

Behavioral Health is Essential To Health



Prevention Works



Treatment is Effective



People Recover



ADA and Employment Rights and Protections

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Presentation Overview

- **Review of rights under the ADA**
- **Reasonable accommodation**
 - *Concepts*
 - *Examples*
- **Additional laws and policies**
- **Practical advocacy, networking, and problem solving**

Rights Under the ADA

- **Disability nondiscrimination**
 - *No discrimination in hiring, firing, promotion, pay, “terms and conditions” of employment*
 - *No disability-based harassment*
 - *No unnecessary policies that exclude people with disabilities*
 - *No segregation*
- **Reasonable accommodation**
- **No unnecessary medical inquiries, and medical information must be kept private**
- **No retaliation or interference**

Rights Under the ADA (cont.)

- **Employers with 15 or more employees**
 - *State laws may cover smaller employers*
 - *Federal employees covered by Rehabilitation Act*
- **“Disability”**
 - *Physical or mental impairment that substantially limits one or more major life activities*
 - *Broadly construed following ADA Amendments Act (2008)*
- **“Qualified”**
 - *Able to perform the “essential functions” of the job with or without “reasonable accommodation”*

Examples of “Disability” – Post-ADA Amendments Act

- major depressive disorder
- bipolar disorder
- post-traumatic stress disorder
- obsessive compulsive disorder
- schizophrenia
- autism
- cancer
- diabetes
- epilepsy
- HIV
- being deaf or blind
- intellectual disability
- cerebral palsy
- multiple sclerosis
- muscular dystrophy
- mobility disability requiring wheelchair
- partially or completely missing limbs
- another physical or mental impairment limiting a major life activity

Disability Principles – Post-ADA Amendments Act

- **Construe “disability” as broadly as statute permits**
- **Do not include “mitigating measures” when assessing substantially limits**
- **Impairments that are episodic or in remission, are “disabilities” if they would substantially limit when active**
- **“Major life activities” broadly defined**

Disability Principles – Post-ADA Amendments Act

“Major life activities” broadly defined (cont.)

- Caring for self, manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working
- Operation of major bodily function – immune, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, reproductive

What Is a Reasonable Accommodation?

- **Changes made to a job or workplace which help an employee or job applicant perform the job or enjoy equal opportunity**
- **Must be reasonable “on its face”**
 - Or reasonable given “special circumstances”
- **Cannot eliminate essential functions of job**
- **Cannot impose undue hardship**
- **Must be qualified! With accommodation, you must be able to perform the basic duties of the job.**

Examples of Reasonable Accommodations

- **Changes to equipment, furniture, facilities**
- **Special equipment or devices**
 - *Assistive technology*
 - *Ergonomic equipment*
- **Policy changes**
- **Job coach**
- **Additional or specialized training**
- **Modified supervision**
 - *Versus different supervisor*
- **Job restructuring**
 - *Consider “teamwork”*
- **Transfer to vacancy**
 - *“Accommodation of last resort”*
 - *Employer must grant if needed (unless strict seniority policy)*

Examples of Reasonable Accommodations

- **Changes to work schedule**
 - *Later schedule*
 - *Part-time schedule*
 - *Regular schedule*
- **Time away from work**
 - *Medical appointments*
 - *Avoid hazard at work*
 - *Appointments for wheelchair, van, service animal*
- **Leave of absence for treatment and recovery**
 - *Can be longer than FMLA*
 - *Can be longer than leave permitted by employer policy*
 - **Include “return to work” date!**
 - *Otherwise employer may claim leave is unreasonable*
 - *Purpose is to recover and return to work*

Should I ask for a **reasonable accommodation**?

Pros

- **Need for accommodation to perform the job**
- **Need for accommodation to avoid discipline or termination**
- **Need for accommodation to protect health**
- **Potential for more successful and supportive employment**

Cons

- **Risk of stigma and discrimination**
- **Risk of retaliation**
- **Risk of loss of privacy**

Consider

- **Role of “informal accommodations”?**
 - **Employer policies, culture**
- **Role of FMLA**

How do I ask for a reasonable accommodation?

- **Must disclose disability and need for accommodation**
 - *To employer = supervisor, manager, human resources*
 - *Give enough information to put employer on notice of disability and need for accommodation*
 - **Best to use words such as “disability” and “accommodation” (but not required)**
 - *You are not required to disclose intimate details of medical condition, history*

Best Practices – Asking for a Reasonable Accommodation

- **Put your request in writing (memo or email)**
 - *print out a copy and keep at home*
- **Include the following:**
 - *statement that you are requesting a reasonable accommodation for your disability*
 - *description of why you need accommodation*
 - *your thoughts on what accommodations would be best*
 - *statement that you look forward to discussing accommodations with your employer*
- **Be positive, professional, and “reasonable”!!**

What is supposed to happen next?

- **Employer required to consider your request and respond**
- **Possible employer responses:**
 - *Grant request*
 - *Deny request*
 - *Offer different accommodation*
 - *No response*
- **If request not granted, employer and employee required to begin discussion about accommodation (the interactive process)**

What is the **interactive process**?

Prompt, good faith, interactive, ongoing communication about accommodations

- Employee shares information in his/her possession (e.g. about disability, ability, needs)
- Employer shares information in its possession (e.g. about operations, vacancies)
- May include third-party experts as needed

Best Practices – Interactive Process

- **Put requests for accommodation in writing**
- **Respond promptly if employer requests information**
 - *But protect your privacy!*
- **Suggest alternatives if employer rejects accommodation**
- **Schedule and attend meetings about accommodations**
- **Offer your employer free referrals and resources**

Free Referrals and Resources

- **Materials from the EEOC**
 - *Reasonable Accommodation and Undue Hardship Under the ADA*, <http://www.eeoc.gov/policy/docs/accommodation.html>
 - *Other documents found at* <http://eeoc.gov>
- **Job Accommodation Network (JAN)**
 - 1-800-526-7234
 - <http://askjan.org/>
- **ADA National Network (previously DBTAC)**
 - 1-800-949-4232
 - <http://adata.org/>

“Reasonable Medical Documentation” and Employee Privacy

- If your need for accommodation is not obvious, your employer may request “reasonable medical documentation”
 - *Doctor’s note showing disability and need for accommodation*
 - *Must be treated as confidential medical record, maintained in a separate and secure file*
- ***Medical information may be shared only on a “need to know” basis with managers or supervisors (not co-workers).***
- ***You are not required to produce or release your entire medical or mental health file.***

What if I have a disability-related problem at work?

- **Know your deadlines:**

- *You must file with the EEOC or your state's fair employment practices agency within 180 or 300 days, depending on your state*
 - EEOC: 800-669-4000, <http://eeoc.gov/>
 - If you go to the EEOC, do not seek an immediate right to sue – once you receive a “right to sue,” you may have as little as 90 days to bring a lawsuit.
- *Federal employees have much earlier deadlines – contact your EEO office immediately*
- *There may be other deadlines for other claims*
- *For disability benefits, ask your HR department*

What if I have a disability-related problem at work? (cont.)

- **Legal resources**

- *National Employment Lawyers Association, <https://www.nela.org/NELA/>*
- *Local bar association*
- *Local legal aid office*
- *Disability Rights Bar Association*

Additional Laws and Policies

- **Federal employment**
 - “*Schedule A*” and Executive Order 13548
 - USA Jobs, <https://www.usajobs.gov/>
 - Contact agency’s “**Selective Placement Program Coordinator**” or “**Special Emphasis Program Manager**”
- **Federal contractors**
 - *OFCCP* – 7% goal

Additional Laws and Policies

■ *Federal disability resources*

- DOL's Office of Disability Employment Policy (ODEP),
<http://www.dol.gov/odep/>
- DOL's OFCCP, Recruitment and Hiring of Qualified Individuals with Disabilities,
http://www.dol.gov/ofccp/regs/compliance/resources_recruit_disability.htm

■ *Additional resources*

- *Ticket to Work, Job Centers/One Stops, VR, CILs*
- *State Governors' Committees on Employment of People with Disabilities*

Practical Advocacy and Problem Solving

- **Research employers**
 - *USBLN-AAPD First Annual Disability Equality Index, <http://www.usbln.org/programs-dei.html>*
 - *Informational interviews*
- ***Internships and mentors***
 - *AAPD Internship*
 - *Emerging Leaders Summer Internship Program*
 - *Disability Mentoring Day*

Practical Advocacy and Problem Solving

- ***Know yourself***
 - **What job tasks are you good at?**
 - **What type of environment brings out your strengths?**
 - **How do you like to interact with people?**
 - **What is the right fit for you?**
 - *Flexible? Structured?*
 - *Corporate? Small business? Nonprofit?*
 - *Working in a group? Working alone?*
 - *Other qualities*

Practical Advocacy and Problem Solving

NETWORKING AND COMMUNITY

- *Cross-disability networks, e.g.:*
 - Centers for Independent Living (CILs)
 - American Association of People with Disabilities (AAPD)
 - ADAPT
 - *And so many more!*
- *Disability-specific networks, e.g.:*
 - NAMI
 - DBSA
 - International OCD Foundation
 - *And so many more!!!*

Practical Advocacy and Problem Solving

NETWORKING AND COMMUNITY (cont.)

- *Professional disability networks, e.g.*
 - National Association of Law Students with Disabilities
 - Society of Healthcare Professionals with Disabilities
 - Career Opportunities for Students with Disabilities
 - *And so many more!!!*

And everyone is on line ...

All About JAN

- A free, confidential, national service
- Communicate via telephone, chat, text, TTY, relay, email, Skype, and social networks
- Specialize in job accommodations and the employment provisions of the ADA
- Assist with the interactive process
- Provide comprehensive personalized and on-line resources
- Provide live and archived training

All About JAN

Personalized service:

Once you reach JAN, a Program Assistant will ask what you are calling about (i.e., disability or chronic health condition.) You will then be connected with an expert consultant on the Sensory, Cognitive/Mental Health, or Motor Team.

Online:

JAN's comprehensive website features more than 220 publications and includes the Searchable Online Accommodation Resource (SOAR)

JAN supports employers

JAN helps employers capitalize on the talents and value of employees with disabilities

- Hire, retain, and promote qualified employees with disabilities;
- Learn about workplace accommodation options and practical solutions;
- Protect their companies by assisting in compliance with various laws and regulations;
- Learn about employment practices that can ultimately save them money through reduced workers' compensation and other insurance costs.

JAN supports employers

JAN research provides a business case:

- 58% of accommodations are provided at no cost,
- \$500 – the typical cost of an accommodation when there is cost,
- 74% - employers reported the accommodations were effective,
- 90% - employers reported accommodations helped retain a valued employee,
- 72% - employers reported increase in productivity,
- 64% - employers reported improved interactions with co-workers, and
- 62% - employers reported increase in morale.

JAN supports people with disabilities

JAN helps people with disabilities increase their employability and succeed on the job

- Understand their rights under the ADA and the Rehabilitation Act,
- Learn the benefits of requesting accommodations from their employer or potential employer,
- Pinpoint specific accommodation and accessibility options to enhance their on-the-job success,
- Identify other government resources and placement agencies that can help them find jobs or succeed in their current work environments, and
- Learn about self-employment options.

Common MH Conditions

- Anxiety
- Bipolar Disorder
- Major Depression
- Obsessive Compulsive Disorder
- Panic Disorder
- Post-Traumatic Stress Disorder
- Seasonal Affective Disorder

Common challenges faced at work

Attendance

Concentration

Emotions

Fatigue

Memory

Panic Attacks

Sleep Issues

Stress

Coworker Interaction

Organization

Common accommodations provided

- *Allow use of job coach or provide mentor*
- *Space enclosures, sound absorption panels, or a private office*
- *White noise, music player, or environmental sound machines*
- *Uninterrupted “off” work time*
- *Increase natural lighting or provide full-spectrum lighting*
- *Restructure job to include only essential functions*

Common accommodations provided

- *Provide memory aids such as schedulers, calendars, email add-ons, or apps*
- *Allow flexible work environment*
- *Allow telephone calls during work hours to doctors and others for needed support*
- *Allow the presence of a support animal*
- *Develop clear expectations of responsibilities and the consequences of not meeting performance standards and code of conduct*

Situations and Solutions

Example

A production manager for a large manufacturer had bipolar disorder. His duties included working 40 hours per week with additional overtime to complete and oversee paperwork and shipping orders. He was not meeting his production standards.

Situations and Solutions

Accommodation

He was also provided a work area that was away from noise and given earbuds to listen to music. He also met briefly with his supervisor once a week to discuss workload issues. The employee's hours, workload, and overtime were reduced for one month. Then he returned back to his regular schedule.

Situations and Solutions

Example

A housekeeper with OCD repeatedly checked and re-checked rooms for supplies. She was not completing the number of rooms required during a shift.

Situations and Solutions

Accommodation

The individual was accommodated with a computerized checklist for each supply listed for each type of room.

Situations and Solutions

Example

A customer service representative with arthritis and major depression experienced extreme fatigue during the afternoon, which had an effect on her speed.

Situations and Solutions

Accommodation

The individual was accommodated with a wireless headset, an articulating keyboard tray, and an ergonomic keyboard.

Situations and Solutions

Example

A grocery store bagger with SAD had difficulty working an early schedule due to oversleeping. She also experienced fatigue and depression during late fall and winter months. As a result, her attendance was erratic.

Situations and Solutions

Accommodation

She was accommodated with an afternoon schedule and was moved to the front of the store, which had windows that let sunlight enter her workspace.

Tips for the workplace

- Avoid stereotypes and assumptions about the individual and how they may act. Focus on abilities.
- Recognize but respect differences in people. A person may act differently and have problems interpreting social cues.
- Be patient. Allow the individual to think and answer questions.
- Know that stress can aggravate a situation. Alleviating some of that stress may de-escalate the situation.
- In a crisis, stay calm and be supportive as you would with anyone. Ask how you can help, and find out if there is a support person who can be sent for.

Contacting JAN

- (800)526-7234 (V) & (877)781-9403 (TTY)
- AskJAN.org & jan@askjan.org
- (304)216-8189 via Text
- janconsultants via Skype



The screenshot shows the JAN website homepage. At the top, there is a navigation bar with links for ADA LIBRARY, PUBLICATIONS AND RESOURCES, SEARCH ACCOMMODATIONS DATABASE, A-Z OF DISABILITIES AND ACCOMMODATIONS, and NEWS. Below this is a search bar and a 'Search' button. The main content area features a large photo of a man in a white shirt and tie, identified as 'MEET THOMAS'. To the right of the photo is a 'Connect with JAN' section with contact information: (800)526-7234 (Voice) and (877)781-9403 (TTY). Below this are links for Email JAN, Live Help, Subscribe to Newsletters, Link to Us, Share Through Your Social Networks, RSS Feed, Newsletter, and Webcasts. Further down, there are sections for 'FOR EMPLOYERS' (Private Employers, Federal Employers, State & Local Government), 'FOR INDIVIDUALS' (Employees, Job Seekers, Entrepreneurs), and 'FOR OTHERS' (Rehabilitation & Medical Professionals, Union Representatives, Attorneys & Legal Representatives). At the bottom, there are dropdown menus for 'About JAN', 'Frequently Asked Questions', and 'Training'. The footer includes the ODE logo, the SAMHSA logo, and various social media icons.



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