

# REASONABLE ACCOMMODATION: PITFALLS AND BEST PRACTICES

**JEANNE GOLDBERG, SENIOR ATTORNEY ADVISOR  
OFFICE OF LEGAL COUNSEL  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**

**TRACIE DEFREITAS, PRINCIPAL CONSULTANT  
JOB ACCOMMODATION NETWORK (JAN)**



**JAN**  
Job Accommodation Network

## DISCUSSION TOPICS



- Knowing the Process
- Recognizing Accommodation Requests
- Determining “Disability”
- Requests for Supporting Medical Information
- Choosing Accommodations
- Current Issues: Leave, Telework, Service Animals, Opioids, and More
- Q & A

# KNOWING THE PROCESS FOR HANDLING AN ACCOMMODATION REQUEST

## COMMON PITFALLS: PROCEDURES & COMMUNICATION

- Failing to refer the accommodation request to the authorized decisionmaker if it has come to someone else
- Not communicating with the employee to clarify an unclear request
- Not consulting resources in the search for solutions
- Not communicating with the requester/their health care provider where needed in order to select an effective accommodation

## PRACTICAL TIPS: HAVING AN EFFECTIVE PROCESS

- Assign clear lines of responsibility for processing accommodation requests
- Train all managers and supervisors to know what to do if they receive a request, and to act promptly; unnecessary delays can violate the ADA
- Document all efforts
- Keep open lines of communication with the employee

[Reasonable Accommodation and Undue Hardship Under the ADA \(EEOC\)](#)

[Recognizing an Accommodation Request Under the ADA \(JAN\)](#)

# RECOGNIZING ACCOMMODATION REQUESTS

## DEFINITION AND EXAMPLES

- Any request by an applicant or employee for an adjustment or change for a *reason related to a medical condition* is an ADA accommodation request.
  - “I’m having difficulty concentrating because of medication side effects.”
  - “My wheelchair won’t fit under my desk.”
  - Health care provider’s note states employee needs 3 months of leave for medical treatment
  - “I need to go to counseling appointments once a week so I need to leave early on those days.”



## ACCOMMODATION REQUESTS

- May be made by either the applicant/employee or a family member, health professional, or other representative acting on the individual's behalf
- May be made orally or in writing and no particular words required
- Need not be made at a certain time
  - E.g., may be made after hiring, even if not requested during application process
  - E.g., may be made after performance problems have arisen (but employer is not required to forgo or rescind any consequences for what has already occurred)

[Reasonable Accommodation and Undue Hardship Under the ADA \(EEOC\)](#)



## COMMON PITFALL: FREQUENTLY OVERLOOKED ADA ACCOMMODATION REQUESTS

- Requests for unpaid leave for an employee's own medical condition beyond leave available under FMLA, or where employee is not FMLA-eligible
- Requests that implicate both ADA and other requirements (e.g., employer light duty programs or workers' compensation)
- Requests that identify disability-related need, but employee does not have a proposed solution
- Situations where no request is needed (e.g., where employer is already on notice of hearing-impaired employee's regular need for a sign language interpreter for events such as training, safety talks, discussions on work procedures, policies or assignments, and disciplinary actions)

## COMMON PITFALL: FREQUENTLY OVERLOOKED PANDEMIC-RELATED ADA ACCOMMODATION REQUESTS

- Common pandemic-related ADA accommodation requests may be for someone with COVID-19, or for example could be for:
  - 1) Disability that places individual at higher risk of severe illness if they were to contract the virus (e.g., immunocompromised), or
  - 2) Disability caused or exacerbated by pandemic (e.g., anxiety disorder), or
  - 3) Disability caused or exacerbated by having had COVID-19 (e.g., diabetes, heart condition)
- Employee not entitled to ADA accommodation based on living with an individual with a disability (potential ADA accommodation only required for employees or applicants who themselves has a disability)

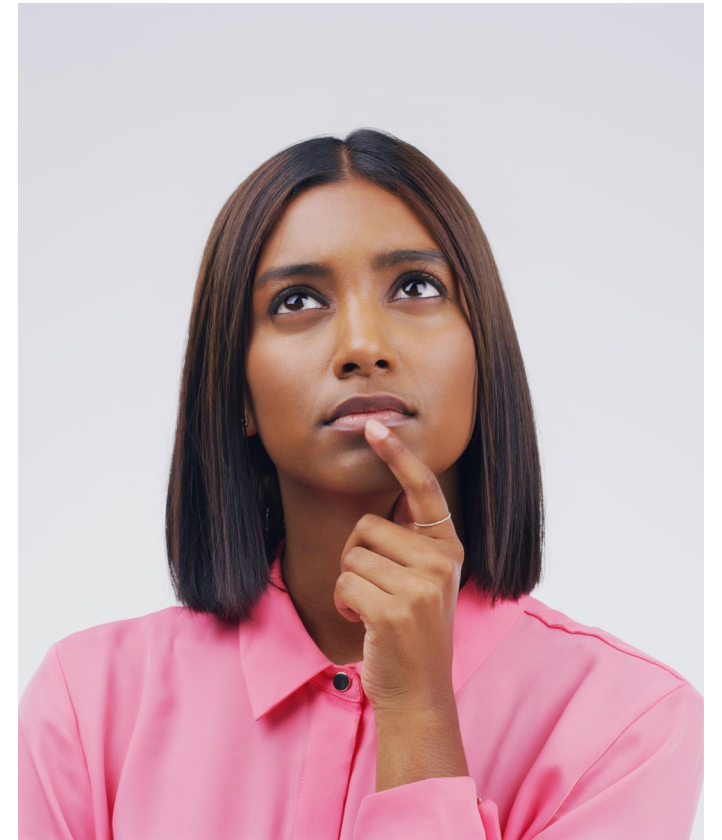
## ACCOMMODATION MAY BE UNNECESSARY TO PROVIDE WHAT EMPLOYEE HAS REQUESTED

- If request is for access to the same benefits/privileges available to similarly situated employees without disabilities, consider if individual is entitled to it without any need for “accommodation”
- If so, handle under same process used for other employees to obtain the benefit
- For example:
  - Is telework available to others in same position?
  - Is flexible scheduling an option for employee’s job?
  - Is ergonomic equipment provided for comfort reasons or to avoid injuries?

[Workplace Flexibility, the ADA, and Requesting Medical Information \(JAN\)](#)

## PRACTICAL TIPS: RECOGNIZING AN ACCOMMODATION REQUEST

- Not sure if it's an accommodation request?  
**Ask.**
- Examples:
  - “How can I help?”
  - “I want to clarify what you're asking for and why it's needed, so I can find out what we can do to help.”



## DETERMINING “DISABILITY”

## DETERMINING ADA COVERAGE

- Does the individual have an **ADA disability** for accommodation purposes?
  - “Actual Disability” — a physical or mental impairment that substantially limits a major bodily function or other major life activity
  - “Record Of” — a history/record of a physical or mental impairment that in the past substantially limited a major bodily function or other major life activity
- Is **accommodation needed** due to the disability (e.g., for a disability-related limitation, side effects of medication, etc.)?

## COMMON PITFALL: FAILING TO USE BROAD AMENDED ADA DEFINITION OF DISABILITY

- Apply the ADA Amendments Act (ADAAA) standards for “substantially limits” a major life activity:
  - limitations **need not be permanent, long-term, severe, or significantly restricting**
  - major life activities include **major bodily functions**
  - benefits of **mitigating measures are not considered**
  - **episodic or in remission conditions** are substantially limiting if would be when active

## ADA PREDICTABLE ASSESSMENTS

- No comprehensive list of covered disabilities — determination requires broad interpretation and generally does not require extensive analysis
- ADA predictable assessments — examples of impairments that should be easily found to substantially limit a major life activity  
**Examples:** autism, bi-polar disorder, blindness, cancer, cerebral palsy, deafness, diabetes, epilepsy, multiple sclerosis, post-traumatic stress disorder...

[Questions and Answers on the Final Rule Implementing the ADAAA of 2008 \(EEOC\)](#)

[How to Determine Whether a Person Has a Disability Under the ADAAA \(JAN\)](#)

[ADA Amendments Act \(JAN\)](#)



## COMMON PITFALL: ASSUMING SHORT-TERM IMPAIRMENTS ARE NEVER DISABILITIES



- No minimum duration an impairment must last
- Effects of an impairment lasting fewer than 6 months can be substantially limiting if sufficiently severe
- *E.g., EEOC example of back impairment causing 20-pound lifting restriction lasting or expected to last several months = substantially limiting*

## WHAT ABOUT COVID-19 OR LONG COVID?

- EEOC has stated that an individual who is **asymptomatic or has mild symptoms similar to common cold or flu that resolve in a few weeks**—with no other consequence—will not meet the ADA definition of disability for accommodation, even if required to isolate during period of infectiousness per CDC guidance.
- But EEOC [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (EEOC), Section N, also provides many examples of when COVID-19 *is* a disability.

## PRACTICAL TIPS: DETERMINING ADA COVERAGE

- Given the ADA's directive to construe disability broadly, err on the side of finding coverage if debatable
- Focus on whether a reasonable accommodation can be provided
- Remember employers are free to provide accommodations even if someone doesn't meet the definition of disability, provided no disparate treatment



# REQUESTS FOR SUPPORTING MEDICAL INFORMATION

## COMMON PITFALL: VIOLATING ADA RULE FOR DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMS



- For accommodation requests: When the *disability, or the need for accommodation, is not obvious or already known*, the employer is permitted to request supporting medical information
- How much? Reasonable info. to determine “disability” and that accommodation is needed
- Employer may also dialogue with health care provider about effective alternatives

## PRACTICAL TIPS: REQUESTING MEDICAL INFORMATION

- Make clear to employee why medical information is being requested, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation
- Employer permitted to either ask employee to obtain info. from health care provider, or have employee sign limited release allowing employer to contact provider directly
- Explain what information is needed (e.g., type of impairment, how it limits a major life activity, or how accommodation would help employee)
  - Describe job duties, if relevant, to increase likelihood of getting accurate/complete information
- **Received information but it's incomplete, or clarification needed?**
  - Explain to employee what additional information/clarification needed, and allow opportunity to provide it, or contact health care provider again

## PRACTICAL TIPS: REQUESTING MEDICAL INFORMATION (2)

- **Initial Accommodation:**

- Request only necessary medical information

[Sample Medical Inquiry in Response to an Accommodation Request Form \(JAN\)](#)

- **Requests to update:**

- Don't request *new* medical information to *continue an accommodation* when sufficient information to substantiate the ongoing existence of an ADA disability and continuing need for accommodation has already been provided
- Only seek updates when needed based on what the original medical information showed

## SELECT RESOURCES: REQUESTING MEDICAL INFORMATION

[Requests for Medical Documentation and the ADA \(JAN\)](#)

[To Ask, or Not to Ask? – Knowing When to Request Medical Information \(JAN\)](#)

[Disability-Related Inquiries and Medical Examinations of Employees \(EEOC\)](#)

[Reasonable Accommodation and Undue Hardship Under the ADA \(EEOC\)](#)

[The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work \(EEOC\)](#)



# CHOOSING ACCOMMODATIONS

## COMMON PITFALLS: EXPLORING AND CHOOSING ACCOMMODATIONS



- Applying a one-size-fits-all approach to providing accommodations
- Requiring an employee to be on leave while exploring accommodations even though able to work
- Using inaccurate job descriptions to determine essential functions
- Neglecting to consider temporary/trial accommodation if needed to determine whether it would be effective
- Failing to search for a solution where employee doesn't have one or proposes one that employer can't provide

## PRACTICAL TIPS: ACCOMMODATIONS ARE NOT ONE-SIZE-FITS-ALL

- Impairments and limitations, as well as accommodation needs, are different based on the individual
- Don't use a one-size-fits-all approach; have the full conversation
- Beware of any assumptions in determining what an individual can or cannot do, or what accommodation is needed
- Make individualized assessments based on actual limitations, work history, and current ability to perform functions with accommodation

## EXPLORING AND IMPLEMENTING ACCOMMODATIONS

- ADA does not require employer to:
  - Provide employee's preferred accommodation; employer has discretion to choose among effective alternatives
  - Provide accommodations that pose an undue hardship – *significant* difficulty or expense (budget of employer overall)
  - Provide *personal use items* needed in accomplishing daily activities both on and off the job (e.g., hearing aids, prosthetics)
  - Remove *essential* functions, lower production standards, or create a new job, but may — benevolent employers not held liable for exceeding ADA requirements

[Reasonable Accommodation and Undue Hardship Under the ADA \(EEOC\)](#)

## COMMON PITFALL: INACCURATE/OUTDATED JOB DESCRIPTIONS

- ADA does not require job descriptions, but be aware inaccurate information in descriptions could mislead decisionmakers on accommodation requests
- Clearly define the essential functions of the job
- Describe the desired outcome of the work rather than a single method for accomplishing that outcome

## PRACTICAL TIPS: UPDATED JOB DESCRIPTION OFFERS USEFUL INFORMATION

- Constructive tool for identifying essential functions but update periodically because the content, nature, and functions of job can change
- Reliance solely on a job description can be misleading; determine duties actually performed by employee and coworkers in same position

[Job Descriptions \(JAN\)](#)

[ADA Technical Assistance Manual, title I, Chapter II \(EEOC\)](#)



## PRACTICAL TIPS: EMPLOYEE SEEKS TO BE EXCUSED FROM PERFORMING A DUTY

- If employee seeks to be excused from a marginal job duty:
  - Determine if the duty can be eliminated or swapped with another worker's marginal duty, without undue hardship
- If employee seeks to be excused from a duty but it is an essential function of the job:
  - Employer need not eliminate the duty as an accommodation, but determine if employee can be accommodated to perform the duty
  - If not, consider reassignment to a vacant position as the accommodation of last resort

## PRACTICAL TIPS: WHERE EMPLOYEE DOESN'T KNOW THE SOLUTION OR REQUESTED SOLUTION IS RULED OUT

- Search for a solution even if the employee has only identified the problem, not proposed a particular accommodation
- If employee does have a proposed solution but you rule it out, search for and offer an alternative reasonable accommodation if available absent undue hardship
- Use resources to explore solutions, like [JAN](#)

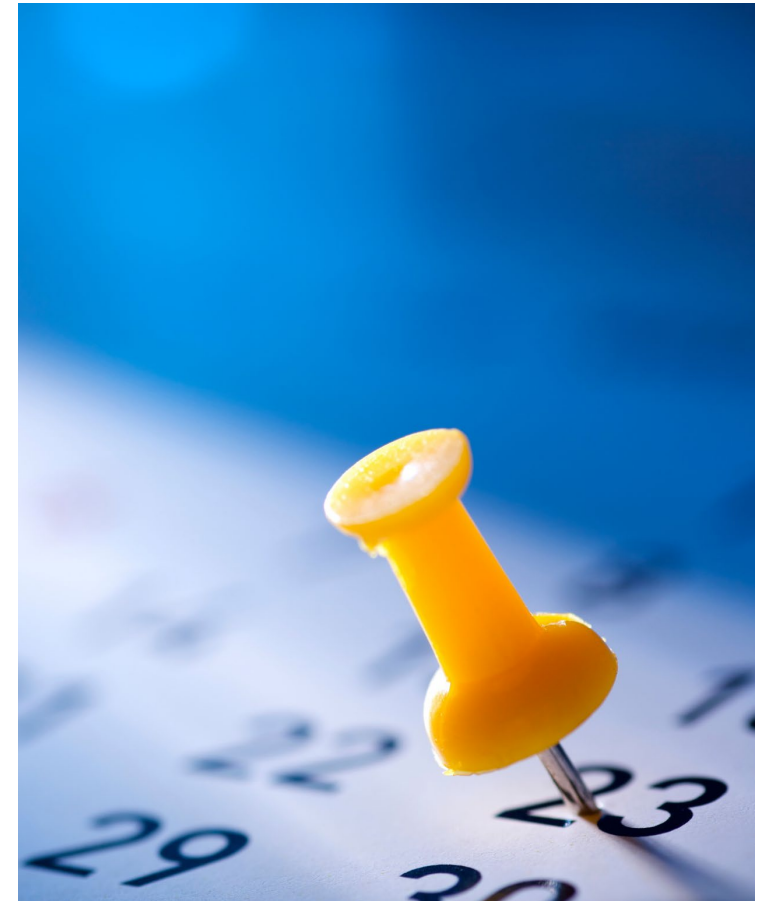
[Reasonable Accommodation and Undue Hardship Under the ADA \(EEOC\)](#)



## PRACTICAL TIPS: PROVIDE TEMPORARY OR TRIAL ACCOMMODATIONS

- Consider providing a trial or short-term solution as part of the accommodation process if it might demonstrate whether the accommodation will be effective, or enable an employee to return to work sooner than anticipated
- Shows good faith effort, keeps employees working/expedites return to work

[Temporary or Trial Accommodations](#) (JAN)



## PRACTICAL TIPS: EASIER AND MORE COST-EFFECTIVE SOLUTIONS

- Employer may choose to:
  - Develop a list of items any employee may have without going through the accommodation process (e.g., flexible work arrangements, standing desks, ergonomic chairs), or authorize management to grant simple requests using an expedited process
  - Develop a task bank for return to work/modified duty accommodations
  - Establish a centralized accommodation fund (but look to additional resources if needed)

[Workplace Accommodation Toolkit \(JAN\)](#)

## PRACTICAL TIPS: IMPLEMENTING ACCOMMODATIONS

- Act expeditiously to implement granted accommodations and follow up to determine if satisfactory
- Document approval/denial, draft an accommodation agreement if needed, etc.
- Remember ADA confidentiality rules, which apply to all applicant/employee medical information, as well as to the fact that someone requested or is receiving disability accommodation. Limited exceptions permitting disclosure.

[Sample Accommodation Approval Form \(JAN\)](#)

[Sample Accommodation Denial Form \(JAN\)](#)

[Sample Temporary/Trial Accommodation Approval Form \(JAN\)](#)

**CURRENT ISSUES:  
LEAVE, TELEWORK, SERVICE ANIMALS, OPIOIDS, AND MORE**

## LEAVE: MIND THE INTERACTION OF FMLA & ADA

- **ADA:** Employee needs leave as accommodation because of own disability
- **FMLA:** Employee needs leave for own serious health condition or that of a covered relative
- Employer can request different documentation for each
- ADA has undue hardship defense; FMLA does not, but FMLA has 12-week limit per 12-month period
- If both ADA and FMLA apply, employer must provide leave under whichever statute provides greater rights to employees

## LEAVE: MIND THE INTERACTION OF FMLA & ADA (2)

- Employees may be entitled to leave under the ADA after exhausting their FMLA leave
- Employers may consider FMLA leave taken when determining whether additional leave under ADA would pose an undue hardship
- Unless undue hardship or direct threat to health/safety, can't force an employee to take leave due to disability instead of providing reasonable accommodation to enable work

[Employer-Provided Leave and the ADA \(EEOC\)](#)

[Leave \(JAN\)](#)

[Family and Medical Leave Act \(DOL\)](#)

## TELEWORK: ACCOMMODATION OUTCOMES DIFFERENT GIVEN PANDEMIC EXPERIENCE?

- Legal analysis unchanged: Is remote work needed due to disability? Is it feasible for essential functions to be performed remotely? Would it pose an undue hardship?
- Employer may restore pre-pandemic duties even if removed essential functions to enable full-time remote work due to pandemic
- But pandemic telework experience is relevant in determining if continued telework as a disability accommodation is feasible, and whether it would pose an undue hardship

## ACCOMMODATION SITUATION: REQUEST FOR CONTINUED TELEWORK

An employee with panic disorder asks to continue teleworking after mandatory telework related to the pandemic ends and employees are called back to the workplace.

**How should the employer proceed?**



## ACCOMMODATION SITUATION: TELEWORK ALTERNATIVES?

A manager who is hard of hearing experienced great success in transitioning to telework. Virtual platforms allowed her to work with minimal background noise. She could also adjust volume during meetings. The manager wanted to continue teleworking, but the employer wanted to bring as many people back to the worksite as possible. The employee returned but had great difficulty communicating with coworkers who wore masks.

**Are there alternative *effective* accommodation solutions?**

## ACCOMMODATION SITUATION: ACCESS AND VIRTUAL MEETINGS

Remote meetings and trainings have been a time saver for many workplaces, which plan to keep this practice in place indefinitely. But these meetings need to be accessible to all staff.

**How can we make sure all employees are included by making virtual meetings accessible?**

## ACCOMMODATION SITUATION: COMMUTING BARRIER

An employee who received a heart transplant used public transportation to get to work. The employee has been teleworking for 6 months to avoid exposure to COVID-19, but now all employees are expected to return to the worksite. The employee is concerned about using public transportation to commute to work.

**Does the employer have to accommodate  
where a disability affects commuting?**

**Is continued telework a solution? Reassignment?**

## ACCOMMODATION SITUATION: SERVICE AND EMOTIONAL SUPPORT ANIMALS

An employee who has anxiety and a mood disorder exacerbated by the pandemic requests to bring a support dog to work.

**Is the employer required to allow the dog in the workplace?**

## ACCOMMODATION SITUATION: REQUEST TO BRING ANIMAL ONSITE DUE TO DISABILITY

- Employment: For applicant/employee request, apply the ADA Title I rules and standards
  - [Service Animals in the Workplace \(JAN\)](#)
  - [Emotional Support Animals in the Workplace: A Practical Approach \(JAN\)](#)
- Non-Employment: For request by member of the public or other participant in state/local government programs and for public accommodations, apply the ADA Title II/Title III rules
  - [Frequently Asked Questions About Service Animals and the ADA \(DOJ\)](#)

## ACCOMMODATION SITUATIONS: OPIOID USE

Employee #1 tests positive for opioid use. The employee provides medical information showing the use is legally prescribed.

Employee #2 advises the employer he needs a different break or work schedule (e.g., scheduling work around treatment), a change in shift assignment, or a temporary transfer to another position due to the side effects of legally prescribed opioid use for pain caused by a back disability.

Employee #3 seeks leave for treatment of an addiction to legally prescribed opioids.

**What is the employer's ADA obligation in each situation?**

## RESOURCES ON OPIOID USE & THE ADA

[Use of Codeine, Oxycodone, and Other Opioids: Information for Employees \(EEOC\)](#)

[How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed \(EEOC\)](#)

## QUESTIONS?

- Jeanne Goldberg, Senior Attorney Advisor  
Office of Legal Counsel, U.S. Equal Employment  
Opportunity Commission (EEOC)  
JEANNE.GOLDBERG@EEOC.GOV
- Tracie DeFreitas, Principal Consultant  
Job Accommodation Network (JAN)  
DEFREITAS@JAN.WVU.EDU

