to have a vision test or a blood pressure screening periodically, because otherwise, those people in those jobs may pose a direct threat if things went undetected or unknown.

Again, I can't emphasize this enough that it's a very limited job category and very specific instances. So if an employer decides to terminate or take other adverse action against an employee with a disability based on the results of that medical exam, it must demonstrate that the employee is unable to perform his or her essential job function or in fact poses a direct threat that can't be eliminated or reduced with an accommodation. Therefore, when an employer discovers that an employee has a condition for which it lawfully may test as part of a periodic medical exam, it may make additional inquiries or require additional medical exams that are necessary to determine whether the employee currently is unable to perform his essential job functions or poses a direct threat due to that condition.

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Okay. So now onto some accommodation ideas for those in law enforcement. Let's look at some common product considerations we see. I think this is probably the No. 1 issue we deal with on the Motor Team, because we've learned that duty belts can range in size from 15 pounds to 27 pounds for most officers. So the back issues, the hip issues, gait and walking limitations, and overall general pain. You wouldn't think it, but cops have to carry a lot of stuff literally on their person.

So one modification you can work on is reorganization where you have your equipment. Tatum went over this briefly with the fire stuff. But distributing that weight evenly across the hips, down the femur, minimizing those pressure points across the spine and those ab muscles while providing a stable and secure platform needs to be considered. So as an alternative to the belt, we're seeing a lot more suspenders and vests and harnesses. So really this helps us get that equipment spread more evenly and take the weight off the pressure points of those hips.

Employers may require employees to wear certain articles of clothing to protect themselves, their co-workers, or the public, so I did want to include the dress code excerpt from the site. We may have to consider modifying a dress code for a person with a disability, but you don't totally have to exempt someone from conforming to safety standards.

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Okay so of course being on the Motor Team, we talk about the benefits of speech recognition a lot, which is when someone inputs data using their voice. So the Motor Team talks on it mainly for fine motor issues. If someone can't type all day, or they have trouble striking specific keys, but there is also times -- there are also times speech recognition can work for cognitive issues where someone can dictate information but the cognitive process of typing the information is difficult for them.

So here I linked this product. It's -- Dragon is a form of speech recognition manufactured by Nuance, and it's one of the more popular speech recognitions we see. So this is a specific specialized version of that software. So we know that law enforcement, emergency transportation services, 9-1-1 operators, they depend on computer-aided dispatch and records management systems to quickly and accurately and document and share mission-critical information. So these systems are in fact the heart of any public safety program with first responders sending out mass amounts of communications each day to ensure rapid response to these time-critical situations. So this Dragon Law Enforcement software provides a faster, safer, and more efficient way to create incident reports and make those mentioned systems easier to use all by voice. So on the website I pulled a couple of their key items. They said it improves situational awareness, improves specificity and accuracy within reports, and it speeds documentation and reporting deadlines. So I have that hyperlinked on the slide for you all.

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Another common issue we try to accommodate is problems with the employer-provided cruiser, whether it's bending and stooping to get into a low-profile car -- We see that a lot -- or it's someone that's just a larger body size and they don't have the accessibility in a small police cruiser. The steering wheel is tight on them along with that computer-mounted laptop area in the middle. So just also we see the general limitation that someone cannot sit eight hours a day. So whenever we're looking at products or ergonomic considerations, we may be able to retrofit an existing cruiser with lumbar cushions to provide support for that lower back. I also love swivel seats and seat extenders to help people get in and out of that low-profile car. Assist lift cushions also help someone get standing when they are having trouble physically getting in that standing upright position. And then of course another accommodation consideration could be providing a larger SUV or a larger sedan instead of that typical car that's furnished. On the slide I do have linked the JAN's driving accommodation publication for more details on the driving ideas.

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Okay. So working in a correctional institution could be stressful and dangerous. Correctional officers and jailers have one of the highest rates of injuries and illnesses of all occupations, often resulting from confrontations from inmates. Officers work in shifts that cover all hours of the day and night, including weekends and holidays. We see high safety standards for these roles, rightfully so. So some of those requirements are the ability to restrain others, cover large areas. You need to be able to monitor multiple levels or floors, both inside and out areas. Then the ability to control emotions. Yes, this isn't motor-related, but we definitely see it in this industry. So for some accommodation ideas, we have restructuring the job. Can we assign somebody with a mobility issue to one location, one floor, so they have a smaller area to kind of monitor? Can we remove the duty to restrain? Can we put the employee with the disability in a low-security location? These are just some options that an employer kind of needs to think outside the box for.

And then as far as emotions go, periodic breaks to give that individual with a disability time to regroup or call a support person to lower the stressors we experience time to time at work. And then again for the safety-sensitive roles, an employer needs to be able to show that someone poses a direct threat to the health and safety of themselves and others and an accommodation doesn't lower that threat. So I did want to plug this direct threat article on the website, as well, for a more detailed explanation.

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Probation officers often have to visit offenders in their homes and places of work for check-ins and supervision tasks, so offsite access is a common issue we see. If someone is in a mobility device and can't gain access to someone's house, perhaps an accommodation here is going to be a virtual check-in. Same with a parole officer with allergies to smoke or animals, whatever the case may be. If that person's home is an issue for an employee with a disability, consider the virtual options or alternative meeting sites, depending on the circumstances. So back to an employee using a mobility device and a home isn't accessible, can we reorganize the employee's zone to only have clients where the check-ins are at an accessible work site or an accessible house, giving them only clients that have one-floor housing where they don't have to go up multiple flights of stairs? You want to be mindful of those physical accessibility considerations.

But what if someone can't drive? Again, the location change to a location that they can get there either using public transit or removing driving out of the equation and make the meeting virtual again.

And then lastly, we do have listed on the slide pairing with a co-worker who can drive. This can be an easy-enough fix for some situations. A co-worker is headed to that side of town regardless, let this employee ride along and get to where they need to meet their clients.

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Okay. Looking at a couple of examples for the law enforcement corrections sector, we have a probation officer with allergies and asthma, and they had difficulty meeting with clients in their homes, especially those clients who smoked. So what do you think an accommodation may look like?

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The accommodation here was that the employee was allowed to meet some of their clients in a neutral place without smoke.

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So this was a win-win for both parties. Zero cost reported, and it kept an experienced, tenured probation officer.

Next slide, please.

Another example. Now we're looking at a correctional officer with a musculoskeletal disorder. They are having some trouble performing essential functions due to bending, sitting, and walking limitations. So this essential function -- it could be inmate contact, ability to respond to emergencies, guarding and counting inmates and monitoring their conduct and behavior to prevent fights and forbidden activities and introduction of contraband. So responding to emergency situations and administering CPR and first aid care, those are just a few essential functions of a correctional officer. So the prison warden called JAN to learn about possible accommodation solutions and next steps.

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So the accommodation here was that the employee and the prison warden both agreed that reassignment to an office role was more appropriate -- most appropriate. So reassignment is commonly known as the accommodation of last resort. This is because accommodations that will enable an employee to remain in their current original role should, under ordinary circumstances, be considered first. However, if both that employer and employee voluntarily agree that transfer is preferable to remaining in the current position with some form of accommodation, then that employer may transfer that individual.

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So this was a zero cost for the employer, and they retained a valued member of the team. So that wraps up the law enforcement, and now I'm going to pass it over to my teammate Matthew. Thank you.

## [Emergency Medical Service workers]

**MATTHEW McCORD:**

Thanks, Lisa. I'm going to go ahead and take us through some accommodation options that tend to be very helpful for emergency medical technicians. And other Emergency Medical Service workers or EMS workers.

Next slide, please.

As EMS workers will need to be able to assist people who cannot or should not move themselves, lifting or carrying limitations are often common concerns we hear about when we get questions regarding them. One simple accommodation to help with this is the use of transfer sheets. A picture -- the picture on this slide gives a good visual on how these items are used. But in essence, the sheet is placed under the individual needing to be moved. Needing to be moved. And then the EMS workers will be more easily able to move the individual together by lifting and moving the sheet as though it were a hammock that the individual was laying in. Transfer sheets are typically created with easy-to-sanitize materials, have several-hundred-pound weight capacities, and many also come with handles, as well.

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As helpful as transfer sheets are, they are called transfer sheets because they are meant to be used to transfer a patient from where they are onto another device for transport. And for EMS workers, that is usually going to be a stretcher or a gurney of some kind. So our next accommodation option is an electronically powered stretcher that's designed to use motors to help EMS workers lower and raise the stretcher into various positions that they needed to be in as well as to load it into the back of the ambulance. This allows the workers to forego needing to physically do the lifting or pushing or pulling they usually have to do in order to do these tasks. The item pictured on this slide is an example of one of these products that's currently locked on to the track that helps load it into the ambulance.

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Sometimes, though, when an EMS worker is needed on the scene, it will involve needing to perform CPR. This life-saving procedure is vital and must be done as soon as possible. However, individuals with physical restrictions can find the chest compressions that are required to perform CPR to be rather difficult to do. In those situations, a hands-free resuscitation device can be used by performing those chest compressions in place of the EMS worker. The picture on the slide provides a good outline of what one of these products are. In essence, the device is placed over the individual needing CPR, the piston is adjusted to the proper length, and the backboard is locked into place to keep the device secured to the patient, and then it is turned on, and the piston starts performing the chest compressions. These devices are a common option that we will suggest when we get calls regarding a medical worker who needs to have their CPR certification renewed but they cannot do the chest compressions anymore due to their disability. However, if an accommodation will enable the individual to do the function, then they are still qualified to do that particular function and therefore the job under the ADA. CPR certification is to ensure that the individual is properly trained and able to respond when someone needs CPR, and accommodations like this one can enable people remain qualified to do so despite their physical restrictions.

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As COVID is still part of our lives, we thought it made sense to touch on the question of vaccines while we're talking about accommodations for EMS workers. The availability of COVID-19 vaccines has led to questions about the ongoing responsibility to continue to provide reasonable accommodations relating to the pandemic. Employers are wondering if they can ask questions about a vaccination and if accommodation is still needed for those people who have received those vaccinations In individual circumstances where an employer is trying to determine if an employee still requires an accommodation, an employer can go ahead and ask questions about the impact of the vaccine on mitigating risk factors relating to exposures to COVID. This can be a valid question in determining whether the vaccine will impact the continuing need for accommodation.

You want to keep an open mind about this, though. The mere availability of a vaccine doesn't necessarily take away the responsibility to provide effective and reasonable accommodation. Each situation should be handled on a case-by-case basis. For instance, a medical condition might prevent someone from being vaccinated, or some workers with medical conditions, even after being vaccinated, might still need more protection from exposure to the virus than other people. Being vaccinated doesn't 100% guarantee that someone will not contract COVID-19, after all. Just like it's not 100% with the flu.

While we know that employers with the authority to mandate that employees receive a vaccination, if all employees are not required to receive that kind of vaccination, then you also want to make sure you're not requiring only employees with disabilities to be vaccinated as a way to stop providing a reasonable accommodation. It's just not an alternative to providing an accommodation. Also, keep in mind that only requiring individuals with disabilities to get the vaccine will likely constitute disparate treatment of employees with disabilities, too.

Finally, keep in mind that accommodation decisions should not be made based on COVID fatigue. I'm sure you've heard the term used in various ways. Here we're talking about being careful not to, for example, stop -- stopping an accommodation simply because the employer doesn't want to provide accommodations related to COVID anymore, because they don't think they are necessary. We have heard about situations where employers have just said, "We're not going to do it anymore. And that's it. We're tired of dealing with COVID." But we're all tired of dealing with COVID, but that does not mean that our obligations under the ADA can take a backseat because of that fatigue.

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Now for an example. Since it's topical, let's go ahead and do a quick vaccination-related accommodation situation. An employer who was greatly encouraging employees to get flu shots due to the number of flu cases they experienced the year prior had an employee ask to forego the injection because they had a fear of needles.

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The employer referred the employee to a specific pharmacy in their area where needle-free shots were available. I wanted to point out this particular example, because it's a good picture of how accommodations can often be rather simple even for a complex need. In this particular situation, there naturally was no additional cost, and the benefit was that the individual could get their vaccine, even without needing to be poked by a needle.

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So now we wanted to conclude by reviewing some accommodations that are likely to be helpful to any public safety worker, regardless of the type of work that they do.

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First up, an accommodation that can be beneficial for any person who uses a wheelchair or mobility scooter but also needs to traverse outdoor environments -- all-terrain scooters or wheelchairs. These devices are designed to withstand harsh conditions and environments that a typical wheelchair or scooter cannot like sand; soft, wet grounds; uneven surfaces; curbs or steep slopes. Therefore, these can be a good accommodation for any worker that needs to get out into the wilderness to do their work, be that wildlife workers or even gas line or utility line workers, as well.

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Next, an option that can be helpful for more jobs than you think, wearable anti-fatigue matting. The best way to describe this option is to think of the mats that cashiers will stand onto help them relieve the pain of prolonged standing. This is basically those mats but made so they can be strapped onto or placed inside of your shoes so that you can take that support wherever you go. Therefore, any job that requires standing or walking or any person with pain issues from these activities can benefit from an option like this.

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Speaking of accommodations relating to shoes, our next accommodation is steel-toed shoes and toe guards. Many public safety workers must wear specialized footwear to protect their feet from occupational injuries. Unfortunately, these shoes or boots are often by design restrictive and thus do not work well for people with various leg impairments or foot impairments. For people in such situations toe guards can be a great option to consider. These guards can be secured on to the shoe to provide the metal plating that's needed to protect the foot but with the added benefit of being compatible with various different types of footwear.

Next slide, please.

Our next option to discuss is anti-vibration seats. Virtually all public safety worker positions will have some component of the job that will involve either riding in or driving a vehicle to the scene where help is needed. This can often lead to a generally bumpier ride than most trips in the car, and that can be bad news for people with back or hip impairments that have increased pain from sitting through these miniature roller coaster rides. Therefore anti-vibration seats are designed to provide extra shock absorption so that the person sitting in them are not bounced around as much or as hard than they would be in typical seats. In addition to public safety workers these can be great accommodations for any worker with extended time in a vehicle like bus drivers, meal carriers, or even delivery workers.

Next slide, please.

Just like how not all heroes wear capes, the people who work behind the scenes in public safety roles are just as important as those who work in uniform. To that end, our last miscellaneous option we wanted to discuss today was dual-channel headsets. These headsets are designed with switches built in that allows the user to alternate between speaking to one thing or another. For instance, they can be used with speech recognition like how Lisa described earlier while also speaking with someone on the other line of the phone by switching the microphone back and forth between the caller and the computer with the speech recognition. This can be very helpful for emergency dispatch workers that may need accommodations like speech recognition to take down all of that vital information quickly and efficiently.

Next slide, please.

Okay. That concludes the accommodation showcase portion of the presentation. Shown on this slide is the AskJAN.org homepage. We just wanted to point out a few things on the homepage real quick here at the end of the presentation today. Due to how COVID-19 has impacted so many points of our lives, we wanted to point out our special sections circled in yellow for resources specifically on COVID. We encourage you to go there for articles on the Interactive Process relating to COVID and strategies for limiting exposures. You will also see -- you will also see our A to Z highlighted, as well as other links such as the ADA library, publications, and training pointed out by the yellow arrow on the screenshot. We have our live chat feature on the website, and we always tell people that if you have problems navigating or finding anything on the website, feel free to reach out to us. We're happy to help.

Next slide, please.

We're still teleworking here at JAN. So if you have changed the way -- so we have changed the way we talk to our clients on account of that. You can definitely still call us on our 1-800 number, but the quickest way to get in touch with us is on the live chat feature or drop us an email at JAN@AskJAN.org. But if you prefer to speak with us on the phone, call the 1-800 number, and someone will get back to you as soon as we can. Thanks.

## [Q&A]

**TRACIE DeFREITAS:**

Thank you so much. At this time if anyone has questions feel free to submit them using the Q&A. We did have one question come in, so I'm going to throw that out there. Let's see here. Here is a question related to resources for an employee who might be exhibiting signs of dementia or Alzheimer's. So if you were to make any suggestions, if someone were in a situation like that, an employer, and they noticed some signs of an employee exhibiting dementia or Alzheimer's, what would you suggest?

**LISA MATHESS:**

I'll take this. So first, I mean, Matt just went over the JAN resources. That A to Z list link at the top of any homepage on JAN is going to be the best catch-all of resources. I was kind of looking through the Alzheimer's one, because we don't deal with that here on the Motor Team. But we have a whole team dedicated to cognitive and psych, so they would do Alzheimer's calls. But through this publication we have helpful hints for the accommodation process for both the individual that's exhibiting Alzheimer's symptoms and the employer that's kind of dealing with that, and it kind of gives some good practical advice for engaging in that Interactive Process and having that open dialogue and conversation.

As for an employer, I would say look at your performance and production standards that you apply uniformly and point to those. Don't lead with disability, or don't lead with medical condition. Just look at the business performance standards. I think that's a safer approach and just kind of engage in that process with open communication.

**TATUM STOREY:**

I agree. I think also breaking down the specific need and the specific job tasks that maybe somebody is forgetful with can help with deciding what solutions will be effective for that person. Developing a plan and kind of going from there.

**TRACIE DeFREITAS:**

We do have another question. Our officers must be held to the standard of responding to any emergencies. So we can't place a person into an administrative job only. Those jobs are on rotation but cannot be permanent accommodations. Do you see any issue with this policy?

**LISA MATHESS:**

I'll jump up there. I mean, I think any hard, fast policy could have its moments of being problematic under the ADA. We are constantly preaching that your policy should be flexible for that case-by-case determination. So if there's desk work to be done and someone needs that as an accommodation per ADA, I think we're going to have to consider that. And then you could probably put parameters on it, but I think even at the end of that duration, we're going to have to re-engage and see, is this accommodation working? Is it a hardship for us to provide it? Is it still physically needed? And again, gain that information and kind of go from there. But I think hard, fast policies, those rigid company policies, those could be some roadblocks as far as the ADA goes.

**TRACIE DeFREITAS:**

I'm going to follow up on that real quickly. If it is possible to provide, let's say, light duty, is an employer required to create a light duty position in order to accommodate?

**LISA MATHESS:**

Matt, you take --

**MATTHEW McCORD:**

Create one? No, they don't have to create something out of whole cloth. And I think that in this situation, it's important to keep in mind that you know, in the original question, they already have these positions that they have already created, they already exist. So in that situation it's kind of different than creating something completely new whenever you already have them, you just have how you dole them out structured differently. So changing the policy of how you dole out that position of who gets the position could be the thing you're looking at modifying here. And the hardship there could be how much of a hardship would it be on the business to change that policy of how these positions are normally doled out? So I can understand the confusion of "Aren't we making another position?" But in this situation, it might be less likely that you're creating a position and more just modifying that policy of how you do it.

**LISA MATHESS:**

And when we bring up light duty I have to bring up you have to be mindful of Workers' Comp issues that may have different standards of creation of jobs. So ADA is just one puzzle piece of the puzzle. So you want to be mindful of state laws that may require creation and then Workers' Comp laws that may require creation of jobs. Just because ADA doesn't does not mean that you're in the clear.

**TATUM STOREY:**

And there's also a difference between modified or light duty and reassignment. So if somebody truly wasn't -- there was no accommodation that was going to let them, you know, continue doing their position and reassignment was preferred, then it may be considering alternative positions that are vacant. May that be a sedentary desk position.

**TRACIE DeFREITAS:**

Okay. Very helpful. Let's see if I can throw one more at your team. Question related to undue hardship and state and local government. So it appears as if -- they have a question about when might undue hardship result for a state or local government agency. So just providing something like an all-terrain vehicle -- I'm sorry; an all-terrain wheelchair for an individual who might need it. How would you address that? Would the wheelchair be something that's personal in nature? Where would you go with that?

**MATTHEW McCORD:**

The best benchmark that I would encourage in that situation would be to remember that there's a difference between work-related equipment and personal need items, and the best kind of litmus test for figuring out whether something is a work-related need is that they need it for the work only. So say in this situation the person had a wheelchair that they use at home and they are able to use it at home just fine but the problem is specifically once they get on the job, they need a wheelchair to use at work. That's less likely to be a personal need item and therefore, it would be more likely to be something you need to consider. But if they need it both at work and at home and they are going to be taking it back and forth and using it all the time, that's more likely to be a personal use item and therefore less likely to be something you would have to consider as an accommodation.

**LISA MATHESS:**

And as far as the hardship goes for financial, there's not a hard, fast number with the financial hardship. You're going to have to look at the state or local Government as a whole, you're going to have to look at the department, that specific job. You just can't say if something is over 5,000, it's a hardship. Again, that case-by-case determination, really kind of looking, and the EEOC has pushed out some tips for identifying whether something could pose a hardship, which is linked in that technical assistance manual from one of those initial slides and is on the resource list.

**TATUM STOREY:**

There can also be resources available to help people getting equipment. So like Lion's Club, Rotary Club, maybe a Veterans service if it's someone who is a Veteran. Sometimes VRA will help with those, vocational rehab. It's just kind of looking into, you know, are there resources that will help this individual be able to do their job and continue working effectively? Thus, creating a, you know, effective and efficient team.

**LISA MATHESS:**

Right, exactly. Think outside the box. We can't preach that enough is just get creative with these accommodations and explore all avenues.

**TRACIE DeFREITAS:**

Very helpful. Let's see, I think we can get one more in there. Question related to reassignment as a form of accommodation. So certainly there may be some situations where for whatever reason it's not possible to accommodate the person in the original position, and maybe reassignment is looked at as the preferred or most effective accommodation. What about when there's a collective bargaining agreement that might in some way impact reassigning an employee to a different position? How might you look at those types of situations?

**MATTHEW McCORD:**

The best way to look at that I think is to think of the collective bargaining agreement as a third party that has their own voice in the process. You know, whenever it's a normal reassignment, if the individual and the employer both agree, we're good to go. In this situation, since it's a collective bargaining agreement, you have a third person brought in, and that person also needs to agree. So it makes it more complicated because you're adding in another voice, and that happens to be, you, know a union contract, but that's the best way to think about it is that you have that third person at the table who also has to agree.

**LISA MATHESS:**

And I think with collective bargaining agreements you have to look historically. Have you made exemptions before? Have you modified that collective bargaining agreement? And sometimes unions have, so we'd have to consider that now. On the other hand if it is pretty ironclad, we've never made modifications, we've never made exemptions, then maybe you have enough evidence that it would be a hardship to modify it for this reassignment purpose. So you kind of have to look historically how you have treated that collective bargaining agreement, how much weight that gave in prior experiences.

**TRACIE DeFREITAS:**

Okay. Great, I think we can fit one more quick one in. This is more related to an individual who might be requesting an accommodation and who is going to have to complete a form to do that.

They are wondering how JAN might be able to help in that sort of process.

**TATUM STOREY:**

So we have specialists and -- so we have specialists and consultants that are willing to help individuals with any questions that they have related to filling out forms. We can't really offer our own personal opinions. So we are limited in what we can say because there are no required forms for the ADA. And, you know, our opinion isn't really what the ADA says. So we need to follow what the ADA says and the EEOC says. But we are always happy to help in any way that we can with individuals requesting accommodations and practical guidance on moving forward with that accommodation process. There's also VR, vocational rehab, for individuals who qualify for services. And that could be somebody that could help.

**MATTHEW McCORD:**

There's also, on our A to Z index, we have a page under "By Topic" for sample forms. So if the real issue here is that they just don't really know if this form looks right or if they don't really know what to include on the form, like what they should or shouldn't, they can look at the sample forms and see what's kind of typical for people to fill out on a form. And they can kind of compare it and get an idea that way, too.

**TATUM STOREY:**

Yeah that's a good one. I know we have a sample form for medical professionals, and that's a really popular one as well as the sample how to request an accommodation. I think it's worded really well so that what you might include in a request for accommodation is put in bullet points so that somebody who is drafting a letter can really, you know, fine-tune their letter.

**TRACIE DeFREITAS:**

Okay. That's great. Thank you so much. That's all the time that we have today. We do extend a special thank you to our JAN Motor Team for sharing your expertise today -- excellent job. Thank you also for everyone attending this JAN Accommodation and Compliance training series event. If you need additional information about the topic shared today, please contact JAN. Go to AskJAN.org to contact us using email, live chat, or phone You can also follow us on Facebook and Twitter.

As mentioned earlier, an evaluation form will automatically pop up on your screen in another window at the end of this event. We do appreciate your feedback, so we hope you'll take a minute to go ahead and complete the form.

And finally, please join us again next month for our annual ADA Update training with Jeanne Goldberg, senior attorney advisor for the Equal Employment Opportunity Commission. Check the JAN training page for more information at AskJAN.org.

Have a wonderful day, everyone.