# **JAN Accommodation and Compliance Webcast Series –Personal Use or Reasonable Accommodation: What’s What? (6/09/22) Follow-up Q&A**

The following information includes questions received from attendees during the JAN Accommodation and Compliance Webcast titled, “Personal Use or Reasonable Accommodation: What’s What?” (6/09/22). The information is meant to assist individuals in engaging in the accommodation process and is **not** legal guidance.

**Participant Questions**

1. How would this apply to a person in a wheelchair that needs a specially designed/wheelchair accessible vehicle to get to and from work? (This question was asked in response to slide 6 about Personal use amenities.)

* Although employers don’t have to transport employees to and from work, if someone can’t commute to work due to a disability-related reason, accommodations should still be considered. -Lisa
* Accommodations Related to Commuting To and From Work

[https://AskJAN.org/publications/consultants-corner/vol08iss01.cfm](https://askjan.org/publications/consultants-corner/vol08iss01.cfm)

2. How would accommodations be considered for someone in a temporary role or short-term internship?

* The Equal Employment Opportunity Commission (EEOC) guidance on Threshold Issues includes information about how to determine if someone is considered an “employee” under the ADA. If the individual would be considered an “employee” then accommodations would need to be considered, if needed, even if the role is temporary or considered an internship. -Matt
* Threshold Issues
<https://www.eeoc.gov/laws/guidance/section-2-threshold-issues#2-III-A-1>

3. Does ADA have a defined definition on how long extended leave under ADA needs to be approved by the employer?

* The ADA does not define leave duration. The ADA requires employers to grant leave as an accommodation to the extent that it is reasonable and not an undue hardship. -Lisa
* Employer-Provided Leave and the Americans with Disabilities Act
<https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act>
* Leave & Undue Hardship Under the ADA [https://AskJAN.org/publications/consultants-corner/Leave-Undue-Hardship-Under-the-ADA.cfm](https://askjan.org/publications/consultants-corner/Leave-Undue-Hardship-Under-the-ADA.cfm)
* Long-Term Leave and the ADA after Severson
[https://AskJAN.org/articles/Long-Term-Leave-and-the-ADA-after-Severson.cfm](https://askjan.org/articles/Long-Term-Leave-and-the-ADA-after-Severson.cfm)

4. Can an employer require me to use a work cell phone for work-related activities (email, calls, etc.) if I require use of my personal cell phone instead as an accommodation-related need?

* There may be security policies in place and oftentimes concerns to permit an employee to use their personal device for work-related activities. The employer may need to consider providing accommodations on the employer owned device to accommodate an employee with a disability or modifying the policy. -Lisa

5. Does JAN have any resources available to assist an employer how to reasonably accommodate after employees cannot return back from leave of absence?

* This will largely depend on why the individual was on leave in the first place and what limitations prevent them from returning. You will want to review and see if there is any possible accommodation to enable them to return to work, either in their current position or in a vacant position that they can be reassigned to. Our A to Z Index has quite a lot of options that might be helpful in this situation if you are aware of the condition’s name or what limitations are preventing them from returning to work. -Matt
* A to Z Index
[https://AskJAN.org/a-to-z.cfm](https://askjan.org/a-to-z.cfm)
* JAN's By Topic page on Reassignment
[https://AskJAN.org/topics/Reassignment.cfm](https://askjan.org/topics/Reassignment.cfm)

6. Related to previous question re: wheelchair accessible vehicle - is this different if the nature of the job requires the person to travel between sites to perform their job such as mileage reimbursement provided for the employee to use their personal wheelchair accessible vehicle?

* Modifying a policy can be a form of reasonable accommodation, so in lieu of a company owned vehicle, perhaps paying milage for the employee-owned personal vehicle could be considered absent undue hardship. -Lisa
* Accommodation and Compliance: Travel on the Job
[https://AskJAN.org/topics/travel.cfm](https://askjan.org/topics/travel.cfm)

7. Would the mini fridge also inadvertently become a privacy issue?

* You could have a conversation with the employee, but people often bring in mini fridges for a variety of reasons outside of disability related needs. -Lisa

8. Question about the fridge scenario - what about an employer that says they do not want to allow someone to bring in a mini fridge to use because then everyone else will request them and ask why the one employee gets a fridge when others do not, putting them in a situation where they worry about answering that question. (I hear similar complaints from employers for other accommodations that would be like this).

* See question 42 in the EEOC guidance on Reasonable Accommodation and Undue Hardship Under the ADA
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>
* The Manager’s Dilemma: “An employee is asking about a co-worker’s accommodation. As a manager, what do I say?” [https://AskJAN.org/blogs/jan/2013/12/the-manager-s-dilemma-an-employee-is-asking-about-a-co-worker-s-accommodation-as-a-manager-what-do-i-say.cfm](https://askjan.org/blogs/jan/2013/12/the-manager-s-dilemma-an-employee-is-asking-about-a-co-worker-s-accommodation-as-a-manager-what-do-i-say.cfm) -Lisa

9. What about bathroom accessibility regarding transgender issues?

* Being transgender is not considered a disability under the ADA, but more and more businesses are recognizing the need to establish policies related to accommodating transgender workers – without an established federal mandate to do so. The accommodation process can be similar to that applied to workers with disabilities.
* Accommodation and Compliance: Transgender Issues and Resources
[https://AskJAN.org/topics/transgender.cfm](https://askjan.org/topics/transgender.cfm)
* From [Strategies for Developing a Transgender-Inclusive Workplace](https://askjan.org/blogs/jan/2015/10/strategies-for-developing-a-transgender-inclusive-workplace.cfm)
	+ Permit employees to use the restroom facilities that correspond with their gender identity. Employers may also establish single-occupancy gender-neutral (unisex) facilities or allow use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls. The Occupational Safety and Health Administration (OSHA) has issued transgender inclusive restroom access guidelines. For more information, go to [*Best Practices: A Guide to Restroom Access for Transgender Workers*](http://www.dol.gov/asp/policy-development/TransgenderBathroomAccessBestPractices.pdf). -Lisa

10. What if an employee has a personality disorder and does not get treated for it and is creating what is being reported as a hostile work environment by their coworkers?

* If the individual with a disability is creating a disturbance in the workplace then the employer would likely be entitled to address that disturbance under existing conduct policies. If the employer is aware that the disturbance is being caused due to a disability, then it would likely be best to have an accommodation discussion with the individual on how the employer can help them manage their disability. Employers likely would not have to consider altering the conduct policy as part of that accommodation, but accommodations to help the individual comply with it should be explored. -Matt
* Accommodation and Compliance: Conduct
[https://AskJAN.org/topics/condandperf.cfm](https://askjan.org/topics/condandperf.cfm)
* My Disability Made Me Do It! When It Does and Doesn’t Matter [https://AskJAN.org/articles/My-Disability-Made-Me-Do-It-When-It-Does-and-Doesn-t-Matter.cfm](https://askjan.org/articles/My-Disability-Made-Me-Do-It-When-It-Does-and-Doesn-t-Matter.cfm)

11. What are some resources or tools for an individual with a vision impairment who has difficulty seeing their monitor?

* Increased operating system font size with [large-size computer monitors](https://askjan.org/solutions/Large-Computer-Monitor.cfm)
	+ Note: Computer users can modify their computer display so that text is shown in large print
* [Screen magnification software](https://askjan.org/solutions/Screen-Magnification-Software.cfm)
* Locator dots and/or large print keyboard labels for keyboard navigation
* [External computer screen magnifier](https://askjan.org/solutions/External-Computer-Screen-Magnification.cfm)
* [Flicker-free monitor](https://askjan.org/solutions/Flicker-Free-LCD-Monitors-and-Laptops.cfm)
* [Anti-glare guard](https://askjan.org/solutions/Anti-Glare-Radiation-Filters-for-Computer-Screens.cfm) and [computer glasses to reduce glare](https://askjan.org/solutions/Absorptive-Filters-Anti-glare-Glasses.cfm)
* Frequent breaks to rest eyes when fatigue is a factor. -Lisa
* Accommodation and Compliance: Low Vision
[https://AskJAN.org/disabilities/Low-Vision.cfm](https://askjan.org/disabilities/Low-Vision.cfm)
* Accommodation and Compliance: Blindness
[https://AskJAN.org/disabilities/Blind.cfm](https://askjan.org/disabilities/Blind.cfm)

12. If an employee carries an oxygen tank in a backpack but is wanting a device that will allow them to push or pull while at work because the backpack causes back pain.  This would be something the employee only uses during work however their job is mostly sedentary.  Is the employer still required to provide a push/pull device?

* Ultimately, JAN cannot make the determination of whether this would be considered a personal use item on behalf of an employer. As the use of the oxygen tank and backpack to carry it is a need that occurs both on and off the job then this is more likely to be considered a personal use item. But, whether this definitely is personal use or not is a question best answered by legal counsel.
-Matt

13. We have an employee that is requesting to work from home due to side effect of their prescription. He has limitations driving, he has an office position. Does their initial request to work remotely need to be approved or can we provide alternative options?

* Commuting issues are tricky—and accommodations are often limited.
* If someone can’t drive due to a disability, it’s often permitting telework, changing the location of work, or a flexible schedule to utilize public transit. -Lisa
* Accommodations Related to Commuting To and From Work
https://AskJAN.org/publications/consultants-corner/vol08iss01.cfm

14. Does an employer have to provide a vacuum for a veteran with a service dog to clean company vehicles?

* This will depend on the policies the employer has for the cleanliness of the company vehicles and how that cleanliness is required to be maintained by the employee. If the employer’s policies lean towards the idea that the individual should be cleaning out the car due to the service animal before other employees can use it, then it makes sense for the employer to provide the equipment for the individual to comply with their policy. - Matt

15. Can these situational examples be used in a vocational training program for students with disabilities?

* Please feel free to use them if you would like! - Matt

16. How can an employer handle a vague medical provider accommodation request of: work from home in mornings when experiencing nausea?

* Employers are entitled to request what the EEOC calls “sufficient” medical documentation prior to providing an accommodation if the individual’s needs are not otherwise known or obvious to the employer. So, if the employer feels the need for telework is not obvious or already understood based on what information they have, then it is likely that they would be permitted to request additional medical documentation. - Matt
* What Does “Sufficient” Mean? - A Deconstructive Series for ADA Terminology
[https://AskJAN.org/articles/What-Does-Sufficient-Mean-A-Deconstructive-Series-for-ADA-Terminology.cfm](https://askjan.org/articles/What-Does-Sufficient-Mean-A-Deconstructive-Series-for-ADA-Terminology.cfm)
* Accommodation and Compliance: Medical Exams and Inquiries
[https://AskJAN.org/topics/medexinq.cfm](https://askjan.org/topics/medexinq.cfm)

17. Student/employee received a grant through an institutional fellowship of $1000 to purchase student/job related needs.  The student/employee wants to use some of the funds to purchase Dansko shoes for a stated disability.  Would this be considered personal use? Thx!

* As this is regarding a grant and not an ADA accommodation, this is a question that we here at JAN are not able to answer. It might be best to reach out to legal counsel on this to review the grant’s requirements on how the money may be used. -Matt

18. Are we obligated to issue a stethoscope compatible with hearing aids?

* If an individual needs to be able to use the stethoscope to perform their job duties (assuming the employer supplies the equipment), and a typical variety of stethoscope would not be accessible to them because of a hearing impairment that requires the use of hearing aids, then yes, it is likely this would be an accommodation an employer would want to consider absent undue hardship.
-Matt
* Amplified Stethoscopes and Related Products
[https://AskJAN.org/solutions/Amplified-Stethoscopes-and-Related-Products.cfm](https://askjan.org/solutions/Amplified-Stethoscopes-and-Related-Products.cfm)

19. In a high security work environment (ie. secured area of the airport) could uniform be an essential requirement due to public safety?

* If the employee cannot meet the dress code because of a disability, the employer may still require compliance if the dress code is job-related and consistent with business necessity. An employer also may require that an employee with a disability meet dress standards required by federal law. If an individual with a disability cannot comply with a dress code that meets the “business necessity” standard or is mandated by federal law, even with a reasonable accommodation, he will not be considered “qualified.” -Lisa
* See F. Dress codes in Applying Performance and Conduct Standards to Employees with Disabilities
<https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities#dress>
* Dress-Code
[https://AskJAN.org/concerns/Dress-Code.cfm](https://askjan.org/concerns/Dress-Code.cfm)

20. Employee with an invisible disability works in a large office setting.  Usually does not work with the public but can be required to assist in the public section of the office.  This employee has requested to bring a trained service dog to assist with medical issues.  Does the employee need to be allowed?

* Permitting a service animal onsite can be a form of accommodation. JAN offers detailed information about access for service animals as a job accommodation.
-Lisa
* Service Animals as Workplace Accommodations
[https://AskJAN.org/topics/servanim.cfm](https://askjan.org/topics/servanim.cfm)

21. An employee is requesting an accommodation for communication assistance in remote meetings. Automated Zoom captions are generally effective for this employee who is hard of hearing and has some executive functioning issues at times. The employee has encountered repeated barriers by Zoom hosts (employee not turning on captions when providing a request in advance and sharing how to info from Zoom. Employee requests a communication tool like Ava so that automated captions are available as an app on phone.

* If the meetings are work-related and the individual is encountering barriers in accessing the information being relayed during those meetings, then it makes sense to review accommodations to help remove this workplace barrier. -Matt

22. An employee submitted a note asking to be excused from managerial meetings as they have shared the meetings are causing the employee stress. Upon conducting the IP the employee shared she has obtained legal representation for discrimination. It has been confirmed the employee has behavioral and performance issues of which the meetings are related to. How should this request be handled?

* This sounds like there is a lot going on here. If the issue is attending the meetings, is it possible for this same thing to be done outside of a meeting format? For instance, would the individual be more amenable to email chains discussing the same things? If the issue is being physically present in the meeting, would a zoom meeting or a telephone meeting work better? Since this situation seems like it has several moving parts, it might be helpful to seek some legal advice on this situation too. -Matt

23. So, what if, the person wiliness to assist with administer the coworker insulin and something unfortunate happens

* Yes, when permitting coworkers to aid employees with disabilities you do want to seek legal guidance to sort out liability issues. -Lisa

24. What happens if the Co-worker either gets injured or injuries the disabled co-worker incompletion of requested tasks, which are not part of a job description?

* Yes, when permitting coworkers to aid employees with disabilities you do want to seek legal guidance to sort out liability issues. -Lisa

25. People willing to help us great. I’d imagine the employer would be concerned about liability. What if someone assisted moving a wheelchair out of a car and hurt themselves.

* Yes, when permitting coworkers to aid employees with disabilities you do want to seek legal guidance to sort out liability issues. -Lisa

26. Does JAN have an employer tool like a workflow to help employers through the interactive reasonable accommodations conversations?

* JAN offers many resources to assist employers engaging in the accommodation conversation. Here are some links to pages to explore on the AskJAN.org site:
* Resources for Employers
[https://AskJAN.org/info-by-role.cfm#for-employers](https://askjan.org/info-by-role.cfm#for-employers)
* Accommodation and Compliance: Interactive Process
[https://AskJAN.org/topics/interactive.cfm](https://askjan.org/topics/interactive.cfm)
* JAN Workplace Accommodation Toolkit
[https://AskJAN.org/toolkit/index.cfm](https://askjan.org/toolkit/index.cfm)
* Sample Forms
[https://AskJAN.org/topics/Sample-Forms.cfm](https://askjan.org/topics/Sample-Forms.cfm)
* Telework Accommodation Request Flowchart
[https://AskJAN.org/articles/Telework-Accommodation-Request-Flowchart.cfm](https://askjan.org/articles/Telework-Accommodation-Request-Flowchart.cfm)
* Role Play Training Videos and Accompanying Presentations
[https://AskJAN.org/toolkit/RoleplayVideos.cfm](https://askjan.org/toolkit/RoleplayVideos.cfm)

27. Can you give an example of what the documentation would say when the employer is going above and beyond? Would you tell the employee the employer is going above and beyond?

* JAN offers a sample temporary/trial accommodation approval form at [https://AskJAN.org/topics/Sample-Forms.cfm](https://askjan.org/topics/Sample-Forms.cfm) that may help. -Lisa
* See also Good Deeds Not Punished: Dispelling the Idea of Precedent Setting and the ADA at [https://AskJAN.org/articles/Good-Deeds-Not-Punished-Dispelling-the-Idea-of-Precedent-Setting-and-the-ADA.cfm](https://askjan.org/articles/Good-Deeds-Not-Punished-Dispelling-the-Idea-of-Precedent-Setting-and-the-ADA.cfm)

28. How often should an employer ask/review an employee (re-apply) for accommodations?

* You want to have a reason that is job-related and consistent with business necessity for asking for new medical information but can check in on the effectiveness of an accommodation, if deemed necessary. -Lisa
* Recertifying the Ongoing Need for Accommodation
[https://AskJAN.org/publications/consultants-corner/Recertifying-the-Ongoing-Need-for-Accommodation.cfm](https://askjan.org/publications/consultants-corner/Recertifying-the-Ongoing-Need-for-Accommodation.cfm)