

# The ADA and the Interactive Process

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# Objectives

- Interactive Process
  - 5 practical tips for success
  - 6-step process
- Complex Accommodations
- Questions



# Interactive Process

## Why have a process?

- Consistency
- Successful Accommodations
- Good Faith Effort



## ADA Basics: Interactive Process

- Recommended
- Shows Good Faith Effort

# Five Practical Tips

## Tip 1. Develop Written Policies and Procedures

### Why?

- Awareness
- Consistency
- Documentation

# Five Practical Tips

**Tip 2.** Train All Managers and Supervisors How to Recognize and Respond to an Accommodation Request

## Why?

- ADA Compliance
- Effective Use of Policies and Procedures

## How?

- Guidance documents
- Free resources (JAN, EARN, ADA Technical Assistance Centers)

# Five Practical Tips

**Tip 3.** Have a Process for Determining Effective Accommodations

**Where to begin?**

- Employee
- Employee's Medical Provider
- Other Resources

# Five Practical Tips

## Tip 4. Monitor and Update Accommodations

### Remember to:

- Monitor the Effectiveness of the Accommodation
- Update Periodically if Needed
- Keep the Lines of Communication Open
- Document Efforts



# Five Practical Tips

## Tip 5. Train New Employees

### Remember to:

- Train New Managers and Supervisors
- Train New Employees





# Interactive Process

**Step 1: Recognizing an Accommodation Request**

**Step 2: Gathering Information**

**Step 3: Exploring Accommodation Options**

**Step 4: Choosing an Accommodation**

**Step 5: Implementing the Accommodation**

**Step 6: Monitoring the Accommodation**

**SUCCESSFUL ACCOMMODATION**

# Interactive Process

## Step 1: Recognizing an Accommodation Request

### TIPS

- Err on the side of caution
- Act quickly
- Assign responsibility
- Conduct training



# Interactive Process

A newly-hired government employee told her manager that she was having difficulty writing documents due to dyslexia and cerebral palsy.

**Did she make an accommodation request?**



# Interactive Process

Did she make an accommodation request?

**Yes.**

- Workplace accommodations are needed
- Because of a medical condition



# Interactive Process

## Step 2: Gathering Information

### TIPS

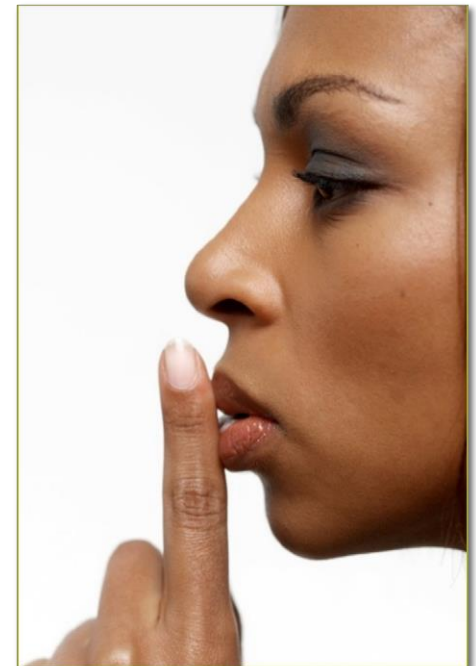
- Find out the limitation and problem
- Get information from the employee when possible
- Remember ADA rules for medical inquiries



# Interactive Process

## Medical Documentation:

- Employee requests accommodation and the disability and/or need for accommodation is not known or obvious
- Definition of disability: an impairment that substantially limits one or more major life activities
- Verify need for accommodation
- ADA confidentiality rules




# Interactive Process

**JAN**  
Job Accommodation Network  
Practical Solutions • Workplace Success

**Accommodation and Compliance Series**

**Medical Inquiry in Response to an Accommodation Request**

Job Accommodation Network  
PO Box 6080  
Morgantown, WV 26506-6080  
(800)526-7234 (V)  
(877)781-9403 (TTY)  
jan@askjan.org  
askjan.org




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**Effective Accommodation Practices (EAP) Series**

**PRACTICAL GUIDANCE FOR MEDICAL PROFESSIONALS: HELPING PATIENTS WRITE EFFECTIVE ACCOMMODATION REQUEST LETTERS**

Job Accommodation Network  
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# Interactive Process

A newly-hired custodian with a seizure disorder used a service animal to alert her that a seizure was coming on. She did not disclose during the phone interview and thought it would be ok to tell her supervisor on her first day of work. The employer had a “no animal” policy.

**Do we have all the information we need?**





# Interactive Process

Did we provide all the information?

No.

- Did not provide problem
- Did not provide justification



# Interactive Process

## Step 3: Exploring Accommodation Options

### TIPS

- Keep an open mind
- Invite the individual to suggest accommodations
- Consult with other service providers
- Use JAN when needed

# Interactive Process

A social worker with carpal tunnel syndrome requested a work-related aid to do all her keyboarding for case notes.

**How can we figure out what else might work?**



# Interactive Process

How can we figure out what else might work?

## Call JAN!

- Perform an ergonomic assessment
- Purchase speech recognition software
- Provide alternative keyboard and mouse

What if JAN isn't available?



# Interactive Process

## Step 4: Choosing an Accommodation

### TIPS

- Consider the employee's preference
- Consider a trial period



# Interactive Process

A customer service representative with diabetes had a strong body odor that he could not reduce until he got his diabetes under control. His employer was considering putting up cubicle walls and an air-purifier in his work area. His job could be done from home but the employer was concerned about isolating the employee.

**How can we help the employer decide which accommodation to choose?**

# Interactive Process

How can we help the employer decide which accommodation to choose?

## Talk with the employee!

- Employee preferred to work at home so not forced isolation
- Employee was more concerned about the cubicle/air-purifier drawing attention
- Employee expressed his preference and concerns to employer

# Interactive Process

## Step 5: Implementing the Accommodation

### TIPS

- Make sure all necessary steps are taken to implement the accommodation
- Communicate with essential personnel about the accommodation



# Interactive Process

A secretary with a shoulder injury and 10 pound lifting restriction had to get bulk items weighing more than 10 pounds from the storage closet. Her employer purchased her a small lifting device for office settings.

Is that it?



# Interactive Process

Is that it?

No.

- May need to be assembled
- Employee may need instruction in use
- Route of travel may need to be established



# Interactive Process

## Step 6: Monitoring the Accommodation

### TIPS

- Check on effectiveness
- Maintain the accommodation
- Encourage ongoing communication

# Interactive Process

An auditor with computer eye strain started using screen reading software a year ago. Recently the employer purchased new database software only to find out that the employee's screen reading software would not work with the new database.

**Could the employer have avoided this problem?**



# Interactive Process

Could the employer have avoided this problem?

**YES!**

**When purchasing new products and equipment:**

- Remember to consider accessibility issues
- Do not forget about existing accommodations




# Interactive Process

**JAN**  
Job Accommodation Network  
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**Effective Accommodation Practices  
(EAP) Series**

**The Interactive Process**

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# Complex Accommodations

# Choosing Accommodations

## Example:

A customer service representative with lupus who works in a large room with cubicles asked the employer to remove or filter all the overhead lights in her area.

- Is an employer required to provide the reasonable accommodation that the individual wants?
- How can we figure out what else might work?



# Choosing Accommodations

- Employer may choose the less expensive or burdensome accommodation as long as it is *effective*
- If more than one is effective, preference of individual should be given primary consideration
- Employer has ultimate discretion to choose among effective accommodations

CubeShield – Low cost solution  
that meets needs of the employee



# Changing a supervisor

## Example:

A state employee with PTSD was having difficulty working with a particular supervisor. He requested for this supervisor to be reassigned as a reasonable accommodation.

- Does an employer have to change a person's supervisor as a form of reasonable accommodation?



# Changing a supervisor

**No.** An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so.

The employer was able to reassign the employee to a new facility with a new supervisor instead. By doing this the employer was able to retain a hardworking employee and the employee was pleased with the new work situation and supervisor.

Changing a Supervisor as an Accommodation under the ADA at <http://askjan.org/ENews/2013/Enews-V11-I2.htm#1>

# Changing supervisory methods

- Supervisory methods may be altered as a reasonable accommodation
- Provide positive praise and reinforcement
- Provide day-to-day guidance and feedback
- Provide written job instructions via e-mail
- Develop clear expectations of responsibilities and the consequences of not meeting performance standards
- Schedule consistent meetings with employees to set goals and review progress

# Changing supervisory methods

- Allow for open and honest communication
- Establish written long-term and short-term goals
- Develop strategies to deal with conflict
- Develop procedures to evaluate the effectiveness of accommodations
- Educate all employees on their right to accommodations
- Provide sensitivity training to co-workers and supervisors
- Do not mandate that employees attend work related social functions

# New supervisors

## Example:

An employee with Parkinson's disease has been working at home three days a week for two years. A new supervisor comes in and decides that no one is going to work at home more than one day a week.

- Do you think the new supervisor can make such policy changes?



# New supervisors

Yes.

- Not a violation of the ADA for a new supervisor to change policies
- Is a potential violation if not considering existing accommodations
- Should enter into a new interactive process
- Always check on existing accommodations before a new policy is implemented

Remember...

- ❖ Maintain effective accommodations by training new managers and supervisors

# Modifying a policy

## Example:

An accountant with generalized anxiety disorder and major depression frequently had difficulty arriving to work by 9 a.m. due to difficulty sleeping and the side effects of medication. She requested that the employer modify the attendance policy and not count late occurrences against her.

- Are employers required to modify tardiness and attendance policies?
- Should employees with disabilities be exempt from time and attendance requirements?



# Modifying a policy

**No.** Employers need not completely exempt an employee from time and attendance requirements, grant open-ended schedules, or accept irregular, unreliable attendance.

Consider:

- Is it possible to allow a later arrival time without it posing a hardship?
- How much schedule flexibility is reasonable?
- What impact will tardiness have on ability to perform essential job tasks and operation of the business?

Applying Performance and Conduct Standards (EEOC) at <http://www.eeoc.gov/facts/performance-conduct.html>

# Service animals in the workplace

## Example:

An office worker at a small legal firm arrived to work one day with her emotional support dog. When the employer approached her about having the animal at work, the employee told the employer she could not ask for documentation regarding the need for the animal.

- Does title I of the ADA require employers to automatically allow employees with disabilities to bring their service animals to work?



# Service animals in the workplace

**No.** According to the EEOC, title I does not require employers to automatically allow employees to bring their service animals to work. Allowing a service animal into the workplace is a form of reasonable accommodation.

- No specific definition of service animal under title I
- Right to request reasonable documentation that an accommodation is needed
- Right to know that the animal is actually trained and what the animal does for the employee

JAN's Service Animals in the Workplace at  
<http://askjan.org/media/servanim.html>

# Service animals in the workplace

## Example:

A newly hired federal employee requested to bring her service dog into the workplace. After starting, a co-worker informed the employer of a severe allergy to animals.



- Does an employer have to provide reasonable accommodations when a co-worker is allergic to a service animal?

# Service animals in the workplace

**Yes.** An employer has an obligation to provide an effective accommodation for an employee with a service animal, but also has a responsibility to co-workers who are allergic to the service animal.

In this case, the employer moved one employee's workstation, provided an air purifier for the employee with the allergy, established separate routes of travel, maintained a regular cleaning schedule, and allowed the employees to communicate in alternative ways in place of face-to-face communication.

# Leave

When to consider leave as an accommodation:

- obtaining medical treatment
- recuperating from an illness or an episodic manifestation of the disability
- obtaining repairs on a wheelchair, accessible van, or prosthetic device
- avoiding temporary adverse conditions in the work environment
- training a service animal, or
- receiving training in the use of braille or to learn sign language

# Leave

## Example:

A new hire requested telework or leave for various issues related to a bladder condition. The employee was not yet FMLA eligible and her job involved duties that could not be done from home (i.e. answering and routing incoming phone calls). In lieu of leave the employer reduced the employee's workload for the first 30 days of employment, allowed for a flexible arrival/departure, and allowed flexibility in breaks.

- Was it ok for the employer not to provide the leave?

# Leave

**Yes.** In lieu of providing leave, an employer may provide a reasonable accommodation that requires an employee to remain on the job (e.g., reallocation of marginal functions or temporary transfer) as long as it does not interfere with the employee's ability to address his/her medical needs.

Consider:

- How much leave has to be provided?
- Does the leave have to be paid?
- When does providing leave become an undue hardship?
- What about the interplay of ADA and the Family and Medical Leave Act (FMLA)?



# Job Accommodation Network

JAN Consultants can be reached M-F 9am-6pm ET

- Phone - (800) 526-7234 (voice); (877) 781-9403 (TTY)
- Email - [jan@AskJAN.org](mailto:jan@AskJAN.org)
- Skype - Janconsultants
- Text - (304) 216-8189
- Chat available online at <http://AskJAN.org>

# Questions?

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