# Accommodating Employees with Diverse Cognitive and Neurological Needs

## [Introduction]

**TRACIE DeFREITAS:**

Welcome, everyone. We're pleased to have you join us for this Job Accommodation Network Accommodation and Compliance Series webcast, "Accommodating Employees with Diverse Cognitive and Neurological Needs." I'm Tracie DeFreitas, and I'm a program leader and the Director of Training and Outreach for JAN. Today I will be the moderator for this webcast, because I am joined by my JAN colleague Melanie Whetzel, JAN Principal Consultant and Cognitive/Neurological Team Lead. Thanks for presenting on this important topic today, Melanie.

**MELANIE WHETZEL:**

Sure, thank you. So let's just jump right in.

Next slide, please.

**TRACIE:**

Let me go ahead and hit just a few housekeeping items. [crosstalk]

**MELANIE:**

I'm sorry.

**TRACIE:**

It's okay. I'm glad you're eager to jump in! [laughter]

Just a quick introduction to the topic: Today we'll be discussing accommodations for people with cognitive and neurological disabilities such as mental health conditions, attention deficit/hyperactivity disorder, brain injury and seizure disorders. In the workplace these types of disabilities may pose unique considerations that do not exist with other disabilities, as the need for accommodations may not always be apparent. Employers may encounter scenarios involving medical documentation, applying performance and conduct standards, ensuring safety, and preserving confidentiality and more. Melanie will share some complex accommodations scenarios in the workplace and offer effective solutions to help maintain productive employees with diverse needs. This training will be 60 minutes in duration. For additional information on this topic, please do contact JAN directly for free consultation. You can visit AskJAN.org.

Now let's get started with the training. Melanie, I'm going to leave it to you now.

**MELANIE:**

All right. Thank you. I apologize for jumping right in. I have so much to say, I thought I might as well get started.

**TRACIE:**

I think that's fair.

**MELANIE:**

So our agenda today, We're going to be talking about performance and conduct. I talk about that a lot, but I think there's some special considerations for people with cognitive and mental health conditions. We're going to talk about safety and direct threat. Preserving confidentiality — That goes for the employers and for the employees. We're going to talk about leave, which is one of the most requested accommodations. Communication, which is always an issue. It's become more of one since COVID. There seems to be a lot more anxiety, social anxiety going around. And also, we're going to talk a little bit about medical documentation, and then, of course, time for questions and answers if we have time.

Next slide, please.

## [Common Limitations]

All right. You know at JAN we talk to — Our main goal is to talk to employers, but we talk to really whoever contacts us, and if we can't help them, we refer them on. We talk to employees and their parents and their representatives in vocational rehabilitation, professionals and doctors. We talk to a lot of different people, so we feel we really have a good background on what's going on, what the difficulties are in the workplace.

The most common limitations we see from mental health and cognitive disabilities are panic, memory and learning, attendance, organization and concentration, time management, sleep disturbances — whether those are caused by the disabilities or the medical condition or from medication — working effectively — coworker interaction can be very difficult for people with mental health conditions, and also stress and emotions management.

The definition of disability is somebody who's substantially limited. Now that's not a really high bar to me, more limited than the average person, You think of somebody as substantially limited in several of these. Nobody's going to have all of these, and people have different levels of severity in these limitations. It can really have a profound effect on getting work done in the workplace. Just keep that in mind as we go through the scenarios and the information.

Next slide, please.

## [Performance and Conduct Standards]

I said that I think there's some special considerations with performance and conduct standards, and I'd like to say that there are people with cognitive and mental health conditions that don't always realize that their performance or their conduct is an issue. They may be having some issues with medication, or they sometimes can't see the whole picture of their job. They may think they're doing fine, and they don't realize they're leaving a whole part of their job out. And so it's really important for employers to bring that to an employee's attention as soon as possible in a gentle way, I like to say.

We get a lot of questions where employers will think, "We think so-and-so has a mental health disability. What do we do?" "We think they might be on the autism spectrum. What do we do?" We would advise people to follow your performance and conduct standards. Apply those across the board to everyone, and that way you're just being fair and consistent to all employees. If there's an employee that you think may have a disability or medical condition, handle it the same way, bring it to their attention. Because if they're not aware that that's an issue that's going on, then they need to know that, and they need to have that opportunity to correct that. The sooner the employer can do that, the better it is for everybody. And it gives the employee a safe place to disclose. They may not really have been aware; they might not really connect their disability or their medical condition to their performance, and it gives them a chance to think about that.

You don't have to lower a standard as an accommodation; the accommodations are put in place to help the employee meet that standard. We get a lot of questions about, "Because I have this disability, shouldn't they lower or shouldn't they remove this?" No. They can, they can go above and beyond the ADA, but employers aren't required to do that. The accommodations are to help them work more effectively, more efficiently.

The same for conduct standards. There's a little bit of difference. If the employee with a disability cannot comply with the standard, it must be job-related and consistent with business necessity, and it must be something that the employer would hold all employees to. You don't want to hold somebody with a disability to a higher standard than others. You want to make sure that that's really something you hold all employees to. But you do need to consider accommodations to help lower that risk, look at what causes that conduct, what causes that behavior and accommodate it so that behavior or conduct doesn't continue. At the bottom of each slide, I do have the resources where the information comes from for quick reference.

Next slide, please.

### [Examples]

We'll go to our examples. Here we have two performance examples.

Pat's employer requests a meeting to talk about the recent performance issues. Pat is surprised. It happens a lot. People just don't always realize that they're not getting their work done or getting it done on time. They didn't realize their performance was as low as their employer is stating, so it gives Pat the opportunity to say, "Hey, I do have some recurring depression, and when that's exacerbated, I do have problems with focus and memory, and I think that's what's going on." That gives the employer the chance to say, "Okay. How do we help you? What accommodations can we put in place to help you meet these performance goals if you're not getting your reports done on time?” or whatever that might be. That, of course, is the ideal situation, but I think when Pat's employer goes to them and says, "Hey, here's what we see. Here's what we need to do," that gives Pat the opportunity to realize what's going on.

Our next example, Jack, is an employee who worked for an online retailer who's having difficulty with serving customers over the phone and asks for reassignment to a position where he didn't have to talk to people but could do online chat and emails. Well they didn't have a position that he was qualified for that didn't require talking on the phone. It was a catalog retailer; most of the jobs required that. So they said, "Let's talk about this. What is the difficulty you're having serving customers on the phone?" He started talking about memory issues he was having, and he couldn't remember the catalog, some of the products and the details, and then when he had to talk to the customers, he got really nervous, and it made things worse. He had some stress, anxiety in there too. And they said, "Okay. Let's talk about what we can do. Do we need to have some more training for you? Do we need to provide resources for you that are easier to locate? Maybe some color-coded pages. Group the items together in a way that makes sense for you, Jack, not the way that it would make sense for me. But how would this work for you? Do you need a mentor to help you so that you could see how they do their work and maybe help you do yours?" The employer can drill down and say, "We're not going to remove that function, and we're not going to reduce it. Let's talk about how we can help you do that."

Next slide, please.

Here, we have two conduct examples. The first one, after a few uncharacteristic outbursts, Jai rigged out makeshift partitions out of mailing boxes around his centrally located desk. His supervisor determined it was time to speak to him about his actions. What actually happened in this case is that Jai went to his supervisor several weeks before this happened, and he said, "I'm really struggling with being out here in the open surrounded by people. I need a little bit of privacy in order to get my work done." The supervisor kind of responded, "You know what? You're an administrative assistant. Your job is to be out there in the middle. Just get back to work." And really, I think if the supervisor had been a little bit more astute to what was going on or probed a little bit, Jai might not have gotten to this point where he kind of had to take it upon himself to give himself some privacy when that might not have been the appropriate way to do it. It was what he could do at the time. Kind of exposed him to his coworkers, looking and thinking what the heck's going on there? The supervisor could have had that conversation, "Hey, what's going on? Let's talk about what you mean when you say 'privacy.' What do you need?" What they ended up doing was that he was out in the center, people came to him from all directions, behind him, and I think that was the biggest thing for him was that they came behind him. They put up a partition behind him and on the sides, and then they changed some of the protocols to help him so people weren't coming at him all the time from every angle. But he didn't ask for that as an accommodation; he didn't say, "I need it because I have a mental health condition," but maybe the employer could have been a little bit more probing just to see what was going on and maybe avoid that situation.

Our next example is Al. Al's extremely upset because his employer's written him up for being late, that his next occurrence would result in termination. Al had ADHD, said he couldn't be on time, the employer can’t expect to be on time, because he had a disability. That's not really the truth. The employer can hold him to the same standards they hold others to, if they hold others to being on time at work. This guy's job involved he was the only one there, and he did security checks, checking badges and who was coming in the building. There was no one else to do that job when he wasn't there. He really needed to be there. They met with him and met with him and met with him, and he didn't disclose that he had ADHD and that it was related to disability or anything, so the employer had no idea. It is up to the employee to realize, "Hey, this difficulty I'm having is related to my disability. I need to talk about that," not just keep that information private or expect the employer to somehow know that.

All right. Next slide, please.

## [Ensuring Safety/Direct Threat]

This is talking about ensuring safety or a direct threat. Employers can have a qualification standard that an individual not pose a direct threat, as long as it's applied to everybody in the same kind of a job. The employer must meet very specific and stringent requirements under the ADA to determine that a direct threat exists. It's kind of a high bar; it's not something that is vague and nebulous and out there. The employer must be prepared to show that there's a significant risk of substantial harm. The specific risk must be identified, not just, "Well, we're afraid something might happen," It must be a current risk and not one that's speculative or remote. The assessment of risk must be based on objective, medical, or other factual evidence. And that factual evidence can be something that's seen in the workplace.

 Sometimes employers will — and I'll have this in a really good example coming up — sometimes they don't really have that factual evidence, it's just perceptions that they have, misperceptions, misconceptions that they have about a disability or a diagnosis, and they're just things they've seen on TV or maybe some family member that they know that has that diagnosis, and they really need to be more objective in how they look at that and look at each individual. Even if a genuine significant risk or substantial harm exists, they need to look at, "How do we reduce that risk with accommodations?" There's more information — Each of those bullet points is explained more thoroughly in that Technical Assistance Manual.

Next slide, please.

### [Examples]

This first example, it's an unfortunate example, but I really like it, because it really shows what we mean when we're talking about direct threat and trying to find out if there is factual evidence, if there's medical documentation.

Here, an employee disclosed that he had PTSD and asked for an accommodation of being allowed to leave his workspace and take a walk around the building if he was feeling particularly stressed. This was a longer-term employee, had worked there, no problems. The employer got this request and said, "We're putting you on leave. You can't come back until you have a thorough psychological evaluation that tells us you're OK to work here." The employee was like, "What is that? What do you mean?" There was no factual evidence at all that there was any kind of a problem with this employee. In fact, the employer was totally surprised that the person says they had a diagnosis of PTSD. If the employee had been violent or shouting, throwing things, turn over his desk, anything that might have given them any kind of indication, but it wasn't. There was nothing like that. And so the employer did not follow the guidelines.

I say in this example, "Where was the risk of substantial harm?" They didn't look at what the factual evidence. They just kind of did that based on the mental health diagnosis, which is not the correct thing to do. If things changed, they can certainly say, "Let's get some medical documentation, and we'll be glad to help you." If then if things change and they saw other things in the workplace, then they could get more information and they might make changes, but at this point, when there's no evidence of anything going on, the employee really should not be asking for that type of medical documentation and putting an employee on leave.

Our next example's just a little different. This is a maintenance employee with an intellectual disability and difficulty reading. He works alone and must be able to mix chemicals for the extermination of bugs. He got promoted because he was able to do that job. He worked with the supervisor, the supervisor left, he got promoted to the supervisor's level, but there were some coworkers who were worried about it and reported it because they thought he wasn't safe, because he had difficulty reading. They had already worked out accommodations with him. They had made individual recipe cards that were color-coded, they had the pictures of the chemical containers on them, they were numbered, the containers were color-coded, and he worked very well, and they had complete confidence in him. They had already made those accommodations that made it possible for him to do that job and reduce that risk.

Next slide, please.

## [Preserving Confidentiality]

Preserving confidentiality. It's really important for people who have cognitive and mental health disabilities — particularly mental health diagnoses, some more than others — they don't want that diagnosis to get out. They don't even want to tell their employer sometimes. They hold off on asking for accommodations sometimes until it's too late, because they're afraid of what might happen if they do disclose. There's a lot of stigma on having mental health conditions. We all have mental health, and it varies from time to time. They've had bad experiences or they're not sure what's going to happen, so when they do disclose, employers really need to make sure that that information remains confidential.

What that really means is that that goes to specific people, very few people — HR, might be a reasonable accommodation coordinator or somebody like that — but it doesn't go to the manager or supervisor. That information is analyzed and looked at — maybe not "analyzed" is the right word — looked at. Let's determine if this person has disability or not, if they qualify and it's put away in a secure, locked file separate from the personnel file so that a personnel clerk that gets in there doesn't have access to that information, and then they move on with the accommodation process.

The EEOC identifies a few exceptions, and I just included two — and if you look in that technical assistance manual, you will find some other exceptions, but these are just the two that meet our purposes for today. So it says supervisors and managers may be informed about necessary restrictions on work duties of an employee and necessary accommodations. May be informed. Now I'll say this: I don't believe the manager/supervisor needs to have that medical information, that is confidential. A lot of times the employees themselves give out that information, and then it kind of gets out, and they're upset. The employer wants to be really careful that, even if the employee disclosed that to the supervisor or coworkers, they don't want to talk about that diagnosis, they don't want to verify it, they don't want to do anything involved in that. Even if somebody comes to them and says, "Hey, So-and-so told me this," they don't want to be involved in that. They need to be aware of restrictions or limitations and accommodations that are needed.

Let's say somebody — this was a question one time — "Does my supervisor have to know this?" The question was, "I'm going be working from home." I think the supervisor would have to be involved in that. HR may not really know if that job can totally be done from home, and so it might be up to the supervisor or manager to help determine "Can it be done 100% from home? Can it be done 50%?" What if somebody needs a flexible schedule? The supervisor's going to need to know if you're not going to be there at 9:00 every morning, you're going to be coming in at 9:30, the supervisor needs to know that. But not the medical information.

Plus, in the interactive process, when we're going through, looking for effective accommodations, the supervisor could be really helpful. They know the job. They know what your performance is. They know what your strengths are, they may know what your weaknesses are too, and it may be really helpful in determining what accommodations might be needed.

The next point there is first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or if any specific procedures are needed in case of fire or other evacuations. I wanted to talk about, for instance, epilepsy. Someone is going to have a seizure in the workplace, somebody may need to know that. They may need some assistance, they may not know ahead of time to contact somebody, and so somebody may need to be aware of that. The employer may need to tell people, but that is a good conversation to have the employee.

EEOC says you should never overlook a full conversation with the employee, and I think this is a really important conversation to have with the employee. "How are we going to do this? We want to make sure you're safe. What are your recommendations? Let's talk about this." It may have to be more than one person, because one person, if they're not there that day and that's the day something happens, then somebody else may need to know as well.

Next slide, please. We'll look at some examples.

### [Examples]

Our first example here is an employee on the spectrum asks her employer to provide disability awareness training to help coworkers understand her way of thinking and how she functions. We get this question a lot. Individuals really want to have some disability awareness training, and a lot of times, they want the employer to do it. First of all, I always think, "Well, the employer doesn't really know you, they don't know how you think and how you function. You're going to be the one to know that." And sometimes it's a new employee who wants the coworkers to know from the start. The employer's not going to have any idea on your specifics. The employee's going to be the one to know that. The employee is free to bring in someone to help with that, to support. It could be a doctor, could be a therapist, could be a job coach or parent or sibling or somebody.

The second thing is, the employer can't give out information. They have to be really careful about being involved in any kind of information session or talking about disabilities. In fact, we would highly suggest that they don't do that. The way the employer could accommodate the employee, though, is to say, "Okay. We're on board. We'll help with this meeting in any way possible. We can't be involved in the information sharing. We can provide the conference room, the Zoom meeting, however you want to do that. We'll set aside the time so everybody can have off to attend. however you'd like to do that. We can be supportive, but we can't give that information out." And they wouldn't be the appropriate ones to do that anyway.

All right. Our next example is an employer agrees to allow an employee to remain working at home 100% due to a disability, when others are required to return to a strict hybrid schedule. Coworkers are upset when they find out and demand to know what's going on. Not a coworker's business to know that. The employer can make decisions on an individualized case-by-case basis, and they don't have to alert other employees, they don't have to explain to other employees.

Again, they have to be really careful to not give out any information about an accommodation or that would relate back that the person has a medical condition or a disability. I was in an EEOC training last week, and one of the things that one of the attorneys said was, "Just tell people to mind their own business and respect their coworkers' privacy." And that's a quick and to-the-point way of saying it. I think there's some other ways that might be a little bit more helpful. The employer can always say, "When an employee has personal issues on the job, we try to help. We keep that information private. If you were to have personal needs on the job, we would keep your information private as well." They can handle it in that sort of way, but they want to be really careful to not give any of that information out to the employees.

They want to be really careful, too — We see this where the employer doesn't want to approve an accommodation because somebody else might want it, and it may hurt the morale. And then, "Oh, we're not going to open that can of worms. Oh my gosh, what are we going to do about that?" That would not be undue hardship. That would not be a reason to deny an accommodation. If it works for somebody and they really need that, then the employer would just have to deal with people that are unhappy. If that were to be the case or had questions, they just deal with that. It wouldn't be a really good reason to deny that accommodation.

Next slide, please. All right.

## [Leave]

Leave. I think leave is one of the most requested accommodations that we see on our team. I've been here for 16 years, and I think it's been pretty consistent. Leave can be for large periods of time, it can be intermittent, it can be two hours a week for counseling or medical appointments, it can be as much as the employee needs until it causes a hardship for the employer. I think it's also one of the most misunderstood accommodations, because we think of accommodations as adjustments or changes that are made to help somebody do their job, when really, how are they doing their job when they're off over here on leave? Leave can help somebody get treatment, recuperate, rest, and get back to work to do their job.

It is really important that employers be flexible in thinking about leave for employees. Difficulties can occur with unscheduled leave. We see that a lot. I have a couple of examples coming up, but sometimes, people need leave, and they'll have a doctor's note that they need — when they're feeling overwhelmed or when their symptoms are exacerbated, and the employer will say, "You need two days off a month. Let's do the second and fourth Tuesdays of the month." Well, you may not need the second and fourth Tuesdays. It might work out that way, but that feeling where I may need a day off may come tomorrow, and it may not come in two weeks at all, Employers may need to be a little bit flexible about that. It can be difficult when people have chronic unscheduled times, and it can be difficult for employers to meet their operational needs.

Another difficulty is in indefinite leave, and that is leave without a return date or without a solid return date. One thing I'd like to talk about is sometimes a person will need to be admitted to the hospital, and it happens quickly, and they don't have a return date immediately. I would say employers ought to be really flexible about that, too. Don't deny that as an accommodation when there's not an immediate return date, because the person's just being evaluated, and the doctors may not know that quite yet. You can approve leave as long as you can and then get more information. There will be more coming when the doctor can update that information, and then you can determine, at that point, if you can continue to provide leave. Also, when it's extended — I have example that will be good. I'll talk about that a little bit more — When it's extended and extended and extended, that can be indefinite leave as well.

Leave after FMLA. FMLA is guaranteed leave, and sometimes people will take the whole chunk of FMLA and then still need time after that, and it's up to the employer to determine at that time, "Can we provide more leave, or is it a hardship?" That's on a case-by-case, individualized basis. That is always going to be dependent on the employer's needs at the time. It might depend on the department. If you have a lot of people in a department that can help pick up some of that work, an employee might be able to have more leave. If it's a two-person department, they may not be able to have as much leave. We hear from employers too — let's say, for instance, in retail — "We can't allow this leave at Christmas, during the holidays. We need all hands on deck. Any other time of the year, yeah, maybe we can allow more leave, but right now it's our busiest season." And so there may be seasonal needs, maybe departmental needs. It depends, and it always should be based on case-by-case.

And then hardship related to leave, a lot of employers will call us and try to get us to help them figure it out. We can't figure that out; that's up to the employer to figure out. That second resource, "Employer-Provided Leave and the Americans with Disabilities Act," that's a really nice EEOC guidance, and about three quarters of the way down, there's a whole section there, and it gives five or six points on how to help determine that. We would suggest you really look at that to help determine and document how it affects the business. Not how it affects morale, but how it affects the business.

Next slide, please, and we'll look at our examples.

### [Examples]

Our first example here — these are kind of long. An employee discloses depression and provides medical documentation that she will need intermittent time off. The employer agrees to the two days per monthly likely needed but questions the employee and asks for new documentation as time goes on when she begins to miss two days per week and often comes in late and leaves early with no advanced notification.

That can be the problem with unscheduled leave when it gets to be frequent and unscheduled. It can create an issue for an employer, because they have a job to be done and the employee's not doing it, they can certainly go back and get more medical information if something has changed. You can approve an accommodation and say, "We think we can do this, because we thought it was two days, and it ends up being more. Let's go back and get some clarification on what's going on, because this is more than we had bargained for." And also you can ask for accommodations — "Are there other accommodations that can help that we can provide to help this employee get to work and stay at work, be at work more frequently."

Our second example there is more indefinite leave. An employee is scheduled to return to work after eight weeks off for mental health, calls in the night before and says she has had a relapse and cannot work. She submits documentation for another month. At the end of that month, the employee submits another request for three more weeks. That can be considered indefinite leave, because it continues. Is there a pattern here? The employer can get some information there, too, if it's going to create a hardship. Some employers are — and depending on the position, again, can allow more leave "Sure, we can accommodate that. Sure, we can accommodate that." Or, "No, we don't think we can do the three more weeks."

One thing to consider in that, too, is if the employee truly can be back in three weeks. You can get documentation on, "What's going on? What happened? We expected her back after eight, and then we expected her back after four." And if she truly can be back in the three weeks, that's going to be a lot better for business than if she were terminated because it's a hardship, and then you have to hire somebody new to fill that job. Can you post it and hire somebody and get them up to speed? Those are things to think about too when comes to hardship and is somebody off on leave. They may be the best bet to come back and get that work done rather than hiring somebody to replace them. And then in this day and age, employers say we can't find people to replace them, not a lot of workers out there, it seems like.

Okay. Next slide, please.

## [Communication]

Communication, I had alluded to this earlier. I think there have always been communication issues, there are always going to be communication issues. I think since the pandemic — I don't know if it's the isolation, or if there's just a ramp up in anxiety. Anxiety is now rated the number one mental health disability. It's increased a huge amount. I think a lot of people have anxiety, but those who have anxiety disorders have seen an increase. Before the pandemic, I think a lot more people were able to manage their symptoms and kind of accommodate themselves, and then a lot happened in the world — a lot is still happening in the world — that makes things uncertain and increases anxiety, and so communication is part of that.

A lot of people will ask for instructions in writing. I think that's an excellent accommodation for people with cognitive and mental health disabilities. It's sometimes hard to — the processing, the executive functioning, pay attention, take notes, write down instructions while paying attention, moving on to the next thing. That can be really difficult. So if I had instructions in writing when I leave a meeting, or my supervisor follows up with all those instructions in writing, it would be really helpful for me, because then I can listen and be part of the meeting. It might just be meet someone in the hallway and say, "Hey, here's three things I want you to do." I walk back to my office, and so-and-so talks to me, I stop at the restroom, and by the time I get back to my office, I have no idea what those three things were. I totally forgot. And so it could be really helpful to have those instructions.

Now some people ask for every single thing in writing. That might not be doable for an employer to write down everything a person has to do in a job, because there's some level of independence in a job. Maybe write instructions for daily things or weekly things or monthly things, if that's possible, so that the employee has a starting point of what to do in the mornings every day. And then also, if there are new tasks or new things have occurred.

Some people will ask for no in-person communications with coworkers or supervisors. That could be really difficult, and it probably would be considered an essential function to be able to communicate with those around you. Some people say, "It really works for me if I can do more communication in email," and that may work. That may work. Sometimes a supervisor can put more communication instructions in writing, and that may work for everyone.

No contact at all with a supervisor or change in supervisor, EEOC in their guidance makes it clear that that's not considered a reasonable accommodation. There's nothing that says you couldn't do that, but the thing to look at is how do we modify the supervisory method? What works for the employee that also works for the supervisor? What is the issue? I think it's really important to drill down and find out what the problem is, what's causing that?

I didn't put this in as an example, but one that comes to my mind is this woman who had this male supervisor who was just loud and screamed and yelled, and she just couldn't handle it. Come to find out, the supervisor was this big, gregarious, loud guy. He was just friendly and loud. He was not screaming and yelling; she took it that way. He was mortified when they told him how she took it and how he affected her. So they worked on what she needed from him and how he could change that for her so it didn't seem that way.

No phone calls with clients when those are essential functions, we talked about that a little bit earlier. He was unorganized; he had some memory problems. We also have a publication written here, "Difficulties Assisting on the Phone," because we get so many calls about that. People say, "Sure, I can do customer service. Sure, I can talk on the phone," but sometimes they'll come to work that first day with a note that's from the doctor that says, "I can't talk on the phone. It causes me too much anxiety." Well, that's an essential function, and again, you don't have to remove that. Some employers will remove it temporarily, cut down on some of the phone calls. What we would say is you want to look at what is it about those phone calls that's difficult? Are they problem customers that are calling? Do you need conflict resolution? Do you need your resources organized in a better way? Do you just need more training on what to say? What is it that causes that? How can we help you so you can make those calls and talk to people?

Modified schedules to avoid in-person contact. I think this has pretty much happened since COVID. People get called back to the office, "Well, I don't want to be there when everybody's there. Can I work other hours?" Maybe. That's an individualized thing. "Can I work 4:00 to midnight when nobody's there?" Well, if there's no supervisor there, that could be an issue. There was an example one time, a guy was asked to work from home, and he started working midnight to 4:00. He got everything done from midnight to 4:00, and the employer was, "Can we do that?" And I said, "Why not? What would be the question in that?" "Well, I don't know. These aren't our usual hours." "Can you modify those for him? He's getting his work done before everybody needs it? Is there anyone that needs work done that he's —" "No! He's getting it all done because he says he has no distractions, he has no anxiety because he's not working with people." I said, "If that works for him and there's no issue for you, continue that. See what happens."

You can always do accommodations on a trial or temporary basis. I'll say we're big on that at JAN, because we really believe that if you're not sure if something's going to work, do it on a trial basis to see. And if it doesn't, then you have that as proof. "Hey, we tried it, it didn't. Now we're going to try something else." You can put that in writing to employees so that they know for sure what's happening, that it's not a long-term or permanent accommodation, but you're going to reassess it and see how it worked. Has to be effective for both people, both parties.

Also, 100% telework. We're seeing more and more of that as a request because of anxiety, because, "I can't be in the office. I can't communicate with people. I can't see people face-to-face." Sometimes the job includes duties that are face-to-face, meeting with clients. "I can't do that, I have to telework. I can't meet with clients anymore." And so that's an issue. Again, the employer wouldn't have to remove those functions. They could look at reassigning somebody, if possible, to a job where they could work 100% from home and not be facing with client or whatever it is they do, but again, they don't have to remove that as a function.

All right. Next slide, please. Here we have our examples.

### [Examples]

Here we have Rick, a customer service representative, asked to be excused from talking to people on the phone, because it exacerbates his anxiety. I think I pretty much went over this on that last slide. This is where the employer just drills down and says, "Okay. Hey, let's talk about what's difficult to talk to people on the phone. What is it that's causing you the most difficulty or anxiety? We want to reduce or eliminate that. How do we do that?" It may not be possible, I don't know, but it's good to have that conversation. You get medical documentation if you need to. The doctor, a medical professional may have ideas on what might work, but again, you don't have to remove that section of the job.

In this next example, due to communication issues related to her disability, an employee had difficulty getting along with her supervisor and requested a reassignment. The employer's questioning, "Do we really need to do that? We really feel like we should accommodate her in her current role, but the doctor's saying she needs a reassignment." Guidance would say that you need to try to accommodate somebody in their position, their current position, as much as possible until it creates a hardship. There's nothing, if both parties agree, that says you can't just reassign somebody, but the thing I would caution here is if there are communication issues, it's good to get to the bottom of that to what's causing those. "How do we fix that? How do we accommodate that to make it work?" Because if you just reassign somebody without doing that, it may not just to be that they couldn't get along with their supervisor, maybe they have difficulty getting along with the next supervisor. And then you've just moved that employee and are taking that difficulty along to a new supervisor. Sometimes we encounter employers that say, "Yeah, we've done this a couple times, and we realize we really should have looked at what the problem was before and accommodate that. Find some solutions before we move somebody."

All right. Next slide, please.

## [Medical Documentation]

All right. Medical documentation. From whom, how much, when, and how often?

From whom? I think the point I want to make here is it's really difficult, there's a really big shortage of specialists, mental health specialists, and employees have to wait a really long time. I have a friend who waited two years for a child. Two years. That is too long. Employees cannot wait six, eight months to see a specialist to get accommodations. So you really want to look at that may be the best appropriate medical professional, but in the current circumstances, can something else work? Can you get information from a primary care physician? And sometimes that may be really more informative. If a primary care physician has been treating somebody, they know them, they know what the changes, they might know better what they need. Whereas a specialist they go to, they don't know. Specialist doesn't know them. And so it really might be better to have it from a primary care physician or therapist or social worker that's been working with the person.

How much? You just want current objective medical documentation that tells why the disability is interfering with the job. How the limitations affect the ability to do the job. We had a question last week about the employer asking for complete therapy notes. I don't know why they would want those. That would be highly inappropriate for them to be looking at that. I think it would be really rare that an employer would need a whole medical record. When can they get that information? On the job, when somebody asks for an accommodation, they can ask for that to substantiate the need for the accommodation, when the disability is unknown and the need for the accommodation is unknown or when they see something in the workplace that says, "We think something's going on. This person's not safe," or, "This person is unable to do their job."

How often? We do have a publication that was written, "Recertifying the Ongoing Need for Accommodation," because it's really important to consider if you're doing that, if you're an employer who's asking people to recertify every three months, every six months, every year, what's the purpose in that? Why are you doing that? Is that really necessary? If they have a permanent disability — and an EEOC example is someone with bipolar disorder — that's permanent, that's not going to change, there's no need to get that recertified. Is the accommodation working? If it's working, and it's effective for the employee and employer, why is extra information or updated information needed? If something were to change, the job changes, the employee's performance and conduct changes, they ask for different accommodations that the medical documentation doesn't support, that might be a reason to get updated information. But especially if you're asking that every three to six months, employee has to go to the doctor, they have to pay for that, and sometimes we're hearing back now that doctors are refusing to do that. They say, "It's not part of our job. We're not really sure how to do that. We don't want to do that." It makes it really difficult for the employee to continue with that accommodation if it's effective.

All right. Next slide, please.

### [Examples]

Oh yeah. I have three examples here. This first one's an employee develops panic attacks and asks her employer if she can take leave. When she tells her employer she's having trouble getting into see a doctor, the employee tells her she can't take leave until she provides documentation. What if she really needs leave and can't get in to see a specialist? What can you do? Can you get information from a PCP? Do you already have some information that states, yes, she has a mental health condition and she's telling you, "It's exacerbated. I need to be off now. I need some help"? You could use that documentation, perhaps. I don't know what happens when someone goes to an urgent care, but if they're in a really exacerbated crisis situation, urgent care doctors would see that, and they maybe could write documentation that, "Yes, here's what we saw. Here's what this employee needs," and that might be temporary enough until they get in to see their own doctor. Again, information from their therapist. And if you really know the employee, and you can see a difference in what's happening with them, that might be reason enough to grant that leave right now until they can get that medical documentation.

This next example is one that I was referring to. The newly hired employee drives children to and from appointments. After a seizure in the workplace, the employer reassigns the employee temporarily and asks for documentation. The employee says, "I didn't ask for an accommodation. I don't owe you documentation." And this is the case where there's a safety issue. You didn't have to ask for an accommodation for us to ask for that, but we have factual evidence of what we saw in the workplace that raises the level of safety that we need information about your medical condition. How often is this going to occur? What do we do — We don't even know what to do when it happens. We don't know anything about it. We know that you're not safe to drive a car when that happens. You can't be in a car, you can't be driving children, and this employer reassigned the employee, which she was not happy about. Sometimes there's no job to reassign them to, and they might have to put them on leave until they figure that out, because there is safety involved, there is a risk. That is a situation where you would see a risk of danger.

The next situation there, a doctor mandates telework or work in a limited commute area due to an employee's anxiety. And I think we're seeing more and more of this where the doctor dictates the accommodation: the employee needs 100% telework, the employee can't commute to work. In this case, he worked in an afterschool thing, and so he had to travel around to different schools in the whole big district, so he agreed he could do the job, he can travel to the school. So he comes in the first day, and he brings the note from the doctor that says he has to work from home or only go to two schools that are close to his home. They say, "This is not possible. You have to work with students. You can't possibly do that from home. What's going on here?" And a limited commute, they say, "We can't just have them work in two schools, because we have all the schools people need to go to. We don't send people out in teams, so if it's a driving issue, if it's too much stress in a commute to drive, we need to understand that, so we need more medical information so we can look at accommodations, how we can help you get to those places, because those are the places you need to go."

All right. Next slide, please.

[“What Can I Do? Mental Health at Work”]

All right. This is the Campaign for Disability Employment PSA "What Can I Do? Mental Health at Work." It's promoting mental health-friendly workplaces. It's more important than ever, and we all have a role to play promoting that. If you have not seen that, there's a link there. I've seen recently several times on HGTV. I don't watch a lot of TV, but I have seen it there. It's really well done, and I really like it. If you haven't seen that, take a look at that. All right.

Next slide, please.

## [Resources]

And these are just some resources. Those bottom two from EEOC, those were on the slides — On our team, we use those multiple times daily. "Applying Performance and Conduct Standards" and then "Reasonable Accommodation and Undue Hardship," and then the top two are JAN resources. The first one there is "Accommodation and Compliance Series: Mental Health Conditions," has really good accommodation ideas, and then on the "A to Z of Disabilities and Accommodations" you can find specific diagnosis or disabilities like anxiety, depression, schizophrenia, phobias, personality disorders, all of those types of disabilities that you need more information on.

All right. Next slide, please.

Alright, questions? We do have some time, don't we?

## [Q&A]

**TRACIE:**

We do. Give me just a moment, and I will go ahead and check the queue. We do have some good questions here.

This first question, we have an employee who is requesting a weekly one-on-one because she requires more time to absorb new information. The manager has denied, stating this is not the normal process, not undue hardship. Does this seem like a reasonable accommodation request? It seems like this might be something that's not uncommon, Melanie.

**MELANIE:**

It's not uncommon. And frankly, we suggest that to people. Just because it's not part of the normal process doesn't mean that that's not something that they can do. I didn't provide information about modified policies, but employers can modify policies for people with disabilities. They don't change for others. And it could be that. Other people don't need that? Fine, they don't need that, but the employee does. So let's try it and see. Let's do it on a temporary basis to see how it works. Let's get a plan together. Let's talk about what she needs. So when we meet, we can have those things in order, and it can be quicker that way. Now, I'm not saying you have to meet two or three hours every week. Some employers will meet on a Friday to recap the week, then they'll meet on Monday to get things going. It depends on what the employee needs and what's effective, but I would say absolutely that could be an accommodation. It could be very effective.

**TRACIE:**

Okay. Very good. Here's another one.

How can we improve our response to accommodation requests for anxiety disorders so that we're not causing employees even more anxiety?

**MELANIE:**

That's a good one. That whole process can be anxiety-inducing for everybody, but if you have anxiety disorder, disclosing your personal, private information can be very difficult to do. And then not hear back from the employer, not knowing how they're going to react, I think that communication part is really important. I think it's important that employers have a process that everybody knows about and they stick to that. "We get back to you. You provide that information to us, we get back to you, we tell you, 'Yes, we received your request. 'We're looking at it and we're determining what we can do.'" Whatever the answer would be. Even if you don't have an immediate answer of, "Yes, we're doing this or, yes, we're going that," you can get back to the employee at least and say, "We saw your request. We're working on it," so that they know what that process is. Because if you just leave an employee hanging and they don't know — "Hey, I've spilled my guts, I gave up this information, and now I haven't heard back from my employer. I don't know what they're doing with that information or what they're thinking." That just increases anxiety.

**TRACIE:**

Okay. Good ideas. Let's see here. We have a couple of questions around leave.

What you do when someone requests leave, and they don't provide the clarification on the return date, and it's sort of left open-ended? Do you have any suggestions for how to handle those situations?

**MELANIE:**

I think sometimes it might be open-ended. Like I mentioned, depending on what the situation is, the doctor may not really know, but you can go back and say, "Can you give us a general idea? Is it going to be a month? Is it going to be two months? Is it going to be six months? Can we have a better idea than this? Because we really need to plan our business need around this, and we need to know what that future need is." You can have a discussion with the employee as well, a gentle one, again. Just say, "Hey, what's going on? We got this information, but we don't really know how long you're going to need this leave. Do you have any idea how long you might be off?"

**TRACIE:**

Okay. Let's see here. Here is a question related to long COVID.

Does brain fog and anxiety as a result of long COVID qualify as a disability? What accommodations are available if so?

**MELANIE:**

Long COVID is generally — The symptoms of long COVID probably are going to rise to the level of disability. Again, that definition is a mental or physical impairment that substantially limits one or more major life activities. Anxiety could certainly be considered in that. Brain fog could, too, because the definition includes body systems, and brain function would certainly be a — Substantially limited brain function certainly could be considered an accommodation. It depends on how substantially limited someone is, but yes, that could be considered a disability, and accommodations would just be — We have information on our website on anxiety, stress intolerance, and then we also have information, we have a publication on executive functioning. We have a good section on memory that can help with some ideas on what to do when you have brain fog.

**TRACIE:**

Okay. Great ideas. Here's one related to going back to the medical certification/documentation issue.

We're having a harder time getting medical documentation, and the quality and usefulness has dropped quite a lot. What do you recommend in balancing the need for documentation versus taking the employee's first-person narrative on these kinds of disabilities?

**MELANIE:**

That's a good question. In the EEOC guidance, you talk about that employers certainly can require that the employee provide the medical documentation, and it goes through all this "from the appropriate professional," but there's a paragraph that says in lieu of that, they can sit down with the employee and discuss that. If you really feel like you have good information from the employee, they're easy-to-provide accommodations or not expensive, some employers will say that "We don't really try to get medical information if they are easy to provide or inexpensive. If it's more involved and it's going to be more expensive, then we get medical documentation." You might do it on individualized basis, you might do it strictly across the board, you just want to be careful that you wouldn't require more from somebody with a mental health condition than you would with somebody with a shoulder injury. You might see that a bit more if they can't move the arm properly or something, that you don't require more medical information from somebody with an anxiety disorder or depression. I think if you talk to the person and what they provide you is reasonable and you don't have reason to doubt that that's true or reliable, and then look at what those accommodations are. A lot of the accommodations are inexpensive, no cost for mental health. A lot of it's leave, a lot of it's schedule — not that leave is inexpensive — but a schedule change, modified schedule, a lot of flexibility. I think that's important to a lot of people is the flexibility.

**TRACIE:**

I think we have time for one more question. Probably have about another minute or so before we wrap things up. So, let's see. Okay. This is an interesting one.

What do we do if an employee refuses to use an accommodation? So how do we proceed? For example, we have an employee that requested a different avenue to call off to comply with the policy, which we've agreed to accommodate. However, the employee has not used these avenues, and the supervisor has had to continuously call the employee for wellness checks.

**MELANIE:**

Like we stated earlier, you can hold all employees to the same standard. If you have a certain way — you need to call in this number, you can text, you know — but you can modify that policy, which it sounds like you did. I'd say you go back to the employee; you have that conversation. "Here's why this is really important. We need to know what's going on with you. You need to let us know. We can't keep calling you." And then you could — if it were something that you'd hold other employees responsible for, calling in, you can hold that employee responsible too. You'd want to make good documentation of the accommodation you attempted, the times you tried to talk to the employee to explain and to get it worked out and try to figure out what's going on. Is the employee just unable to do that? Is the disability such that they're not able to do that, they're not aware that they need to do that in the mornings? That may be something you need to evaluate, too. And if that's the case, are they really able to work? I don't know.

**TRACIE:**

Okay. That's a tough one. That's one that really needs to be worked out.

## [Conclusion]

That's all the time we have, Melanie, for questions, So I'll go ahead and close things out. Melanie, thank you for your time and your expertise addressing these complex issues. These are some tricky ones.

Attendees, if your question was not answered today, remember you can ask JAN by contacting the JAN service directly for free and confidential consultation. Use the AskJAN.org website, you can use the Live Chat, you can call JAN at 800-526-7234 or email us at JAN@AskJAN.org.

If you're not already following us on social media, please do. Find the Job Accommodation Network on Facebook, LinkedIn, and YouTube, and @JANatJAN on X.

Thank you for joining us today. Enjoy the rest of your afternoon, everyone. This concludes today's JAN training.