# Personal Use or Reasonable Accommodation: What’s What?

## [Introduction]

**TRACIE DeFREITAS:**

Welcome, and thanks for joining us for this JAN Accommodation and Compliance webcast titled "Personal Use or Reasonable Accommodation: What's What?" My name is Tracie DeFreitas, and I'll be your moderator today.

Before we begin, let's -- before we begin the webcast, let's quickly cover some housekeeping items. First, if you do experience technical difficulties during the webcast, please use the question-and-answer option located at the bottom of your screen to submit a question. You may 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 technical questions. See the email you received with the event log-in information for the FAQ link. You can also find it on the webcast registration page.

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

And finally, at the end of the training, please complete the evaluation. The CEU approval code will be provided after the webcast evaluation is completed. Now I'm going to turn the training over to my colleagues, my -- the JAN Motor Team Consultants -- my -- very, very expert consultants on Motor Team-related issues, Lisa Mathess and Matthew McCord. So Matt, I'm going to turn things right over to you.

**MATTHEW McCORD:**

Thanks Tracie. So we'll begin our discussion today by introducing the topic of personal use under the ADA and how it can pertain to items, amenities, and services. Following this, we will discuss medical documentation and how personal use plays into whether we should gather it. Then we'll discuss some practical guidance on answering questions of ownership of personal use items and provide referrals to agencies that can help with funding for a personal use item. Finally, we'll end by going over some particularly tricky areas involving personal use as well as some illustrative situation and solution examples for them.

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## [Americans with Disabilities Act (ADA) and Personal Use]

To begin, an employer is not required to provide an accommodation if it is primarily needed for personal use. Reasonable accommodation applies to modifications that specifically assist an individual in performing the duties of a particular job. Equipment or devices that assist a person in daily activities on and off the job like eyeglasses, hearing aids, or mobility aids are likely to be considered personal items due to this, and if so an employer would not be required to provide them. Keep in mind that this does not mean an employer is prevented from providing them, simply that they are not obligated to do so.

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Similarly, employers will likely not be required to consider providing amenities like refrigerators, Crockpots, or microwaves as an accommodation. Keep in mind that the ADA requires individuals with disabilities to have equal access to the benefits and privileges of employment, so if an individual with a disability is not able to utilize such amenities due to their disability, then accommodations to remove those access barriers should be explored. However, this usually would not require another amenity to be purchased in most situations. Still, employers would not be prevented from doing so if they wanted to.

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**LISA MATHESS:**

Okay. So in addition to the personal use items and those personal use amenities that Matt just went over, there's a similar premise in what we call "personal need services." Typically, we refer to those services as personal attendant services, and they're there to help with the eating, the grooming, the toileting needs that someone with a disability may encounter while they're at work. So we all need to eat lunch, go to the restroom during the workday, and this is no different. So we wanted to decipher what tasks that third-party person is there to do. Is it the toileting and grooming that exists on and off the job? If so, then the accommodation is probably more of just permitting that person with a disability to bring their personal attendant service onsite with them. Most oftentimes an employee has contracts with a personal attendant service to accompany them to work, and that employee with a disability is paying for that service. Or sometimes vocational rehab pays for that, but ultimately, if it's there to help with those tasks that exist both on and off the job, there's not that employer obligation to pay for those services in most cases.

There is a caveat to this, though: If that employee with a disability happens to be traveling for work, when an employee travels for work and incurs personal attendant care expenses beyond their usual his or her expenses when they're not traveling for work, there's a good argument that the employer must pay those added costs, because the added costs are now business-related. So an example of that can be a travel attendant who is there to act as a sighted guide to assist a blind employee on that occasional business trip.

Under the ADA, the reasonable accommodation can include personal attendant services, in the form of a work-related assistance, but generally doesn't include the personal attendant for that personal attendant care at the work site. So work-related personal attendant services can include task-related assistance at work, so those are more of the -- the readers, the interpreters, help with lifting an item or reaching or page-turners, so you really want to mince out what tasks that third-party service would be doing, because that may change employer obligations.

And, of course, I would be remiss not to mention that the exception to this rule is 501, the federal sector, they do require an employer to furnish that personal attendant service under their affirmative action obligation. So it's -- (after a pause), so if you're a federal agency, you may have to provide that person who's going to help with the toileting and grooming. Different set of regulations for that.

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Okay, so we went over the personal need items, the amenities, and services; what does all that mean in that workplace? Do employers have to allow employees with disabilities to use those personal need items such as the canes, walkers, wheelchairs, and hearing aids? Or the services such as the personal attendant care or service animals in the workplace? Allowing an employee with a disability to use a personal need item or service in the workplace is a form of reasonable accommodation.

It may also be an accommodation to permit the individual with a disability the opportunity to provide and utilize equipment, aides, or services, even though you weren't required to furnish them as an accommodation. For example, it would be an accommodation for an employer to permit someone who is blind to use that guide dog at work even though that employer did not have to provide the guide dog.

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So for every rule, there is an exception. Equipment or devices that assist a person in daily activities on and off the job are considered personal use items that an employer doesn't have to provide. However, in some cases equipment that otherwise would be considered personal may be required as an accommodation if it is specifically designed or required to meet job-related, rather than personal needs. An employer generally wouldn't be required to do the eyeglasses, wheelchair, or artificial limbs; however, an employer may be required to provide a person who has a vision impairment with glasses that are specifically -- specifically needed to use a computer monitor. Or, if the carpet is too thick and too deep a pile, and it makes it impossible for someone with a disability to use their manual wheelchair, an employer may need to replace the carpet, place a usable surface over the carpet in areas used by that employee, or provide a motorized wheelchair that can get through that thick carpet.

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Okay, so what if we have an employee who doesn't use their personal use items or foregoes them completely? They never acquired them. Let's say we have an employee who claims that their hearing aids hurt; they won't wear them to work. Can we make them? Can we fire someone for not wearing their hearing aids?

So not so fast, of course. The ADA does require an employer to provide accommodations to remove workplace barriers, regardless of what effect medications, treatment, assistive devices may have on the employee's ability to perform the job. So you may still have that obligation to provide an accommodation, even though you're not obligated to provide the personal use items. For example, an employer may have to provide an amplified telephone or alternative means of communication for an employee with a hearing impairment who chooses not to wear hearing aids.

However, if an employee with a disability, with or without accommodations, can't perform those essential functions of the position or they pose that direct threat in the absence of such medication, treatment, or an assistive device, then they may be unqualified for that job. But again, regardless of what an employee chooses to use or not use for medication, the personal use items, assistive tech -- we need to focus on what we control: those work-related barriers. So, from an employer's perspective, it may appear that an employee is failing to use medication or follow certain treatment. And those types of issues can be complex and a little hairy to navigate, but there is many reasons an -- an employee would choose to forego treatment, including expense and serious side effects, so if an employer were calling us, I would kind of tell them, "Stay in your lane. Work on what those work-related barriers are. Let's not worry about how they choose to deal with their medical condition.

Okay, giving it back to Matt to start an example.

**MATTHEW McCORD:**

Thanks, Lisa.

Okay, so we have here an employer receiving an accommodation request for SPF-protectant clothing from a property inspector employee who had a skin condition. The employee's doctor recommended that the employee stay out of sunlight, due -- but due to the nature of their job, they had to travel between various sites throughout the day.

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Okay. So dealing with exposure to sunlight is not a unique feature of this employee's job, of course. It's a situation that the employee must confront in his personal life as well as in his job. To tackle this need, the individual chooses to stay inside as much as possible during daytime in their personal life. However, the fact that the employee chooses to confront this situation in his personal life by staying indoors does not mean that the employer must provide protective clothing so that the employee can perform their job. Avoiding exposure to the sun remains a personal need as opposed to a strictly job-related one. Because of this the employer denied the requested accommodation, stating it was a request for a personal use item. However, employers may still need to provide a reasonable accommodation even though they're not obligated to provide personal use items.

For example, for this employee with sensitivity to light, the employer might have to consider adjusting the employee's hours so that he's not doing inspections during the sunniest part of the day, assuming the inspections can effectively be done during that time. Keep in mind that even if the employee's requested accommodation turns out to be something an employer is not obligated to provide, other effective options would still need to be considered to meet the need.

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And I'll turn things back over to Lisa so she can go through another example for you.

**LISA MATHESS:**

All right. So now we have an example for those personal need services I went over. So now we have a clerk who used a wheelchair, was successful at her job tasks. Her condition progressed, and her strength was limited. The employee requested her female coworkers push her from her desk, at the workstation, to the restroom, once at the restroom assist in transferring her from the wheelchair to that toilet.

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So here for this situation, we at JAN explained employers want to approach these types of issues on a case-by-case determination. Are those coworkers, are they volunteering to help, or are they coming to you kind of shy and reluctant and are getting pressured to help? So according to an informal guidance from the EEOC, in general, employers can decide how employees use their time at work. Therefore, employers can probably prohibit coworkers from providing personal assistance to employees with disabilities.

However, from a practical standpoint, employers may want to take that case-by-case approach and consider allowing coworkers to voluntarily assist employees with disabilities when the employer doesn't have any liability for resulting injuries and the assistance doesn't really substantially -- substantially disrupt the workplace. So, for any liability issues, you want to consult Legal -- that's beyond our scope -- and really kind of go through these requests, individualized. So this approach may apply better to minor assistance such as the taking on and off of a coat, retrieving and preparing food, and if you as the employer want to allow coworkers to assist with those more difficult tasks such as toileting transfers or administering medications, then you want to make sure that those coworkers are properly trained to provide those types of services.

In contrast, under the ADA's reasonable accommodation obligation, employers must consider allowing employees with disabilities to have their own personal attendant in the workplace, absent undue hardship. So, what if an employee doesn't have that personal attendant service? If I would get this call, I would encourage an employer, give those resources and referrals to let that individual perhaps acquire a personal attendant service. And Matt's going to give you guys some information on those types of resources that are available a little later in this presentation.

All right. Back to you, Matt.

**MATTHEW McCORD:**

Okay. In this example, we have an apprentice who is in an electrical technician program requesting that the employer running the program provide them with prescription-strength safety glasses as an accommodation. The program requires all apprentices to wear safety glasses, however the individual wears prescription eyeglasses to see. Since this was a request for specialized safety glasses and not ordinary eyeglasses, the employer wasn't sure how to proceed, so they gave us a call.

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The employer reached out to us and got some guidance. The JAN consultant discussed how there is no clear-cut answer here and that ultimately the employer must determine what's reasonable on that case-by-case basis. However, as the request is for safety glasses and those safety glasses are required to meet a company safety standard and not a personal need, it is possible that this might not be a request for a personal use item. Beyond this, the consultant also discussed effective alternative accommodation options that might blur the line of personal use a little less. Those options were goggles that could be worn over the apprentice's glasses as well as side safety shields that attach on to the individual's eyeglasses to provide that more safety need there.

Go ahead and turn it back over to Lisa now, and she'll go over medical documentation with you-all.

## [Medical Documentation]

**LISA MATHESS**:

Okay. So yes, switching gears to take a look at how medical documentation can play a part when we're looking at personal use items under the accommodation obligation.

All right, so looking at Slide 18. When a need arises to question the ability of an employee to perform those essential functions of their job or to question whether the employee can do the job without posing that direct threat due to a medical condition or whenever an employee requests an accommodation and it's not obvious, those three statuses could be job-related and consistent with business necessity for an employer to make a disability-related inquiry or require a medical examination. Typically the mere use and existence of personal use items at the work site will not rise to this threshold, to that "job-related, consistent with business necessity" threshold. But as with everything it's going to be that case-by-case determination.

In most cases, there is no reason for an employer to require medical documentation about why an employee needs to use a cane. There's typically not a policy against having such items as wheelchairs and canes in the workplace. Therefore, there's usually no valid reason for an employer to ask for medical documentation to justify the use of a cane or wheelchair. Also, does the employer ever ask for documentation about why employees are coming to work on crutches or using eyeglasses or hearing aids or other types of personal aids or devices? So you don't want to start singling out employees with disabilities about their use of personal use items as it could trickle down to disparate treatment.

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So let's take a look at an example to illustrate why requiring medical documentation needs to be addressed on that case-by-case determination. On the left of the slide we have an example. We have a secretary return to work from hip surgery with a walker. The secretary placed it next to her desk during her shift, used it to go to the restroom, and when they left work for the day. Okay, seems simple enough. On the right-hand side of this slide we have a roofer who had to climb ladders, work from steep roof peaks, and he came to work with a cane following his cancer treatments. The roofer visibly had a hard time navigating the work site on his first day back.

Should we require medical documentation for that secretary who was using a walker? Or what about the roofer who showed up with a cane the first day? I guess if I had an employer calling me and asking me these questions, I would say take a step back, look at this objectively. Does the secretary need anything? Does it seem she has it handled and is pretty safe around the work site? On the other hand, we have a job that could be a safety hazard for many people, not only people with disabilities. We have visual evidence that the employee -- the roofer is having a hard time working around -- walking around that work site. So maybe those facts rise to the level of a request for medical documentation, and it could be job-related and consistent with this necessity to move forward with a medical documentation request.

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So this slide just illustrates what we call "the Hoops Theory." When you have an employee asking for the same access to things that you're customarily giving to anyone -- disability or not -- you don't want to make it an ADA issue where you go asking for a bunch of medical. Nobody else had to provide medical, so you don't want to make people with disabilities jump through additional hoops. So from a perspective of personal use items, I mentioned you typically aren't asking employees for medical whenever they come to work with hearing aids or prostheses. So you don't want to be singling out those employees who have wheelchairs and canes especially if there's no impact on job performance or safety. So we have a couple of JAN links here on the slide. It goes over situations when it may or may not be more appropriate than others to request that medical documentation from them -- from that employee.

So I do think that wraps up my spiel on medical documentation. I'm going to pass it back to Matt to go over some resources and referrals that you can use for ownership and funding.

## [Ownership and Funding]

**MATTHEW McCORD:**

Thanks, Lisa. Okay, let's move on to some practical guidance and referrals to help answer questions that commonly arise when an employer considers accommodations that they feel is personal use, namely who ends up owning the item if it's provided and what agencies can help an individual pay for that item, if the employer chooses not to do so?

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Okay, so first of all, if there is ever a question of who owns a possible personal use item, there are a few points to keep in mind to help you figure out who owns it. So first is which party paid for the item? This might sound like common sense, but if the employer paid for 100% of that item, then that fact is good evidence to show that the employer is the owner of that item. Likewise, if the employee paid for all of it, then that's good evidence that they own it instead. If the cost of the item is shared by both the employer and the employee, this will naturally make the question more difficult to answer. Because of this, it might be best to sit down and discuss who gets to keep the item if the employee moves on to another job, if cost-sharing is considered. This way an agreement can be made, and that agreement can be put into writing, just in case you need to go back to it later.

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Okay, second would be which party gets to control where the item is used and how it's used. For instance, if an individual owns and uses their own wheelchair, they control how and where they will use it. If they want to take it with them and use it to go to the grocery store, then they can do so, as long as the store in question is accessible for wheelchairs. Consequentially if the employer has control over the item and can prohibit -- prohibit it from being used outside of the work site, then that is evidence that perhaps the employer owns the item. So that's the kind of thing that you want to look at there. Who controls it? Who can say where it can and cannot be used?

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Finally, let's say an employer and an employee agree to own an item jointly or the employer is okay with being the owner but also allowing the individual to use it for activities outside of work. How does that impact things? Would doing so in one case set a precedent and force the employer to do so in all other cases?

Well, the EEOC and several court cases have stated that employers do not set precedents when they go above and beyond like this. But it can also be helpful to document why an employer chooses to go above and beyond and how it's beneficial to the business for them to do so when they choose to do it. That way, it will be easier to look back at this decision and see how similar or different it is from another request for the same sort of thing. Sometimes it can be a boon to the business to do more than the minimum requirement. Other times, maybe it isn't. And documenting this will help to show those decisions are being made fairly. For more information on this, feel free to review the JAN newsletter article that Tracie wrote on this topic titled "Good Deeds Not Punished" that's linked on the slide.

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Okay, now on to some agencies that can potentially help individuals with funding for a personal use item if the employer chooses not to provide one.

First, we have state-level assistive technology projects. The logo featured on this slide is for the state AT project in California, Ability Tools, but each state has their own project with their own name. Due to each state having their own agency, it is possible that some agencies provide services that others don't. However, four activities are common among all of them, and those are demonstrating assistive technology to members of the public so that they can become familiar with their use, loaning out pieces of assistive technology for people to try for a limited time, reutilization of assistive technology that is no longer needed by its owner and providing it to a new owner at a significant discount, and finally, financing activities to help people purchase assistive technology through loans or other sources. As an additional referral, the AT3 Center provides training and technical assistance for all state-level assistive technology projects as well as resources for the public as well. So you might want to -- might be a good idea to look out, look into, for some general information and resources on this topic too and to learn more about how AT projects work.

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Next we have centers for independent living. These are local-level agencies with typically multiple operating in each state. The logo on this slide is for the Administration for Community Living, which is the agency that oversees the grants that typically fund independent living centers as well as state-level AT projects too and other organizations. Centers for independent living are typically designed and operated by people with disabilities and help people with disabilities live independently within their community. Among the various ways that they can help, independent living centers assist with home accessibility for people with disabilities as well as with assistive technology. Because of this, they can be a helpful resource when a personal use item is needed as well.

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Last for our montage of referrals, we have state-level vocational rehabilitation services, which is funded by the U.S. Department of Education. They serve people in all manner -- with all manner of disabilities, however, some states also have separate programs specifically for individuals with blindness. VRS services provides people with disabilities an individualized program to help them get and retain jobs. This can involve a wide array of services, but concerning our topic today is the portion to assist in supporting job retention. If an individual with a disability requires a personal use item to keep their job -- say you have mobility aid like a wheelchair or a scooter -- then voc rehab may be able to assist in providing the funding for that item because of the assistance with job retention.

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I'll go ahead and turn it over to Lisa, and she'll get started going over our "Tricky Areas" section.

## [Tricky Areas]

**LISA MATHESS**:

Okay. Thanks. So let's take a look at some tricky areas when it comes to processing these requests for what may appear as a personal use and how that could evolve into work-related equipment in specific situations. Okay, so looking at telework and personal use prepandemic. Taking a big breath for these slides. Okay.

First we say sort out if telework is being accessed as a benefit of employment -- anyone can do it regardless of disability or not -- or if the telework is viewed as an accommodation, where someone is requesting it to meet a disability-related need. If it is a benefit of employment where someone just chooses to work from home, it's probably safe to say an employee is responsible for the equipment at home. Because technically they could come onsite to corporate headquarters if they wanted to. They're just opting not to. Now -- and keep in mind this is prepandemic.

So when an employee's request to work at home as an accommodation, the issue of what equipment employers must provide is not clear-cut. While the ability to work from home could be justified by the limitations stemming from a disability, the lack of equipment is not usually something related to the disability, whereas if it is specialized equipment that a person is unlikely to have at home, then there's an argument that could be made that an employer may need to provide the equipment. From a practical standpoint, if there is equipment sitting idle at someone's work site, why not let them bring it home? But ultimately, the ADA and the Rehabilitation Act do not address this question, and to date neither has the EEOC.

Looking postpandemic in these telework and personal use requests. So equipment issues for teleworking employees preCOVID like I mentioned was complex, not addressed by EEOC, but looking at this new hybrid telework workforce, what employers have to furnish as far as equipment goes could be complex and, again, should be handled with that case-by-case determination, meaning that an employer should engage in the interactive process if the ADA is triggered.

The EEOC notes in the pandemic preparedness guidance that, during the pandemic, if an individual with a disability needs the same accommodation at a telework site that was previously provided at the workplace, an employer should provide that accommodation absent hardship. If such a request is made, the employer and individual should discuss what the employee needs and why, whether the same or a different accommodation could suffice in that home setting. For example, an employer -- employee may already have certain things in their home to enable them to do their job so they don't need to have all the accommodations that were previously provided at the office. It's so important to have this open dialogue with that employee. See what they continue to need in the home setting. We may not have to recreate the office setup in someone's home, but providing some good ergonomic equipment that meets their needs is probably best business practice.

So let's look at an example on slide 31. Here we have a situation that we did have here at JAN. An employer was reviewing their remote work policies in light of the COVID-19 pandemic. They contacted JAN, seeking guidance on whether they need to provide -- consider providing office furniture like a sit-stand workstation for those employees that happen to be teleworking. So what did we do?

So after contacting JAN –

Next slide, sorry. Slide 32, perfect, okay.

So after contacting JAN, the employer felt prepared to handle such requests if they arose, the remote work policy was reviewed, and, based on the information provided, was adjusted to reflect that atypical circumstance surrounding a pandemic. So here the important thing is to take a look at what you can do. Again, if a chair is sitting vacant at that work building, can we let them take it home? Things get a little hairy when you're looking at a hybrid remote situation, because most employees in that point have two workstations. They have their workstation at the home then the workstation at the work site, so it's often double the equipment. But like I mentioned, you don't have to completely mirror what's onsite in someone's home. Perhaps other things can be provided and still be effective for that individual.

Okay, I think I'm passing it back to Matt for our next tricky area.

**MATTHEW McCORD:**

Thanks, Lisa. For our next tricky area, what if an individual with diabetes requests a mini fridge be provided at their in-office workstation, so that they can store their insulin they need to inject throughout the workday? Naturally insulin must be kept refrigerated, and it's not like the employee would be asking for the employer to provide them a refrigerator in their own home, so how would that work?

Well, first and foremost, keep in mind that employers can review alternative options to meet the need that may not straddle the line of personal use as much. So, in this situation, it might be possible to allow the individual to store the insulin in an existing refrigerator that the employee is already permitted to use on the work site; however, alternative options can sometimes come with their own additional concerns that need to be addressed.

With this option, what about the individual's privacy? If other coworkers can see the individual going into the fridge and storing and taking out the insulin, isn't that functionally the same as requiring the individual to disclose their medical needs to anyone that happens to be nearby at the time? So could we provide a, say, nondescriptive container to store the insulin in that can be taken out and brought back after they do the injection? Or perhaps even a lockbox so that the individual doesn't have to worry about coworkers sneaking around and peeking inside of the box? That might be effective. Question No. 24 of the EEOC's enforcement guidance on reasonable accommodation and undue hardship discusses a sort of situation and an example, if you are curious about reading more on this particular topic.

Next slide, please. Okay.

Keep in mind if the individual happens to have a mini fridge that they're willing to bring in and use at the workstation, then this might be easier for everyone to simply allow them to bring that in. Finally, whether or not the employer would have to consider purchasing one is questionable due to the potential of it being personal use, but, again, the employer can do so if they want to.

Next slide, please. Okay.

Here is an example of a real-life case we had to illustrate this. An employer reached out to us here at JAN as they received a request for accommodation from a worker with diabetic neuropathy. The employee was requesting speech-recognition software as well as a headset to help minimize the amount of typing that they had to do as well as a small refrigerator to be provided for them to store their insulin in.

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In this situation the JAN consultant discussed the things that we mentioned on slide 33 and that the -- and with the employer regarding the mini fridge as well as other resources regarding the other requested accommodations. The employer participated in our followup survey a few weeks later and stated that they decided to provide and pay for all three things that was requested, including the mini fridge. Sometimes, it really can just be simpler to go ahead and provide things even if they're not necessarily required. Though we do not know specifically what type of mini fridge was provided here, you can find and get small ones nowadays for $50 or less that are big enough for about 6 cans of soda, which should be more than enough to store insulin in. So it might not have been all that costly either.

Now I'll turn things over to Lisa, and she'll go over our next example with you. Next slide, please.

**LISA MATHESS**:

Okay, so in a similar premise with that insulin example: What about the safe handling and disposal of those medical syringes often used for insulin? Well, because the issue of safe disposal is not unique to the workplace -- that person has to put those syringes somewhere both on and off the job -- so an employer probably doesn't have a duty to collect and dispose of used needles and syringes as a reasonable accommodation. Of course, an employer voluntarily may choose to provide a solution for safe disposal. Now one thing to keep in mind is since an employer probably doesn't have to furnish that biohazard container, an employer probably can't insist and require the use of such container, if there's another safe way to deal with those syringes. Can the employee use a temporary receptacle at work then take them home and dispose of them there? Possibly.

So if the employer is absolutely going to insist on specific safety protocols, then perhaps you as the employer should probably furnish the products and equipment to enable that employee to follow such strict policies. There is an informal guidance from the EEOC linked on the page that does shed some light on these issues.

Next slide.

So I've put in the next example in just to really show that employers are free to go above and beyond the ADA, as we've said many times. It shows a good-faith effort. Sometimes it makes good business sense. It retains a valued employee. So let's take a look.

Now, we have a receptionist, a new hire, as they are in training. They happen to be hard of hearing, had a vision impairment, and history of meningitis which can cause headaches and neck pains. Also there was a possibility of a dementia diagnosis that was being explored. So they do the training for three weeks, still wasn't answering phones how the employer wanted them to, so the employer talked about getting different equipment and offering a different version of training, but the trainee was stubborn and incessant on handling it. They claimed they did not need help. So we come across these tougher situations often as employers, and it can be challenging to say the least. So let's see what happened on the next slide.

So this employer showed up and out with accommodations. They provided a close-captioned television, digital recorder, phone with bump dots and a headset, tablets for larger lines, pictures for the in-and-out board, so the receptionist can visually look and see who is in the office and who is out of the office, and hearing aids. It's hard to wrap your head around it after this presentation and our experience, but hearing aids is written in all the guidances as the quintessential example of a personal use item. And the employer also helped with transportation. So they did a lot for this employee, and it was a newer employee at that.

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So this employer did opt into the JAN survey and stated that at first it was a trial period, but it was found to be effective. This enabled the receptionist to improve attendance with that transportation we provided and increased productivity with all those assistive devices and technology that we furnished. It was a win-win for both parties. Again, this probably is above and beyond the ADA in a few different ways, but it was successful nonetheless.

Back to Matt for another example.

**MATTHEW McCORD:**

Thanks, Lisa.

Next let's talk about mobility aids. Let's say that we have an employee requesting an employer purchase and provide a wheelchair or a scooter. Wouldn't that be a personal use item as well, since the individual would need it for both work and non-work-related tasks? Well, maybe, but we also have to make sure that we don't jump the gun and make that assumption. If the individual needs the mobility aid at work and outside of work, then that likely would not need to be considered. However, if the individual solely needs the mobility aid at work, and not anywhere else, then that might need to be considered. This is discussed more detail in the EEOC's enforcement guidance on reasonable accommodation and undue hardship, specifically in the general principles section of that guidance if you want to read more on this, but in essence don't let blanket policies lead you astray. Even something like a wheelchair might need to be -- might not be personal use in every situation.

Next slide, please.

Okay. As another real-life example, an employer reached out to JAN due to an employee requesting to bring in and use their own electric kick scooter while at work due to chronic foot pain. The employee stated that their job requires them to do a lot of standing and a lot of walking, which means that the pain is much worse for them, and they use the kick scooter outside of work, when they must do a lot of standing and walking, and using it eliminates the pain when they use it.

Next slide, please.

In this situation, as the individual was not asking for the employer to purchase the kick scooter and instead to just allow them to bring their own item and use it on-site, this was not a personal use situation. The employer allowed the item to be used onsite and stated in our followup survey that they have heard no more reports of the individual's foot pain getting in the way of them doing their job. This was a good example of why we don't want to deny requests without giving it due consideration. Sometimes they're simply requests that amount to giving permission to use an item and nothing more, so remember to always look at the situation critically and not let blanket policies lead us astray.

Next slide, please.

Lisa will go over another situation with you-all.

**LISA MATHESS**:

Okay. So, looking at restroom accessibility: An individual with limited arm strength and mobility asked their employer to install a bidet toilet in the employee restroom because they had difficulty using toilet paper, so the employer called us, "Do we really have to install a bidet for the single employee?" So if you're unfamiliar with a bidet, it has a water function where it typically rinses your undercarriage to eliminate the use of paper. So -- I took this call. Let's see on the next slide how we handled it.

So, I went over restroom accessibility with them. We want to make sure that employees with disabilities have access to the restroom. And that will look different for everybody. So general accessibility is just the starting point of accessibility, but if people need accessibility beyond that baseline, that's the accommodation obligation comes into play. So, as far as the bidet, I explained this is not clear-cut under the ADA. Is it the same as a higher toilet like we see for people that happen to use wheelchairs? Possibly. People with disabilities can still use higher toilets and probably still use a bidet toilet if they choose to do that.

So we went over even though it's not cited in the ADA, practical guidance, look at effective options. And there are attachments that you can install on existing toilets that have the same effect, so perhaps this is a more low-cost option than overhauling the existing facilities. So with a bidet attachment the employee did get what they needed, and ultimately, with this bidet attachment, it really minimized the breaktime that they were spending in the restroom. So fighting with toilet paper and toilet paper holders, it can eat up a lot of time, and so installing this inexpensive bidet attachment really minimized the breaktime and was effective in meeting the disability-related need. So, again, it was a win-win for each party. So like Matt said, you don't want to have these kind of blanket policies. Look at each request and handle it with care.

 I think that wraps up our situation and solutions, and I think we're going to take some Q&A.

## [Q&A]

**TRACIE DeFREITAS**:

Yes, we are. Great job, guys. All right, so bear with me just a second. We've had a lot of great questions coming in. Let me pick out a few to start with. Here we go.

So here's one from an employer. They say, "We have an employee who needs to take insulin who is having difficulty injecting the medication on their own, due to unrelated limitations." And it looks like they're asking for assistance, so the employer is wanting to know, "Do we have to ask a coworker to help this employee take their medication?"

[no audio]

**LISA MATHESS**:

Matt, you're on mute. I'm not sure if you're chiming in.

**MATTHEW McCORD:**

I am chiming in, sorry. Forgot I was on mute.

Like we said earlier in the presentation, number one, we want to start out by seeing if the individual -- how they feel about helping the individual with the insulin. You know, are they willing to help, and are they eager to help, and they're like, "Yeah, just let me do it, and, you know, I help my family members do this all the time." And in that situation that might be super easy to just allow it. But if the individual who is being asked to help is hesitant or like, "I don't know if I'm going to do this right. I don't know how to do this," then in that situation, we might not have to force them to help someone do that, especially since they're not reluctant. But if they're willing, we can certainly allow that, especially if they have previous experience.

The thing that the employer needs to keep in mind is that we want to make certain that the person who is helping knows how to properly help. You know, we don't want to have someone help that could end up injuring someone or doing things incorrectly and breaking the syringe or wasting the insulin, all that stuff. So we want to make certain that they know how to do it, but if they know how to do it and they're willing, might as well let them; right? No real harm there.

**TRACIE DeFREITAS**:

Sure. I agree. All right. Let's take a look at another one. Looks like this is another one from an employer. Anyone entering our workplace must have a high level of security clearance. Can we require PAS providers to meet this requirement as well?

**LISA MATHESS**:

Yes. In short, if you have clearance requirements and security requirements for -- oftentimes those policies extend to anyone on property. So then that could extend to a personal attendant service. So, otherwise, it could trickle down to an undue hardship situation, and it's definitely job-specific, and you want to take a look at are they going to be working with confidential medical records or just classified information if you're in the federal sector? But there is a federal PAS guidance that kind of says, yeah, we can have these personal attendant services have the same clearance as the individual with a disability that needs to utilize a PAS. And that is on the EEOC website.

**MATTHEW McCORD:**

I believe it's titled "Questions Answered by Federal Agencies." I remember specifically it says, like, "Obligation to provide personal assistant services for federal agencies." So if you're not sure where to find it, you can use "federal agency personal assistant services" as search terms, and it will pop up.

**LISA MATHESS**:

Absolutely.

**TRACIE DeFREITAS**:

We can get that, actually, in the chat as well. We can throw that link in there so we'll -- we'll get that ready and send it out to everyone. Okay. We do have some others here. Let's see. Bear with me. Okay.

An employee was provided an accessible parking space, and they use a wheelchair. Let's see. They don't drive an accessible van, so they need to unload their wheelchair from their vehicle, but they have asked for help doing this when they arrive to work. So the employer is wondering, you know, what sort of obligation does the employer have to let another employee help someone unload their wheelchair from their vehicle? Can you talk about that a little bit?

**LISA MATHESS**:

Yeah. So as far as the law goes, the need to get your wheelchair in and out of your vehicle is probably not unique to the work -- work site. You probably come across that problem at the grocery store, at the mall, so it's not a work-related barrier. It wasn't unique to the workplace. So, again, that case-by-case approach -- I feel like I'm repeating myself, but I just can't emphasize that enough -- where have a conversation with the individual, "How do you deal with this in your personal life?" And kind of see what they say. Are they planning to get an accessible vehicle down the road? Is this a temporary accommodation that would be easy enough to furnish someone helping at the parking light -- parking lot? Because I think that might kind of alter an employer's next move. I don't think it's unique to the work site, so it may fall under that personal need service.

But, again, if someone is willing to help out Johnny with his wheelchair, then why not let them? Is it going above and beyond? Perhaps. You might want to document that, because if Johnny goes on to a different job and then the person with a disability doesn't have that assistance, that can create issues down the road. But cross that bridge when you get to it and kind of document, "For right now, Johnny's willing to, and you're getting into the work site safety and efficiently, so we have no problem with that." And it -- like I said, it could be a temporary accommodation if that person with a disability may be getting an accessible van in a couple of months.

**MATTHEW McCORD:**

I think the main thing here is to just remember, the real thing that the employer wants to keep in mind is that they want to put forth a good-faith effort. So if the individual -- if the individual is willing to help, you know, and they're, like, "Yeah, this is super easy, and, you know, it's no different than me just getting my groceries out of the back of the car when I go to the grocery store," you know, there's not an issue with them getting properly trained. You know, it's not any real more dangerous than anything else that they might do in a parking lot. You know, it makes sense in this situation to just, "Okay, well, they're willing to do it. Let's allow it." You know, we want them to put forth that good-faith effort, because that's the real important key here. Even if it might be a little bit above and beyond, it's still a good-faith effort, and it's super easy, so why not allow it?

**TRACIE DeFREITAS**:

Yeah, these are tricky issues, and, you know, I know a lot of times employers are concerned about going maybe above and beyond, but sometimes it really does make good sense to do that. So, you know, really, look at the situation individually and try to figure out what makes the most sense in that given situation.

We have just a couple more minutes for questions. We do have a few that I think I can throw out here, too, in the time that we have.

This is a -- kind of just an interpretation, so, would CART -- or would a CART provider be considered personal use? How would you look at that kind of situation? It's a service. So would you consider that to be personal use?

**MATTHEW McCORD:**

I mean, I would say that that's likely not, simply because there is probably a business-related need for this person to utilize the CART service. Just like there's a business-related need for someone to have an interpreter. You know, and that's kind of the key here. If the person is just asking for CART so that way they can do personal stuff that's not related to their job, then maybe. But most likely there is some business need for them to be able to communicate, and that's what the CART service does -- to enable that communication. So, it's a gray area, of course, every situation is case-by-case, but it's one of those things where it's probably no different than an interpreter.

**LISA MATHESS**:

Yeah, if it's work-related information that's being conveyed, I think that's going to fall into that employer obligation for the CART services, but as with anything else, you're entitled to choose among effective options. You don't necessarily have to provide CART. But if it's so coworkers can communicate, or it's a training and that's how a person is going to receive that information, via CART, I think that's probably a work-related need.

**TRACIE DeFREITAS**:

Yeah, okay, all right. Here's a question. So we're getting a little bit out of the personal use item or service realm and looking more so at the interactive process. So basically, it's a question about, you know, how do you keep track of the interactive process and accommodations? So you could bring it back to the personal use and service item type scenario, but how are we going to keep track of things and document things? Would you have an individual sign documentation, maybe an accommodation agreement of some sort? Could you maybe give us some insight on that?

**MATTHEW McCORD:**

Well, I mean, there's no absolute mandated way that you have to document things. So I think that's important to keep in mind upfront. Like, the ADA doesn't require "You must use this form, you know, form number number number number ABC, whatever." You know, there isn't anything like that, but it does make sense to create a process, so that way you can review things that you need to review later. So it might be a little custom making, but we do have some sample forms that you can find on our website that you can use as a template. And we also do have an Effective Accommodation Practice Series article on the interactive process, to kind of give you a framework of how to create an entire process, if you're not sure on how to start off from scratch. So we do have some resources that you can build off of or use as-is like that. So do keep in mind that you don't have to use something, you know, you're not mandated to use something specific. You can make your own.

**TRACIE DeFREITAS**:

Matt, I think you sort of read someone's mind here, because one of the next questions is whether or not JAN has any employer tools to help with that. So you took it to the next step there.

**MATTHEW McCORD:**

Great.

**TRACIE DeFREITAS**:

All right, let's see. I think I can get one more in. This is kind of going back to, you know, that whole idea of the employer going maybe above and beyond.

You know, if an employer chooses to do that, let's say they decide, "Yes, we're going to do something that maybe doesn't fall under that compliance realm, but to us it makes sense to do it," would you have any suggestions for how an employer might document if they choose to do that?

**LISA MATHESS**:

We have a sample approval form on the website, and I think, just the most important things to include is the date, what's agreed, and I would even designate, "This is above and beyond ADA, may not be feasible forever, but for right now it's working, and all parties agree to it." Just because memories fade. There is a lot of change in people's workforces, and people leave, and people get on-boarded. So just having some type of document to be, like, "Okay, we agreed to that. We know it was above and beyond, so it's not promised forever." And sometimes accommodations, you know, have to evolve and change as business needs evolve and change, and disabilities evolve and change. So, you know, not everything's concrete, and I think just being flexible and engaging is important.

**TRACIE DeFREITAS**:

Great. And I think it is important, like you said, Lisa, you want to get that documented so that you're making it clear: "We're able to do this now, we're willing to do it now, but that could absolutely change and to be prepared for that." So everyone is on the same page about what things might look like going into the future, so absolutely. Okay.

## [Conclusion]

Well, we have just two minutes left, and that will give me enough time to wrap things up for us today. So, Matt and Lisa, great information as always. Let's take a look real quickly. I just want to let everybody know that we appreciate you, and we're glad that you attended this JAN Accommodation and Compliance webcast on "Personal Use or Reasonable Accommodation: What's What?" Matt and Lisa, we thank you for sharing your time and expertise, with us today. We definitely appreciate you and your service to JAN.

We encourage everyone to register for the next JAN Accommodation and Compliance Series webcast, "ADA Update," on July 14th at 2:00 p.m. with our very special guest Jeanne Goldberg. She's the senior attorney advisor with the Equal Employment Opportunity Commission, the Office of Legal Counsel. You won't want to miss this webcast, so do register today. We actually have extended the time by 30 minutes for that webcast, because we know you'll have lots of questions. So register for that today. You can go to the training page at AskJAN.org to find that registration page or use the link provided here.

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