# Accommodation Solutions for Sleep Disorders

## [Introduction]

**TRACIE DeFREITAS:**

Hello everyone, and thank you for joining us today for this JAN Accommodation and Compliance webcast titled "Accommodation Solutions for Sleep Disorders." My name is Tracie DeFreitas, and I'm your moderator. Today our expert JAN training will be provided by cognitive/neurological team consultant Alexis Popa and JAN principal consultant and cognitive/neurological team lead Melanie Whetzel. Melanie and Alexis, thanks for sharing your expertise with everyone today.

Before we begin we have a few housekeeping items to cover.

First, if you experience any technical difficulties during the webcast, of course, please use the question-and-answer option located at the bottom of your screen to connect with our tech team. You can also contact JAN at 800-526-7234 or use the live chat at AskJAN.org. That's A-S-K J-A-N dot O-R-G. We do offer an FAQ that may answer some of your questions. See the login email you received for the FAQ link. You can also find it on the AskJAN.org website registration page.

Questions for presenters may be submitted using the Q&A option I mentioned. All questions will be gathered into a queue, and, time permitting, we'll answer those at the end of the presentation.

The link to download the PowerPoint slides can be found in the webcast login email you received. This should have come to you earlier today. This is also being shared in this webcast chat right now. You can go to the training page at AskJAN.org to look for it there. You can just look for the event on the webcast registration page there. So lots of ways to access those PowerPoint slides.

To access live captioning, use the closed caption option at the bottom of the webcast window or view captions in a separate browser by accessing the link shared in the webcast chat.

This presentation is being recorded and will be available on the AskJAN.org website and our YouTube in about a week.

And finally, at the end of this webcast please complete the evaluation. The CEU approval code will be provided after the webcast evaluation is submitted.

Now I'm going to turn things over to Melanie to take the lead for this training. Melanie?

**MELANIE WHETZEL:**

Thank you, Tracie. So what we're going to do today, we're going to talk about real-life situations. We really like to do that. We talk every day to 10, 12, 15 maybe sometimes more different people — employees, employers, people calling for them — and so we have a lot of really good examples to draw from that will really help you, I think, better understand ADA guidance. We're going to talk about relevant ADA rules, but then we're also going to talk about best practices and how you might want to go above and beyond ADA rules. And we have lots of accommodation examples, and then, as Tracie said, we're going to have time at the end for questions and answers.

## [About Sleep Disorders]

Okay. So here is just a little bit about some common types of sleep disorders. And we are accommodation specialists; we are not medical professionals. So this is just a little bit of information. We talk to people individually, and we find out what their issues are related to their disability that affect them at work. And so there's insomnia, which is difficulty falling asleep or staying asleep throughout the night. There's sleep apnea, which is abnormal and disruptive patterns in breathing while sleeping. There is restless leg syndrome, and that's a sleep movement disorder that causes an uncomfortable sensation and urge to move the legs while trying to fall asleep. And then narcolepsy, which is extreme sleepiness during the day and falling asleep suddenly during the day. Alright.

Next slide there, please.

So here's some common limitations that we find associated with sleep disorders. Now sometimes we'll get calls from people, and we'll hear things we didn't know, we hadn't heard before, but these are the most common things that we talk about and we try to help people come up with accommodation ideas for. That's memory loss, managing time, stress intolerance, difficulties with both sleeping and staying awake, decreased stamina and fatigue, attentiveness and concentration, and executive functioning deficits that can include behavior, paying attention, strategizing, forming concepts, thinking abstractly, and then also difficulties with organizing, planning, and prioritizing. And then we also see effects of medical treatment that can include using a CPAP machine and of course medication. So those are some of the difficulties that we see. Okay.

Next slide, please.

Here we have our JAN resources that are related to sleep disorders, and you see there the link at the bottom; that's our sleep disorder page. A lot of these are found at the bottom of that page. If you have any difficulties in finding resources, you can always get in contact with JAN. We'll be happy to help you with that and send you the links to the resources.

We have information on "Accommodations Related to Commuting To and From Work." We've got a really good example of that coming up. "Cataplexy," "Dealing with Stress in the Workplace," "Cognitive Impairment and the Accommodation Process." It might be kind of complex for some situations, and people with cognitive difficulties may have trouble with that. "Executive Functioning Deficits for Higher-level Employees and Accommodations," "Getting to Work on Time," "Memory Difficulties in the Workplace," "What's in a Routine?," and "Working 9 to 5 - Not the Only Way to Make a Living." That is just some of the ones that we have. All right.

## [Performance and Conduct]

Now we are going to move on to performance and conduct. And as you saw in that previous slide, some of the performance and conduct issues that are common involve difficulty remembering tasks and procedures, concentrating, staying attentive, inability to manage time efficiently, decreased stamina and fatigue as well as daytime sleepiness, and those executive functioning problems that I mentioned like planning, organizing, prioritizing.

And attendance issues also come into play. The inability to wake up easily and promptly, and under the ADA an employer can require the same level of performance and conduct for all employees, those with disabilities included. And so the only difference there is that the employer is obligated to provide accommodations for known and documented disabilities and medical conditions.

So let's just jump right into our situations and see how employers handle these issues. All right.

So we're going to go to our first situation here. This is an employee with undisclosed insomnia and executive functioning deficits who is working at a call center was having difficulty performing intakes correctly and meeting deadlines. The supervisor sits down to talk with the employee about his performance. Is this a good approach?

Next slide.

So ADA guidance would say that employers can hold all employees to the same standard of performance but should bring deficits to an employee's attention as soon as possible. And let me just say here real quickly that there are people that have cognitive difficulties that may not realize they're having performance issues on the job. They might not understand the full scope of their job; they may not know things they are leaving undone. And so the sooner an employer can bring that to their attention, the better it is for everybody.

But best practices say meet with the employee to talk about performance, like I said earlier, so the employee knows what's going on. You can talk about where the employee should be and how the employer can help him get there. Whether there is a disability involved or not — you don't want to assume that there is, but you can talk about performance. "Hey, here is where you are; here is where you should be; how do we help you get there?" All right. So I'm going to turn this next example and several after this over to Alexis.

**ALEXIS POPA:**

All righty. Thank you. So our next situation we're going to look at still in regards to performance and conduct situations. So here we have an employee who had difficulty with concentration, focus, and getting some of her tasks done on time due to a sleep disorder that affects their mental fatigue and sleepiness. So when the employee discusses it with the employer, the employer asks what they can do to help. So is this a good approach?

Next slide.

ADA would state that employers can hold employees to standards of performance, but however they need to begin that interactive process when an employee discloses their medical condition and connects it to the performance issue. And as a best practice, meeting with the employee, asking how to assist and requesting that medical documentation that may help with some accommodation ideas.

All righty. Next up. So here we have another situation where an employee had been arriving to work anywhere from 15 minutes to two hours late for several weeks. When the manager asked about it, she belligerently had said she had a medical issue and that it was none of the employer's concern. So is this a good approach?

Next slide.

So as a result, because under ADA employers can hold all employees to the same standards, whether there is medical issues or not, employees want to be cooperative and disclose a medical condition before it's too late. Employers don't have to rescind any type of punishment or performance strikes, whatever that may look like in each office of employment, so it's important for individuals to disclose once they realize they're having difficulty. As a best practice, a good opportunity to disclose a medical condition and ask for help is when it is brought to the individual's attention that they're not meeting those attendance standards.

All righty. Next slide.

## [Telework and Commuting]

So next we're going to dive into telework and commuting. Commuting to and from work can sometimes be difficult for individuals with certain limitations. Telework as an accommodation within certain fields can be an excellent alternative for employees who have conditions that make it difficult for them to leave their home or reliably travel to a place of work. So employers should consider if a job can be made compatible with telework for their employees and to communicate their expectations as well as requirements for the job to be performed out of the household.

And then although employers generally don't have to provide transportation to and from work, when an employee's disability however interferes with the ability to commute to work, employers may still have to provide other accommodation such as allowing them to telework, modified schedules, reassignment, things like that we'll dive into a little deeper in the upcoming slides.

All righty. Next slide.

So here we have a situation where an employee who is being counselled for attendance had disclosed that they have insomnia and asks for the ability to telework. So his supervisor tells him to get his attendance in order and they will consider it. Is this a good approach?

We'll take a look at the next slide to see. So according to ADA, while employers can hold this employee to those attendance standards like we talked about, however they should start that interactive process without delay when that employee discloses and asks for an accommodation. So employers are obligated to move forward in a timely manner, potential delays could result in ADA risks of violations, so we always encourage them to go through those processes and tie up those ends, making sure they're doing as much as they can to help the individual. And as a best practice they should treat the request as an accommodation request, requesting that supportive documentation if needed, and have a full conversation about how that telework will be beneficial for the individual.

All righty. I'm going to turn it back over to Melanie to continue on.

**MELANIE WHETZEL:**

All right. Thank you. In this situation we have an employee who was recently diagnosed with narcolepsy and asked for a modified schedule to allow the use of public transportation. The employer denies the request, stating that the employees are responsible for getting themselves to work. Is this a good approach? Excuse me.

Next slide please.

As Alexis said earlier, employers do not have to provide transportation to and from work, and that's not with the employee asked for anyway. But the employer may have to consider other accommodations related to commuting problems that are related to a disability such as modified schedule and telework, since it's the employer who sets the schedule and where the work will be done, so they are the ones that really need to look at, "Can we modify this? Can we modify where the work is done? Can we modify the schedule?"

Best practice is treat the request as an accommodation request and consider modifying the employee schedule, even on a trial or temporary basis, if the situation worked out on a more long-term solution. And see how it works for both parties. May find out pretty quickly that it works, it is an excellent solution, and you may find out that due to public transportation schedules, it is not going to be as effective as you thought. But a trial period is always a good accommodation. We at JAN, we talk about that a lot, because it gives everybody the opportunity to see how that's going to work before you might decide to do it on more of a long-term basis.

All right. Next slide for our next example here.

So in this situation, an employee with a sleep disorder found working from home to be extremely beneficial. She asks to continue teleworking after her employer calls all employees back to the workplace after mandatory telework related to the pandemic. We found that in a lot of situations, not just with sleep disorders, a lot of people who had not worked from home were forced to. Don't know how effective it was to work from home, to have no commute, to be able to control their environments, lots of things. In this case the employer tells the employee that she will have to come into the office until the interactive process is complete. Is this a good approach?

Next slide, please.

Well, ADA says employers do not have to provide an accommodation until the accommodation process is complete. But best practice would say allow telework to continue during their interactive process if the issue is pandemic-related. I mean, we've seen stress levels of people increased dramatically during the pandemic. If the employer can continue to allow the employee to work from home and continue with what's been effective, there may be a much better outcome for both parties at least until a decision is reached on whether the telework can continue on a more long-term basis.

And I want to say this. If somebody's been working from home effectively and all of a sudden you up and change a schedule for someone, that disruption of the schedule for a person with a disability who has adjusted well to that current schedule, it may create all kind of new problems that you might not want to deal with. So if you can continue that telework to continue, until you make a decision, that would be an excellent accommodation.

All right. Next slide, please.

## [Job Restructuring and Reassignment]

Okay. Here we are going to talk about job restructuring and reassignment. The employers can determine if restructuring a job by removing marginal functions to just include essential ones might be effective. They can look to modify when and how those essential functions are performed. Reassignment to an open position that the employee's qualified for may be needed when an employer has tried to accommodate the employee unsuccessfully in their current role.

So let's go to those situations now and see what we have. So the first situation we have here is a long-term employee with a sleep disorder who's begun to have difficulty completing the mandatory overtime recently instated by the employer. The employee's fatigued, inattentive, and has trouble getting through his regular schedule at times. When he discloses to his employer and asks to be exempt from the overtime, his supervisor says they will consider it. Is this a good approach?

Next slide please.

Okay. Well ADA guidance would say that employers must consider providing accommodations for employees with disabilities. So it's good the employer didn't just say, "Hey, everybody is doing overtime. You have to do overtime too." It is good to take that into consideration and look and see, "Is it possible? Can we do it?" Best practice says to determine if the overtime is essential and if changes in the employee's schedule can be made. Discuss what alternate accommodations may be effective.

In this case, after much discussion with the employee and the consideration of the medical information for him his doctor, the employer exempts the employee from some of the overtime but isn't able to take him completely off of the overtime schedule. The employer states a business need requires all hands on deck during the busiest seasonal times but was willing to look at how the overtime would be done, providing more breaks, consider whether a stand or sit stool might be necessary, and if ergonomic equipment may be able to help with the fatigue and help the employee do well with the overtime that he is required to do.

And we would always recommend a full conversation with the employee to find out, "Hey, you're going to have to do some of this overtime, but let's talk about how we can help you." [clearing throat] I apologize, excuse me. "Make that overtime doable for you, what can we do to help you so that you can effectively work?" All right.

Next slide please. Now I'm turning this back to Alexis.

**ALEXIS POPA:**

Thank you. So for this next example we have a veteran who is now a delivery truck driver. He has PTSD and a sleep disorder. He was having difficulty with his nightshift schedule however and had requested dayshift instead. The employer responded he just needs to do what he was hired to do. Is this a good approach?

So sometimes employees, you know, they're unable to work that specific shift or specify a number of hours, whatever that may be. And a shift change can be viewed as a schedule modification when reasonable.

So we're going to go over to the next slide and see what these best practices and ADA states. So ADA states that employers don't have to create a position or bump someone else out of their current one and that a best practice would be is to engage in an interactive process, consider the temporary accommodations like Melanie talked about previously, to assist that driver until reassignment to a dayshift position is possible. If there isn't a dayshift available or the employee doesn't have seniority to be placed in another dayshift that might be open, then it may not be a feasible accommodation. If modifying that employee's shift or schedule isn't reasonable, the employer might need to look toward those alternative methods until a reassignment vacant position might be opened up. It is very case-by-case basis.

All righty. Next slide.

Here we have another situation where an employee was working at a manufacturing site, and he had been successfully working the second shift. He recently experienced fatigue and difficulty with concentration due to disruption of his sleep patterns and couldn't work the early shift that a new manager had assigned him to. The new manager was unconcerned and ignored the employee's attempts to right the situation.

This is a clear example we see sometimes where maybe the documentation of accommodation wasn't in place or there wasn't an accommodation needed to begin with, and that could be an unusual circumstance that causes the need to disclose a disability and the need to request accommodations. So is this a good approach of how this manager handled this?

As a result, under ADA employers should respond quickly to those requests, like I said at the beginning, for schedule changes that are linked to medical conditions. And as a best practice, we encourage engaging in that interactive process, consider maybe moving the employee back into the position his body was accustomed to and that he had worked successfully in. Why was that employee pulled from there? Kind of seeing if you can backtrack into there and fix the issue at hand easily.

All righty. Next slide.

## [Travel]

So here we're going to talk about travel. So employees with a variety of impairments may have different issues traveling on the job, sleep of course being one of those. In some jobs traveling is an essential part of the job, therefore the employee needs to be able to travel to be qualified for his or her position. In other jobs employees may travel, but there are other ways to perform the job without traveling such as maybe virtually presenting like we are today.

So when an employer requires on-the-job travel, that employer is responsible for providing accommodations so long as they are reasonable. Employers must provide accommodations unless they can show that those accommodations might pose a hardship. And the following situations we have coming up, some of the areas we see regarding travel-related accommodations.

Here we have a new employee who was traveling for training had asked for the accommodation of a private room because of the use of a CPAP machine and the need for privacy. The employer's response was by saying all travelers share rooms, and that it is a policy that is in place. So is this a good approach?

So according to ADA, employers can of course have policies that they enforce based on budgets and other factors, but as a best practice they should start the interactive process and discuss the situation with the employee as well as addressing their concerns. They can consider modifying the policy.

EEOC guidance talks about that employers can modify policies for an individual with a disability whilst still implementing those policies onto other employees without disabilities. If that's not possible, how can they accommodate the employee within the room so that they have somewhat more privacy, or are there alternative methods or formats to this travel that the individual can engage in? Sometimes too we see if it causes a hardship, EEOC guidance talks about paying the difference of the cost of an accommodation if cost is a factor, looking towards outside funds, tax incentives, you name it.

Next slide.

Here we have another travel situation where an employee with sleep apnea also uses a CPAP machine, however it's not suitable for travel. After being promoted to a position that requires them to travel, she asks the employer to provide a smaller machine for her work-related traveling. The employer denies this request as it is a personal use item. So is this a good approach?

Under the ADA, it talks about employers don't have to provide personal use items as accommodations to employees. This can involve hearing aids, CPAP machines, the list kind of goes on and on for those day-to-day usage items. However, the employer as a best practice should discuss the situation with their employee and determine how to assist her when traveling. Some ideas that might come to mind maybe could be, if they do have to pack up this bigger CPAP machine, seeing if they are able to maybe compensate the cost of an extra luggage if it takes up a lot of room when they're traveling. Or just how they would travel with it, kind of breaking down those how-to steps with the employee.

Now I going to turn it back over to Melanie to get us started on the topic of medical documentation.

## [Medical Documentation]

**MELANIE WHETZEL:**

Okay. Medical documentation, that's a component of the accommodation process that we get many, many questions about. So let's look at our next two examples here.

Next slide, please.

So here we have a situation, and we hear this one quite frequently. An employee has been discovered sleeping on the job at various times throughout the day over a several-month time period. The employer reports a hesitancy to ask her medical documentation, and since they don't really know what's going on, they let the incidents slide. Is this a good approach?

Next slide, please.

Well, ADA guidance would say that employers do not have to tolerate sleeping on the job. Whether they would consider that performance issue or a conduct issue, the employer can hold all employees to the same standards, and that can be "No sleeping on the job." Best practice would say you want to meet with the employee to alert them that they have been sleeping.

Sometimes people don't know that or they don't know how long they've slept. I've talked to people who say, "I fall asleep at various times, but I have no idea how long I have been asleep, because I just wake up and I don't know." So if the employer notices that they can certainly alert the employee that that's going on and that the behavior is not acceptable. They can ask, "What can we do to help you? How do we assist you in staying awake?"

And the employers want to be careful not to assume there is a medical condition, because the employee could be having many situations going on that are not disability-related. So instead of asking about "Do you have a disability? Do you have a sleep disorder?" you want to ask, "How do we help? How do we help? What do you need?" And that's sort of the same thing as saying, "How do we accommodate you? Do you need an accommodation?" And that way it can lead the employee to disclose a medical condition, and sometimes they don't know they are having a medical condition.

A lot of people call, and they just have been newly diagnosed with a sleep disorder. And so they may have had a lot of indication they had it in the past, but they didn't know they had one and may not be aware of the extent to which they're sleeping. So it's always good to bring it to their attention, and they can disclose at that time, or if they've been thinking, "Hey maybe there is something wrong with me. I've been sleeping a lot; I'm not as alert as I need to be." Then when the employer brings that to the employee, it alerts them. And that's always a good move for both parties, because then the employee can say, "Hey, I do need some help. Here is some ideas that might help me stay awake." They can provide the medical documentation if they have been diagnosed, and that could have some ideas for help staying awake. If not, the employer can always go back to the doctor to get some ideas. What might be helpful for this person? Working in this environment, how do we help them stay awake?

All right. Next example, please. Ok.

So in this situation an employer requests medical documentation from an employee to substantiate the need for an adjustable desk that she says will keep her awake. The employee states that she was diagnosed with narcolepsy many years ago but has no current documentation and has no desire to go through the medical channels again. Is this a good approach?

Next slide, please.

ADA guidance says that employers can require medical documentation when the disability and the need for accommodation are not obvious or already documented. So if the employee doesn't want to go through that, the employer doesn't have to provide an accommodation without the medical documentation. Best practice would say that consider providing accommodations without the documentation, unless it causes a hardship.

If an adjustable sit/stand desk is too expensive, the employer could consider alternate less-expensive options. for standing or adjustable desks, such as a setup with boxes or a shelf, in order to see if the accommodation can be effective and safe. Some employees report falling asleep while they are standing and falling over, and if that's the case then you don't want that happening, so a standup desk may not be the best option. I have seen a little shelf that has suction cups, so you can stick it to the wall, and one of the pictures I saw it was attached to a sliding glass door, and I thought, "Oh wow! That's a really nice place to stand and work for a little while." So there are lots of options for maybe something that is less expensive than an adjustable desk.

And at this time, I wanted to go over — since these two examples talk about daytime sleepiness, I want to go over some ideas for daytime sleepiness. We see a lot of that, a lot of people asking for help with "How do I stay awake?" You can provide a device such as a DozeAlert or other products to keep the employee awake and alert. Alexis is going to talk about these in a couple of slides here, I think.

You can provide a flexible schedule or shift change to allow the employee to work when they are most alert and awake. Some people, all of us really, our bodies work in different rhythms I guess is the way to say it. Where we at times when we're most alert and we feel we're at our most mental capacity, and so someone with a sleep disorder would feel that way as well. There may be times when they're sleepier. You can look at "Can we change the schedule a little bit? Can we change the shift?" You can also look at providing kind of a schedule for their work. Can they do some of the products or tasks that are more exciting or more involved at a time when maybe they are sleepy? and that keeps their mind going, and it kind of helps keep them awake. And maybe then some of the more mundane or more boring tasks that might put them somewhat to sleep could be done. You can always mix up that schedule, unless there are certain functions that had to be done at specific times.

You can reschedule breaks. We hear all kinds of different requests for breaks. "Can we do this? Can we do that?" And I always say you can do about anything with the schedule as long as it works for the employer and the employee, it doesn't cause a hardship. has the employee working when they need to be working. Some people will reschedule for fewer breaks of longer durations. Let's say they have a 15-minute break in the morning, 15-minute break in the afternoon, they'll schedule that with their lunch so they might be able to lie down and take a nap or maybe go out and have a big walk or something, whatever would be helpful for that person. Some people want shorter, more frequent breaks. So they take that 15-minute break, and they divide it up to get up and walk around the office, they do different things that can help keep them more alert.

Some people find that an underdesk peddler, little exercise peddler, can help them stay awake and alert. You can allow the ability to stand up and move around while working, not just breaks. Unless everybody is working 100% of the day all the time, people get up and move around, and people with sleep disorders that might be feeling a little sleepy maybe might need to get up, walk around the office, maybe take a walk around the outside of the building, get some fresh air. Wireless headsets are helpful. Someone spends a lot of time on the phone, because they can walk around and move and still be able to talk on the phone with people. Adjustable desks, like we talked about before.

And also I think most people probably have access to water. There are people we talked to that, because of their work environment and what they are doing, they are not allowed to have water with them, but frequent sips of water can help oxygenate the brain, and that can help keep people awake. And again, we are accommodation specialists, and we can come up with a lot of ideas, but we're not saying this may work for certain people with certain conditions. And because the conditions vary from person to person, these may be effective for some people and they may not be effective for others.

You can move the employee to a location where they have more natural light. That helps with alertness; that helps all of us if we have natural lighting. Full-spectrum lighting can help as well if somebody can't sit near a window. And then also, something that we find works is to allow the use of music if that were to help keep the employee energized and not lull them to sleep. A person could listen to music with one earbud, have the other ear open so they can listen to what is going on or hear the phone ring. But a lot of people report that if they listen to more jazzy, upbeat music that it keeps them kind of moving and can help keep people awake. Those are just some of the ideas. But we're happy to discuss those with individuals, employers, whoever wants to give us a call and talk about some solutions for those different situations. Now I'm going to turn it back over to Alexis.

## [Products]

**ALEXIS POPA:**

Alrighty. Thank you. On these next few slides we're going to highlight some of the products that Melanie touched on.

So here we have just listed a few examples of products that might be beneficial to those with sleep disorders. Depending upon your needs, of course. Like Melanie was saying, everything is case-by-case basis. Really geared toward what limitations you are having. Trialing out different products is something we always recommend too, whether you are the employer or employee.

So first up is that alternative alarm clocks. So these clocks, they have specific functions, each one can be different. Some have — they're meant to meet the special needs of individuals. So some can have reminder alarms throughout their low-vision alarms or even amplified alarms for hard of hearing.

And then next up we have the bed shaker alarms. These are vibrating alarms that have bed-shaking capabilities. And they can be beneficial for those with sleep disorders or even hearing impairments as well who have difficulty hearing those audible alarm clocks or waking up to an alarm itself. Bed-shaking alarms sound just as they would, they're placed between the mattress, and they can be used either with or without the audible alarms as well.

Next up are dawn simulators. These are devices that mimic natural sunrises by gradually brightening up the rooms over programmed periods of time. For my own personal experience, I have seen these being used in recent trends all throughout social media, whether it was TikTok or Instagram, and I think they are really cool. I personally want one for myself. I think it is a really neat, natural simulation to have. These could be placed in your nightstand, dressers, whatever you would like in your room.

Next up is the rolling alarm clock, and they're exactly what you would expect. They roll around on the floor, and they are a clock. This little gadget is interesting. It may seem kind of a bit goofy, but there is reasons for it. So this clock rolls around on different floors, whether it's carpet, hardwood, laminate, and it's meant to play quite loud sounds along with that rolling mechanism to not only wake the individual up but also to have them up and moving to catch the little device. So it gets you up from the bed, not just rolling over to tap the alarm off and snoozing.

So some sleep-alerting devices that can be used throughout the day, and they're fairly inexpensive, I found in my research on it, as well as easily disguised. Two of which are the DozeAlert or Nod-Stopper. Both are worn over the back of your ear, and they can be worn with glasses. They assist with vibrating and notifying you when you're dozing off. So we see some people using this in car rides, I've heard, throughout the day in the workplace, any type of situation or scenario they can be implemented. Another sleep alerting device is the NOZzER watch — I think I am pronouncing that right. It's either "noozer" like "snooze" or "nozzer" watch — which is also discreet. Just as it's explained, it's a watch and it silently alerts you with vibrations throughout the day. I believe it's got one-second notices when you are starting to doze off and measuring that.

So next up is talking alarm clocks. They're just as described. They speak a lot of the time when going off. This can be of great benefit to maybe low vision individuals.

So yeah. I already touched base on the vibrating watches or alarms. And there's a link at the bottom of the slide as well that will direct you to the page of limitations for sleeping or staying awake that has those listed there. You can also find numerous products just by going to our main page and using the little search tab and typing in "sleep devices" or whatever you feel comfortable with putting in there.

So next slide.

We're going to look at some sleeping or staying awake services and applications. So first up to bat, we have a wake-up service. I came across this situation with an interesting case a while back of an employee that was requesting to be called by their employer consistently as a continuous call was the only thing that helped them so that they would be woken up every day. That of course might not be the best case scenario, having your supervisor calling you every morning. So with some research I had come across multiple resources in which there are actually call services available for subscriptions, and earned that fairly expensive at all really, depending on the business. To where it can be wake-up calls kind of like you would experience in hotels even, and you can program them throughout any time of day, repetitiveness, so on and so forth.

Some other areas to consider as well might be sleep apps. While anyone can use apps, there are certain functions that might be particularly helpful to individuals with disabilities. So individuals with sleep disabilities may experience limitations that impact maybe their personal and/or work life. So we're seeing examples of individuals using these apps to help with various aspects of their life at home and in the workplace. These applications can help remove those barriers and assist the individuals by performing the specific functions to support them. As with any piece of assistive technology, apps may be a great solution for some, might not be for others, but these following resources may help to determine if those applications are right for you, if this is something you would be interested in looking upon. But there is countless options, whether you have Apple, Samsung, Microsoft, whatever apps there are out there. So yeah. The possibilities are really endless.

All righty. Next slide.

I believe that ends our presentation today, and like always we are going to open the floor for some questions and discussion. I will turn that over to Melanie and Tracie.

## [Q&A]

**TRACIE DeFREITAS:**

Okay. Wonderful. That was great. Lots of really useful information. I think probably my favorite suggestion is the rolling alarm clock. [Laughter]

**ALEXIS POPA:**

Like a rolling Roomba almost but an alarm clock.

**TRACIE DeFREITAS:**

That sounds fun. We do have several questions, so let's go ahead and get started. We have an employee who cannot get to work on time but needs to be in the office, because he is a liaison for another office. No one else can do what he does, and we have tried to adjust his schedule, but we can't seem to work anything out. Do you have any suggestions for how to accommodate or process this type of situation?

**ALEXIS POPA:**

[Multiple speakers] I'll take this one, Melanie. You sure? Okay. Perfect. So essentially having difficulty adjusting schedule, there is not really set times where the employee can get into work, it can be difficult because employers can have those expectations of a time and attendance requirements. From what I have experienced, whether the individual or employer, looking at what is limiting them in the mornings from getting there on time, is it waking up? Asking those more detailed questions about what their limitations are for getting to work on time and then kind of going from there. There is of course just last resort reassignment if the schedule change is needed completely as no one else can be that liaison, but it just kinda varies.

Melanie, do you want to add to that?

**MELANIE WHETZEL:**

No, no. That's good. I think are there any tasks that somebody else could do? As long as they are not essential, you don't have to trade off essential functions, but there are people we talked to who are just not able to — to no longer — they are just — How do I say that? They're no longer able to do the job, because they can't get there when they need to do those particular functions. Sometimes reassignment is the only accommodation that will work when others have been tried and failed. And it's important when you are looking at reassignment to look at, to make sure it is not going to be the same type of job where he would run into the same issues again getting there at a certain time. Needs to either be a job where he can work more flexibly. It is important to look at those same things. We get that question a lot. How do we determine what the person is qualified for when we're looking at reassignment? You look at, of course, of what the person's skills are, but you also look at what these difficulties were in the previous job, because you don't want to put them in the same job where they can be unsuccessful.

**TRACIE DeFREITAS:**

Okay. Very good. All right. Here's another question. A second grade teacher, it looks like the employer has a teacher who has hypersomnia. They have asked the principal to come in her classroom at the start of every day until she can get there. It looks like sometimes it is 20 or 30 minutes, but sometimes it's an hour or more. It looks like the employer can remove the early bus duty from their schedule to help, but they're wondering if it's reasonable to ask that the principal come into the classroom before the start of the day?

**MELANIE WHETZEL:**

Okay. I'll take that one. That would really not be reasonable. The principal would have their own tasks to do. One thing to look at is if it is two hours, that's two class periods. A lot of times — and I was a teacher. I taught at high school level too so I know you can switch periods around. which is really an essential function of the job. I think that's really a tough one, because a teacher needs to be there at the beginning.

I don't know if they can have a paraprofessional come in and do that part of the job until the teacher gets there. They could change your planning period so the kids are going to gym or music or computer class or something like that until the teacher can get there, but two hours would kind of be an extended time to do that. That may need to be looked at a reassignment, too, and I'm not sure as a teacher what that reassignment would be unless would be to another position where they weren't a teacher in a classroom or they were a part-time teacher, which again would be reducing their job. There are teachers who work just in the afternoons or work part time. But if you are really not able to get there anywhere from 20 minutes to two hours, and you can't do the essential functions of your job, you're really not qualified for that job anymore.

We hear that from a lot of people, how sleep disorders and other disabilities can just really mess up their work life. And I think it's important for employers to really look at all the possibilities, but sometimes it's just not possible to accommodate someone if the disability is pretty severe. That doesn't sound very positive, but I think calling JAN is a good point, to talk about calling JAN, because maybe we can help them through some things that maybe the employer has not thought of. We can talk through things, ask questions, and maybe come up with something the employer hasn't thought of.

**TRACIE DeFREITAS:**

I think you make a really good point though, too, Melanie, is that realistically, sometimes there are those situations where maybe it's not coming up with the best solution right away, but you just really want to make sure that you're exhausting all of the viable options. So exploring every possible solution before you really get to that point that you make the decision that someone can't do the job anymore. So that's a really good point.

Of course talking a lot about attendance issues and getting to work and being to work on time, I do have another question around that topic. When an employee — let's say they have been absent multiple times and maybe they hadn't disclosed to the employer until sort of at the last minute, they do go ahead, and they make it known that the absences are due to a medical condition like a sleep disorder.

Does an employer have to go back and look at past disciplinary action or past attendance occurrences and take those away because the individual has connected those absences to the disability? So since this is around attendance and performance and looking at those sorts of things, what are some best practices or what are your thoughts around removing those past absences or disciplinary action?

**MELANIE WHETZEL:**

I'll take that one. According to the ADA guidelines, EEOC guidelines, the employer would not have to excuse those things. Even if it led up to a termination, they wouldn't have to excuse those. So we recommend that an employer go to the employee when it first becomes an issue and say, "Hey, what's going on? How do we help you? You've been late; you can't get to work. What's going on?" Again, don't relate it to a disability, but just alert that person, the employee, that there is a problem. They don't have to — they can go above and beyond the ADA, but they don't have to forgive those disciplinary actions that came before they knew.

Now once they knew, yes, going forward they need to make a plan "How do we help you?" And even if a person is being put on a plan of improvement, they can still put accommodations in place to make sure that the person has the opportunity to work with those accommodations. And when we talk to individuals, we'll often say, "Hey, you want to alert your employer that these problems that you are having are related to your disability as soon as you become aware of that so that you don't get into those situations where you get discipline, and then you can't" — Sometimes people wait. They've had a bad experience, or they just don't know how to say it to their employer. They're not sure what to do. Sometimes they just don't know they have rights under the ADA, and they wait until the last minute, and it can be too late sometimes. And so we would say, "If the employer first brings it to your attention, disclose it. If you don't know if you have a medical condition but you're thinking that you kind of might, talk to your employer about that." Say, "I know I have trouble getting up in the morning. I don't know what it is. Maybe I need to see my doctor," but have that conversation so the employer knows that at least you're working on it, and you can come up with a plan.

**TRACIE DeFREITAS:**

Very helpful. I'm going to take that to another way of looking at things. In that case the person did disclose eventually. Let's say you have a situation where an employee has maybe exhibited some performance issues at work, and maybe the employer has tried to address the issue.

We had a question come in around an employee who is showing some symptoms at work, maybe showing some performance issues at work, and the employer's trying to address it, but the individual's not really acknowledging that there's a disability or saying they need help or accommodations. The employer is trying to do what they can to help, but the employee is essentially refusing the need for accommodation. What happens in those types of situations? Where you have the performance issue, and there's not a request for accommodation, but there seems to be an apparent need for it but the employee is refusing or not acknowledging it.

**ALEXIS POPA:**

I can take this one, Melanie.

**MELANIE WHETZEL:**

Sure.

**ALEXIS POPA:**

Overall, the employer can only do so much, bringing it to the employee's attention, there's these situations occurring, if they go down the route of putting that employee on a performance improvement plan, if there's knowledge that there is a disability involved, or, like you were saying, Tracie, the employee is against any assistance or help, I mean, overall under ADA it states that an employer cannot require an individual that's qualified with a disability to accept an accommodation. If, however, that employee needs an accommodation to perform those essential job functions, whether it's to eliminate direct threats or meeting those performance and production standards, and they refuse to accept an effective accommodation, then they might not be qualified to remain on the job, and they can proceed then with how they would with an individual that's not meeting those standards and that's declining the need of an accommodation.

I see that sometimes. It's unfortunate, I see employers a lot of the time they want to help, "How can we help this individual? They are defiant on it." They don't — I don't know the employee's situation. Maybe they're not wanting to ask for help or, whether it is pride or denial, who knows? But they can't force an employee to accept what they don't want, but it might come into question then if they're qualified then. I said "then" a lot. Sorry.

**MELANIE WHETZEL:**

Let me just add there too. If the employer is careful to talk about "How do we help you?" And they really shouldn't be assuming there is a disability and using words like "disability" and accommodation," but "How do we help? Do you need some help with this?" And that I think kind of helps the employee understand, "They're willing to work with me here. I need to work with them." But Alexis is right. There are employees who hold out to the very end, and they get fired, because they can't keep up with their performance or their conduct. They are sleeping, whatever the issue is. And they either don't know that they can, or they just refuse to, And the employer needs to document that. "Here's what we did. Here's when we met. Here's what we talked about. Here's when we met. Here's what we talked about" So if the employee comes back later and says, "I had a disability, and you didn't help me," "Oh yeah, here's all these things we tried to do." But some of that responsibility lies with the employee.

**TRACIE DeFREITAS:**

That's excellent advice. Very good. I think we have time for one more question at least. This one's getting more into the medical certification route.

In this instance, the agency requires medical certification to start processing a reasonable accommodation, which of course many employers do. The certification is difficult to obtain due to the healthcare provider's unfamiliarity with the employee's schedule. So perhaps they're not really sure what to get from the healthcare provider or maybe provide the healthcare provider so that they can offer the certification needed for the accommodations. What should an employee tell or communicate to a healthcare provider or another appropriate professional to maybe help them obtain the medical certification to support that reasonable accommodation process?

**MELANIE WHETZEL:**

I'll take that one. I think it's really important for the employee to have a thorough understanding of what those issues are at work, whether the employer has told them or not, so they can explain that to the doctor. "Here's my schedule. Here's what I do. Here's when I have problems. Here's the kind of help I need," or if they don't know what kind of help they need, "Here's what is going on. I don't know what to do." Sometimes the doctor can provide as much as possible and get to the employer, and then sometimes it kind of goes back and forth. So I think it's important too if the employer's had that conversation with the employee, They can write questions. I often suggest employers write questions. "Here's what is going on. Here's where the greatest difficulties are. Here are the problems we see in the workplace. Here's what it looks like on a day-to-day basis. Here is what it looks like on Mondays and Thursdays," because there is a certain schedule or something. I think the more information that an employer can provide.

Some people provide a job description, and that may be helpful, but it may not include everything. So I think if the employer can help with what those greatest difficulties are, what we see the problems are, then that helps the employee with the doctor. Because sometimes employees — and I will say this again. If you've got a sleep disorder and your medication may not be working right even if you're taking medication and it is doing the best it can and you are doing everything you can, your cognitive ability might not be tiptop. So when you go to the doctor you might not really be able to say everything you need to. So any information that the employer can provide to the doctor about what happens on a day-to-day basis or if it's just after lunch or whatever, that information can be really helpful to the doctor.

**TRACIE DeFREITAS:**

That's very helpful. I think that's probably about all of the time we have today for questions. Alexis and Melanie, thanks for delivering this information. It has been so helpful. I think we've all learned a lot about accommodations that I think many people aren't really aware of. So it's been a very, very useful training. We really appreciate your time and your expertise, of course.

To our attendees today, thank you for joining the JAN webcast on "Accommodation Solutions for Sleep Disorders." We encourage you to register for the next JAN Accommodation and Compliance Series webcast where we partner with our sister project, the Employer Assistance and Resource Network on Disability Inclusion, or EARN. We're going to talk about building a disability-inclusive organization. The webcast will be hosted on Thursday, October 13 at 2 PM, and you can register today. Go to the training page at AskJAN.org. The link is also provided here in the chat and on the slide. This webcast in particular is in support of National Disability Employment Awareness Month, or NDEAM. Observed annually in October, NDEAM celebrates the contributions of American workers with disabilities, past and present, and it showcases supportive, inclusive employment policies and practices. This year's theme for NDEAM is "Disability: Part of the Equity Equation." And for more information you can go to the Department of Labor's Office of Disability Employment Policy for resources at DOL.gov/agencies/ODEP, and that link will be in the chat as well.

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Finally, if you have questions about today's topic or need guidance on ADA and accommodation issues, please do contact JAN. Go to AskJAN.org for all of the contact details.

Once again, thank you all for attending this JAN Accommodation and Compliance webcast series event. This concludes today's training.