



## Reasonable Accommodation

### Best Practices for Return to Work During COVID-19

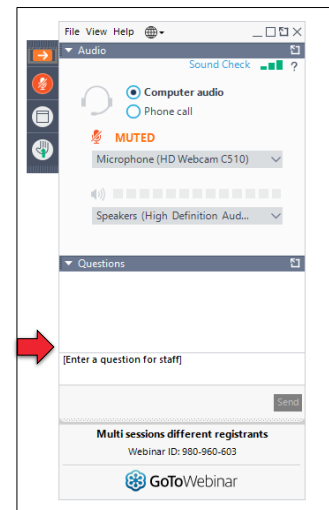
#### Will begin at 2:00 p.m. Eastern Time

- Audio and visuals are provided through the online webinar platform
- Access to presentation handouts was included in the email reminder you received for this session
- This session will be open-captioned



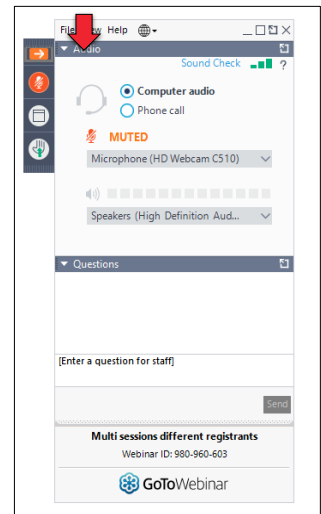
## Technical Assistance

- If you experience technical difficulties
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  - Call 301-217-0124



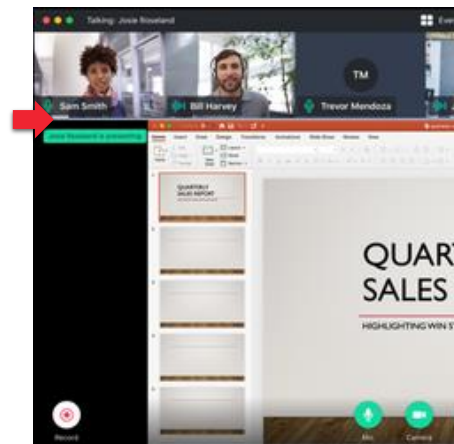
## Audio

- Expand the audio panel to select computer audio or phone call



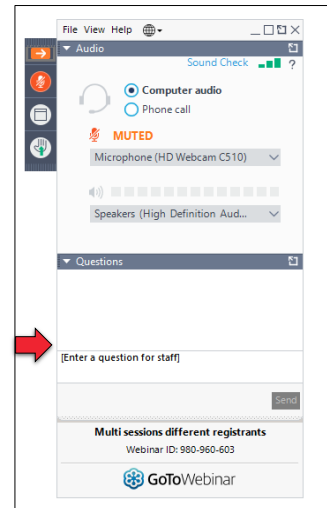
## Video

- Use the divider line to enlarge or reduce the video feed



## Questions and Comments

- Use the QUESTIONS panel



## Archive

- This webinar is being recorded and can be accessed next week
  - You will receive an email with information on how to access the archive

## About Your Hosts...

### **TransCen, Inc.**

- Improving the lives of people with disabilities through meaningful work and community inclusion

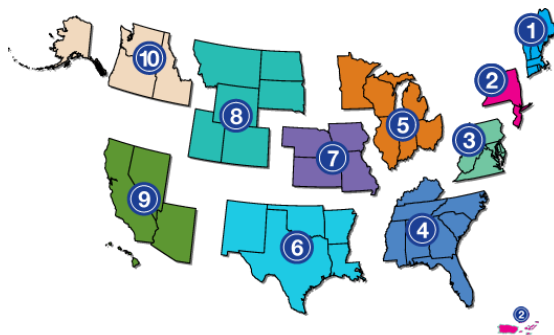
### **Mid-Atlantic ADA Center,** a project of TransCen, Inc.

- Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services



## ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA
  - 1-800-949-4232
  - [ADAta.org](http://ADAta.org)







## Reasonable Accommodation: Best Practices for Return to Work During COVID-19

Linda Carter Batiste, J.D., Principal Consultant

JAN is a service of the U.S. Department of Labor's  
Office of Disability Employment Policy.





## Agenda

- Overview of JAN Services
- Real Life Situations
- Relevant ADA Rules
- Best Practices
- COVID Implications
- COVID-Related Accommodation Examples
- Questions and Answers

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# About JAN

## Job Accommodation Network (JAN)

- Job accommodation ideas and information
- Practical guidance on the Americans with Disabilities Act (ADA)
- Resources for self-employment of people with disabilities



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# About JAN

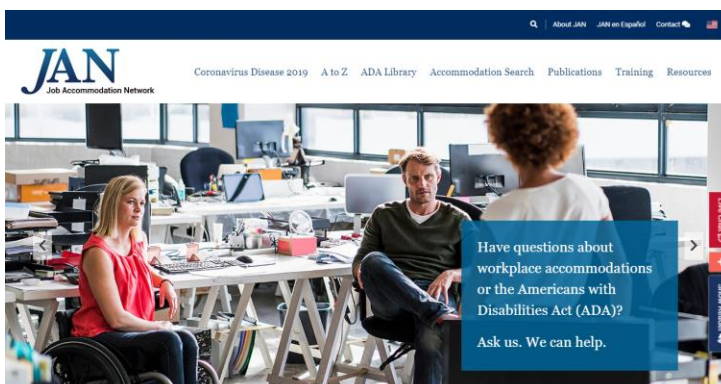
## Job Accommodation Network (JAN)

- Free
- National
- Anyone can use JAN!



# AskJAN.org

## Home Page



Due to our response to COVID-19, we are asking that you use our chat, e-mail or Voice Mail contact methods to reach the JAN service. You can speak with us directly through chat and e-mail or request a call back through voice mail, chat or e-mail. For more details on these methods of connecting with the JAN service, see Contact Us.

# JAN COVID Resources

## Strategies for Reducing Risk of Exposure

- JAN's *Accommodation Strategies for Returning to Work During the COVID-19 Pandemic*  
<https://AskJAN.org/blogs/jan/2020/08/accommodation-strategies-for-returning-to-work-during-the-covid-19-pandemic.cfm>
  - General solutions for limiting the risk of exposure
  - Solutions to address physical distancing needs
  - Solutions to address communication needs
- JAN's *Requesting and Negotiating Accommodations During the Pandemic*  
<https://AskJAN.org/blogs/jan/2021/02/requesting-and-negotiating-accommodations-during-the-pandemic.cfm>

# JAN COVID Resources

## Other JAN Publications

- Engaging in the Interactive Process During the COVID-19 Pandemic
- The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19
- Masks for COVID-19 Management and ADA Accommodations
- Coronavirus (COVID-19), Stress, and Mental Health Conditions
- Accommodations for Educators Who are Deaf or Hard of Hearing
- Teleconference Accessibility and Hearing — Keeping Deaf and Hard of Hearing Employees in the Loop

Available at <https://AskJAN.org/topics/COVID-19.cfm>

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# TELEWORK

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# Return to Work

## Telework



### Situation:

An employee asks to continue teleworking after her employer calls all employees back to the workplace after mandatory telework related to the pandemic. The employer tells the employee she will need to come into the office until the interactive process is complete.

Is this a good approach?

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# Return to Work



## ADA

Employers do not have to provide an accommodation until the accommodation process is complete.

## Best Practice

Allow the telework to continue during the interactive process, especially if the issue is pandemic-related.

# Return to Work

## Telework



### Situation:

An employee who is teleworking asks his employer to purchase an ergonomic chair and wrist rest for his home office. The employer says it's the employee's responsibility to provide at-home equipment.

Is this a good approach?

## Return to Work



### ADA

EEOC has been unclear about what equipment employers must provide for employees with disabilities who telework as an accommodation under normal circumstances.

### Best Practice

Provide work-related equipment unless undue hardship.

# Return to Work

## Telework – COVID

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship.

From question 14 at: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>



# LEAVE

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# Return to Work

## Leave

### Situation:

During the pandemic, an employee discloses that he is addicted to illegal drugs and wants to get help. He asks for leave time to go to rehab. The employer has a zero-tolerance policy for illegal drug use and terminates the employee under the policy.

Is this a good approach?



# Return to Work



## ADA

Current illegal drug users are not covered under the ADA, and employers can apply their usual policies.

## Best Practice

Consider allowing leave and a last chance agreement.



# Return to Work

## Leave



### Situation:

An employee asked for leave until the pandemic is over. The employer denies the request because there is no end date and notifies the employee that he is being terminated.

Is this a good approach?

# Return to Work



## ADA

Leave must be provided unless undue hardship, but indefinite leave might be considered inherently unreasonable.

## Best Practice

Find out why the employee is asking for leave.

Talk to the employee about options for return to work.

# Return to Work

## Leave – COVID

The Equal Employment Opportunity Commission (EEOC) has not directly addressed whether a request for leave “until the pandemic is over” is considered a request for indefinite leave.

EEOC is encouraging employers and employees to be creative and flexible.





# MENTAL HEALTH

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# Return to Work

## Mental Health

### Situation:

After returning to work during the pandemic, an employee with panic disorder requests a private office and not to have to interact with the public or coworkers because she fears catching COVID. The employer denies the request stating that sufficient safety precautions are in place.

Is this a good approach?



# Return to Work



## ADA

Employers get to choose among effective accommodations.

## Best Practice

Discuss the situation with the employee. Try to address the employee's concerns.

# Return to Work

## Mental Health

### Situation:

An employee with anxiety asks to bring an emotional support animal to work. The employer denies the request because the employee did not need the accommodation before the pandemic.

Is this a good approach?



# Return to Work



## ADA

The duty to provide accommodations is ongoing; it does not matter that an employee did not always need the accommodation.

## Best Practice

Treat pandemic-related requests the same as non-pandemic requests.



# Return to Work

## Mental Health – COVID

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or PTSD, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

From question D.2. at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>



# SERVICE ANIMALS

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# Return to Work

## Service Animals

### Situation:

An employee who is blind asks to telework because her service animal is not trained to social distance. The employer denies the request because it's about the service animal's limitations, not the employee's limitations.

Is this a good approach?



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# Return to Work



## ADA

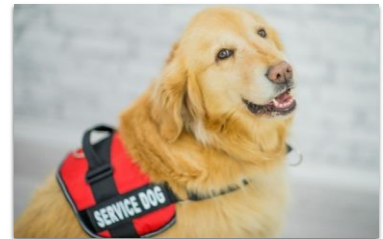
Employers must consider accommodations related to an employee's chosen method of overcoming limitations.

## Best Practice

Treat the request as you would if it was a wheelchair user who cannot access the workplace.

# Return to Work

## Service Animals – COVID



CDC recommends handlers keep their service animals a safe distance away from other people and animals.

From <https://www.cdc.gov/coronavirus/2019-ncov/animals/service-therapy-animals.html>



# COMMUTING

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# Return to Work

## Commuting



### Situation:

An employee with IBS asked to work temporarily at an office closer to her home to avoid using public restrooms. The employer denies the request, stating that employees are responsible for getting themselves to work.

Is this a good approach?

## Return to Work



### ADA

Employers do not have to provide transportation to and from work but might have to consider other accommodations related to commuting problems such as modified schedule and telework.

### Best Practice

Treat the request as an accommodation request and consider modifying the employee's schedule.



# Return to Work

## Commuting – COVID



Employees who rely on public transportation may have difficulty safely commuting to work.

Temporary telework may be a viable solution.



# JOB RESTRUCTURING

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# Return to Work

## Job Restructuring



### Situation:

During the pandemic, a nurse was excused from seeing COVID-19 patients, but the employer asked her to start seeing them again after the number of patients rose. The nurse refused so the employer fired her.

Is this a good approach?

# Return to Work



## ADA

Employers do not have to excuse an employee from performing essential job functions as an accommodation.

## Best Practice

Go through the accommodation process, explore other options.

# Return to Work

## Job Restructuring – COVID

The fact that an employer temporarily excused performance of one or more essential functions...does not mean that the employer permanently changed a job's essential functions.

From question D.15. at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>



# MEDICAL DOCUMENTATION

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# Return to Work

## Medical Documentation



### Situation:

An employee with diabetes has been teleworking for months during the pandemic. The employer wants to review the accommodation and asks the employee for medical documentation.

Is this a good approach?

# Return to Work



## ADA

Employers can require medical documentation when the disability and need for accommodation are not obvious or already documented.

## Best Practice

Don't ask for new medical documentation unless necessary.



# Return to Work



## Medical Documentation – COVID

Consider using CDC guidance related to at risk employees and minimize the need for medical documentation.

CDC guidance: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>



# VACCINES

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# Return to Work

## Vaccines



### Situation:

As vaccines are becoming more widely available, an employer wants to require at risk employees to return to the office instead of teleworking.

Is this a good approach?

## Return to Work



### ADA

Employers only have to provide accommodations if they continue to be needed.

### Best Practice

Don't assume that vaccine availability negates the need to telework, use a case-by-case approach.

# Return to Work

## Vaccines – COVID

If an employee cannot get vaccinated for COVID-19 because of a disability and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker.

From question K.7. at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

# EMPLOYEES WITH COVID-19

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# Return to Work

## Employees with COVID-19



### Situation:

An employee returning to work after having COVID-19 asked for periodic rest breaks to help her deal with ongoing fatigue. The employer denied the request after determining that COVID-19 is not a disability.

Is this a good approach?

# Return to Work



## ADA

Employers only have to accommodate employees with current disabilities or a record of a disability.

## Best Practice

Err on the side of caution. Consider providing accommodations when possible.

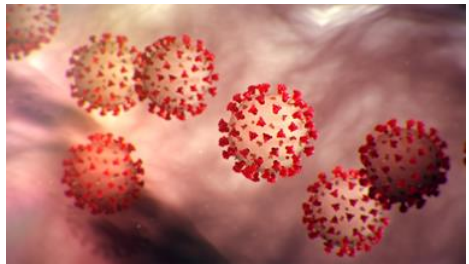


# Return to Work

## Employees with COVID-19

This is a very new virus, and while medical experts are learning more about it, there is still much that is unknown. Therefore, it is unclear at this time whether COVID-19 is or could be a disability under the ADA.

From <https://www.eeoc.gov/transcript-march-27-2020-outreach-webinar>



# COVID-Related Accommodations

## COVID-Related Accommodation Examples

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# Accommodations

## Example

An accountant who is deaf usually reads lips to communicate. During the COVID-19 pandemic, all employees were required to wear cloth face coverings as an infection control measure.



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# Accommodations

## ACCOMMODATION:

The employee could read lips if others wore clear face masks. The employer was willing to provide the masks for the coworkers the accountant frequently interacted with.



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# Accommodations

## Example

Roger, an employee with heightened sensory sensitivities is returning to work after being home due to the pandemic. His employer is requiring all employees to wear masks the employer provides. Roger has difficulty with stress and anxiety while wearing the rough and scratchy mask for the full day, so he asked if he could provide his own cloth mask.



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## Accommodations

### ACCOMMODATION:

After some discussion about how to sanitize the mask every evening for the next day, Roger's employer allowed him to wear his own mask while they evaluated its effectiveness.

~~in~~effective

# Accommodations

## Example

A daycare worker took an immunosuppressant due to a kidney transplant. She had concerns about working around children and not being able to practice social distancing during the COVID-19 pandemic.

She asked her employer to allow her to work a night shift so she could limit exposure from families, children, and coworkers.



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# Accommodations

## ACCOMMODATION:

The essential function of her position, caring for children, requires that she work during the day because that is when the daycare primarily operates. Since the employer cannot modify her hours, the employer temporarily reassigned her to a different position.



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# Accommodations

## Example

A help desk employee's main job functions included troubleshooting the problems of other staff members. He was highly competent in solving problems but was now experiencing panic attacks due to fear of COVID-19 exposure.



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# Accommodations

## ACCOMMODATION:

A new policy was instituted that allowed the employee to take requests for help by e-mail or by phone instead of in person, reducing the employee's fear and stress caused by close interactions with coworkers. This enabled him to feel safe while continuing to perform his job.

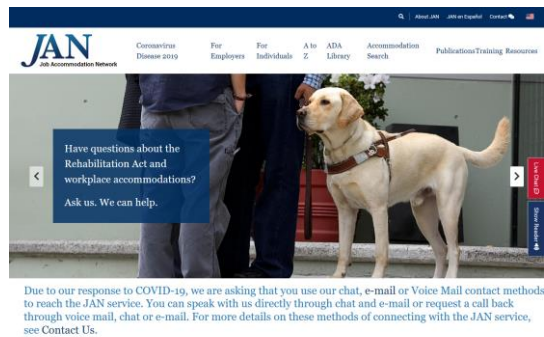


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## Contact

- (800) 526-7234 (V) & (877)781-9403 (TTY)
- AskJAN.org & [jan@AskJAN.org](mailto:jan@AskJAN.org)



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- Check the reminder email you received about this session for instructions on obtaining a certificate of participation or credits for this webinar
- Please email the code above to [ADATraining@transcen.org](mailto:ADATraining@transcen.org) by **5 PM E.T. on March 22, 2021**

Thank You for Joining Us!

**Mid-Atlantic ADA Center**

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Local: **301-217-0124**

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