



Disability Disclosure and Requesting Accommodations

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AskJAN.org

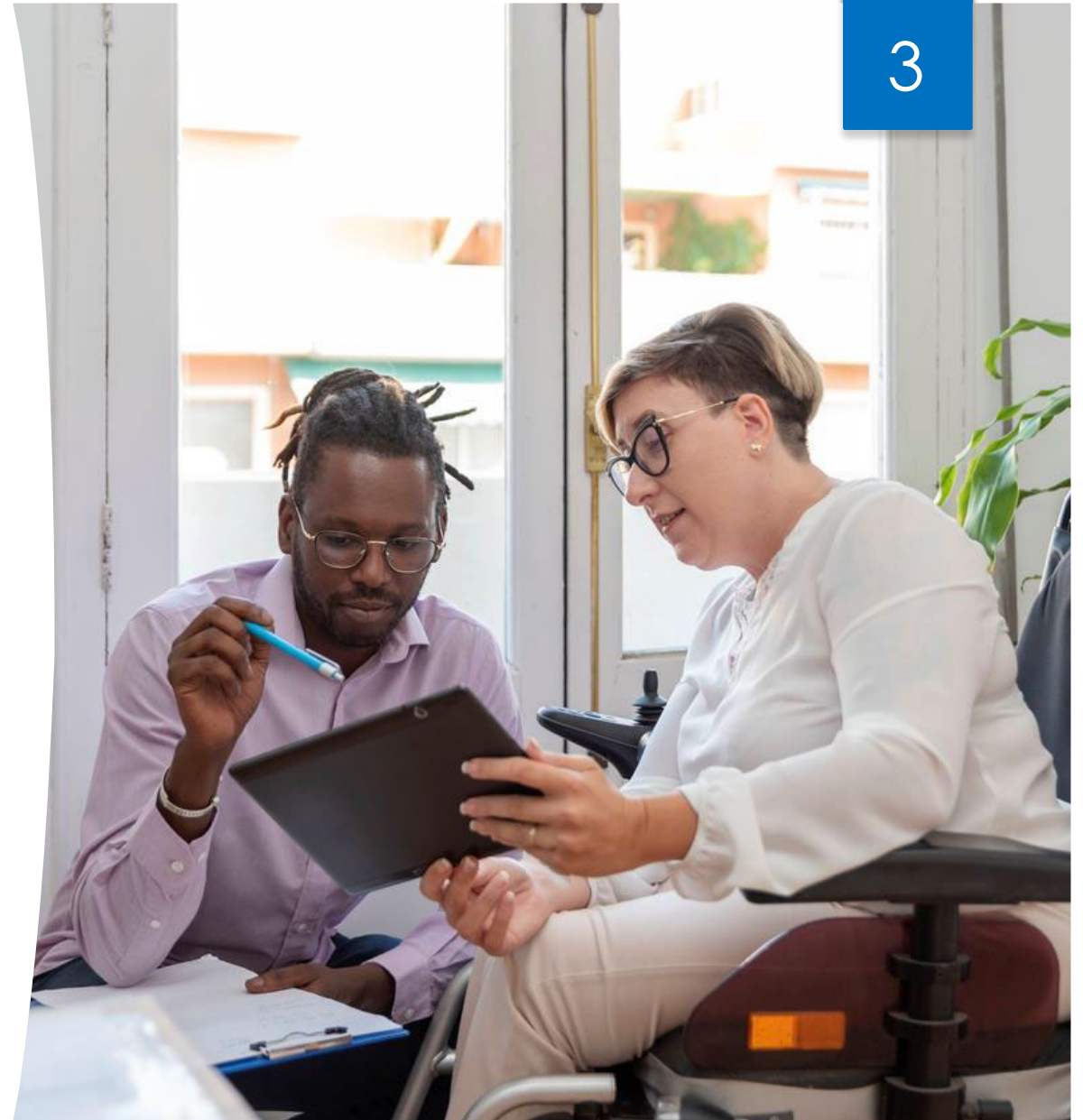
JAN is a service of the U.S. Department of Labor's Office of Disability Employment Policy/ODEP.

Training Overview



- ▶ Job Accommodation Network (JAN) Overview
- ▶ Disability Disclosure
- ▶ The Americans with Disabilities Act (ADA) and Requesting Job Accommodations
- ▶ Questions

JAN Overview



Job Accommodation Network

- ▶ Established in 1983
- ▶ National, free consulting service
- ▶ Expert, trusted, confidential guidance on job accommodations and disability employment issues
- ▶ A service of the U.S. Department of Labor's Office of Disability Employment Policy/ODEP



Have questions about workplace accommodations and the Americans with Disabilities Act (ADA)?

Ask JAN! We can help.

(800) 526-7234 or (877) 781-9403 (TTY)

Employer Live Chat

Your Partner in the Accommodation Process

Practical guidance and technical assistance for employers, people with disabilities, and others on:

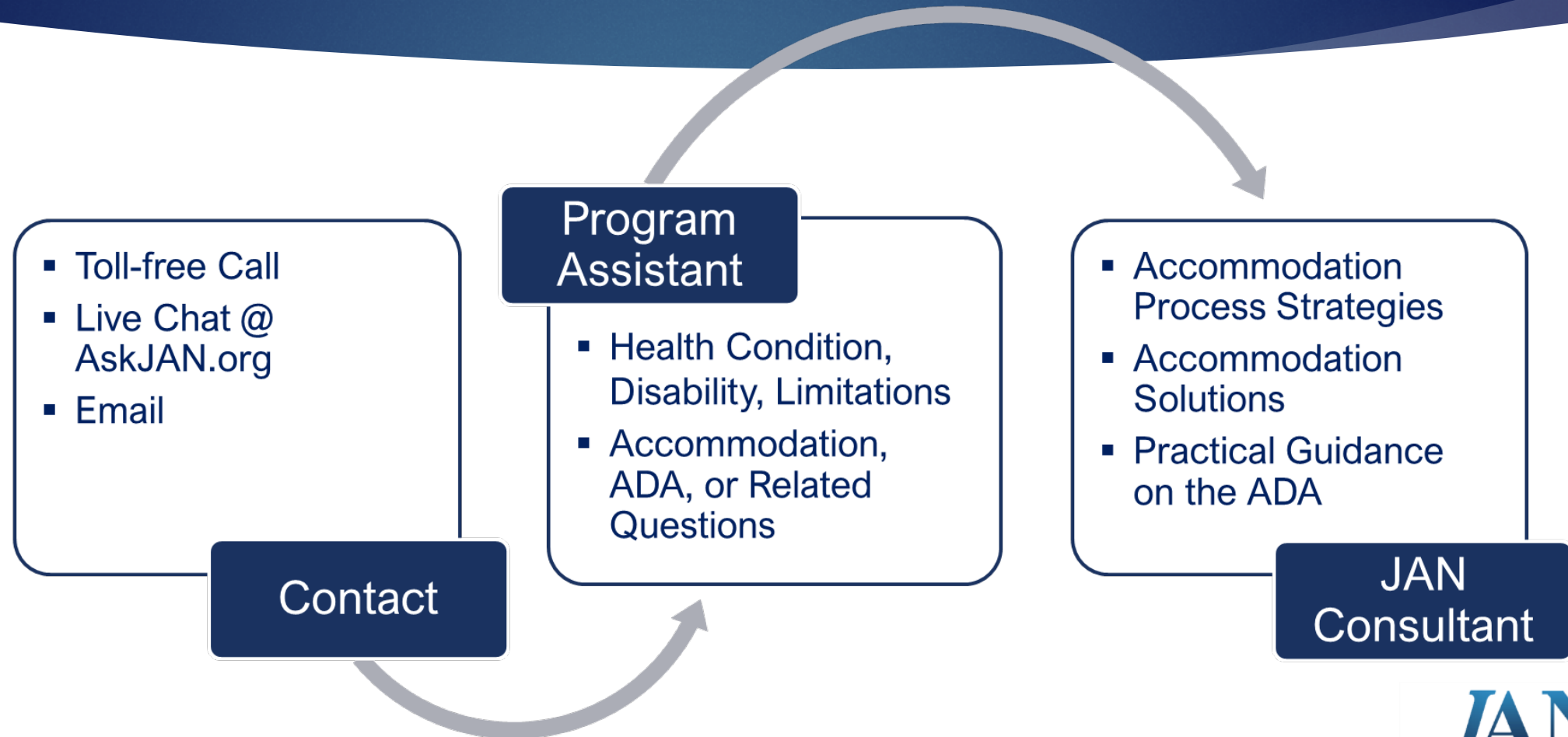
- ▶ Accommodation process strategies
- ▶ Job accommodation solutions
- ▶ Title I of the Americans with Disabilities Act (ADA) and related legislation
- ▶ Self-employment and entrepreneurship options for people with disabilities

Anyone Can Use the JAN Service

- ▶ Employers
- ▶ Individuals with Disabilities
- ▶ Legal, Rehabilitation, Medical, and Educational Professionals
- ▶ Others



When You Contact JAN...



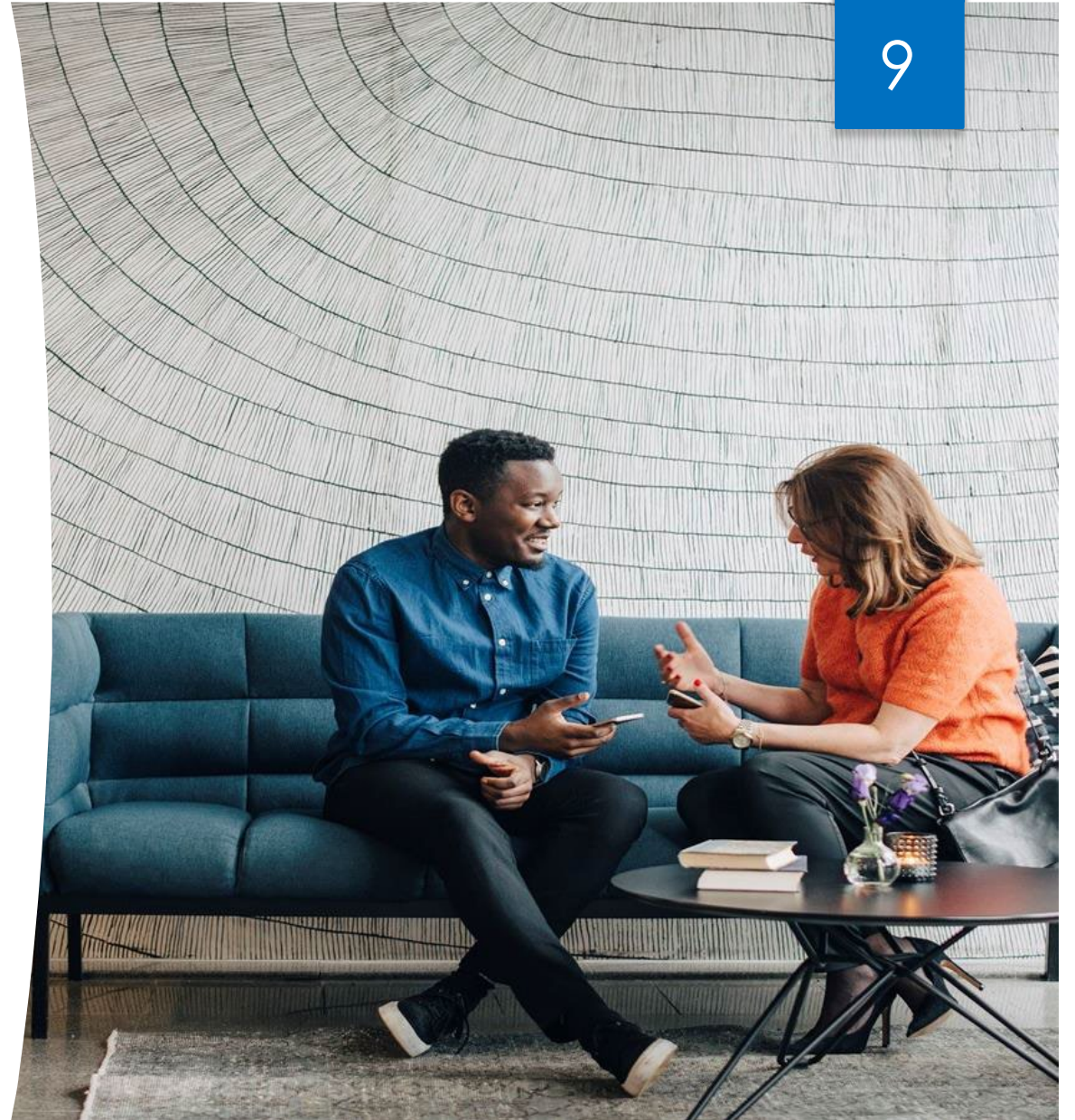
Ask JAN! We Can Help.

JAN consulting staff are highly qualified, experienced, and serve as a member of a specialty team:

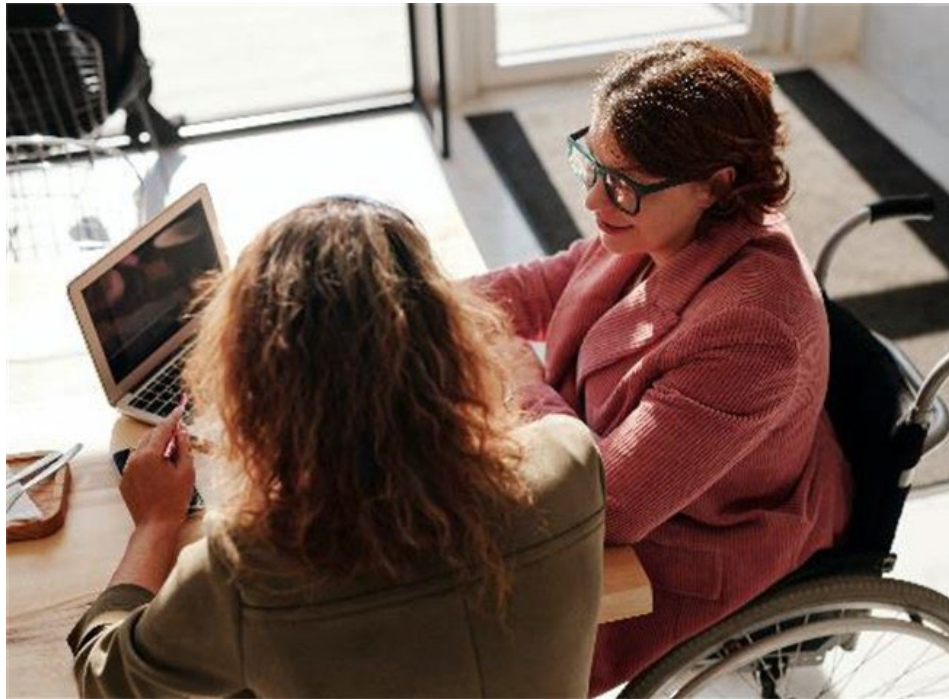
- ▶ ADA
- ▶ Cognitive/Neurological
- ▶ Motor
- ▶ Sensory
- ▶ Self-Employment



Disability Disclosure



Disability Disclosure, Accommodations, and Work



- ▶ Understand whether and how disability will impact work
- ▶ Be knowledgeable about accommodation rights and ADA responsibilities
- ▶ Leverage resources to support the accommodation process

What is Disability Disclosure? Why disclose?

Disclosure is when a job applicant or employee shares specific, personal information about their disability.

Why disclose?

- ▶ To ask for job accommodations
- ▶ To receive benefits or privileges of employment
- ▶ To explain an unusual circumstance



Disability Disclosure Misunderstandings

Myth

1. Applicants should disclose their disability and need for accommodation during hiring.
2. An employee can't request accommodation later if they didn't disclose their disability during hiring.
3. I don't need to share information about my medical condition to receive an accommodation. My personal medical information is private.

Truth

1. Applicants are **not** required to disclose their disability **during hiring** (unless accommodation is needed), or to tell an employer that accommodation will be needed for the job, if hired.
2. Employees may disclose a disability and request accommodation **at any time**.
3. When the disability or need for accommodation is **not known or obvious**, an employer may request reasonable medical information to provide an accommodation.

Disclosure Situation



Rhonda has depression and needs to ask for the accommodation of a flexible schedule while she adjusts to new medication. She is having difficulty sleeping and waking up and has been late three days in a row. She is wary of disclosing her medical condition but is concerned about disciplinary action

Disclosure Solution

Rhonda discloses and provides medical documentation. Since her work doesn't depend on or affect others, the employer found no hardship in flexing Rhonda's schedule as long as she works between the core business hours of 8:00 am and 6:00 pm.

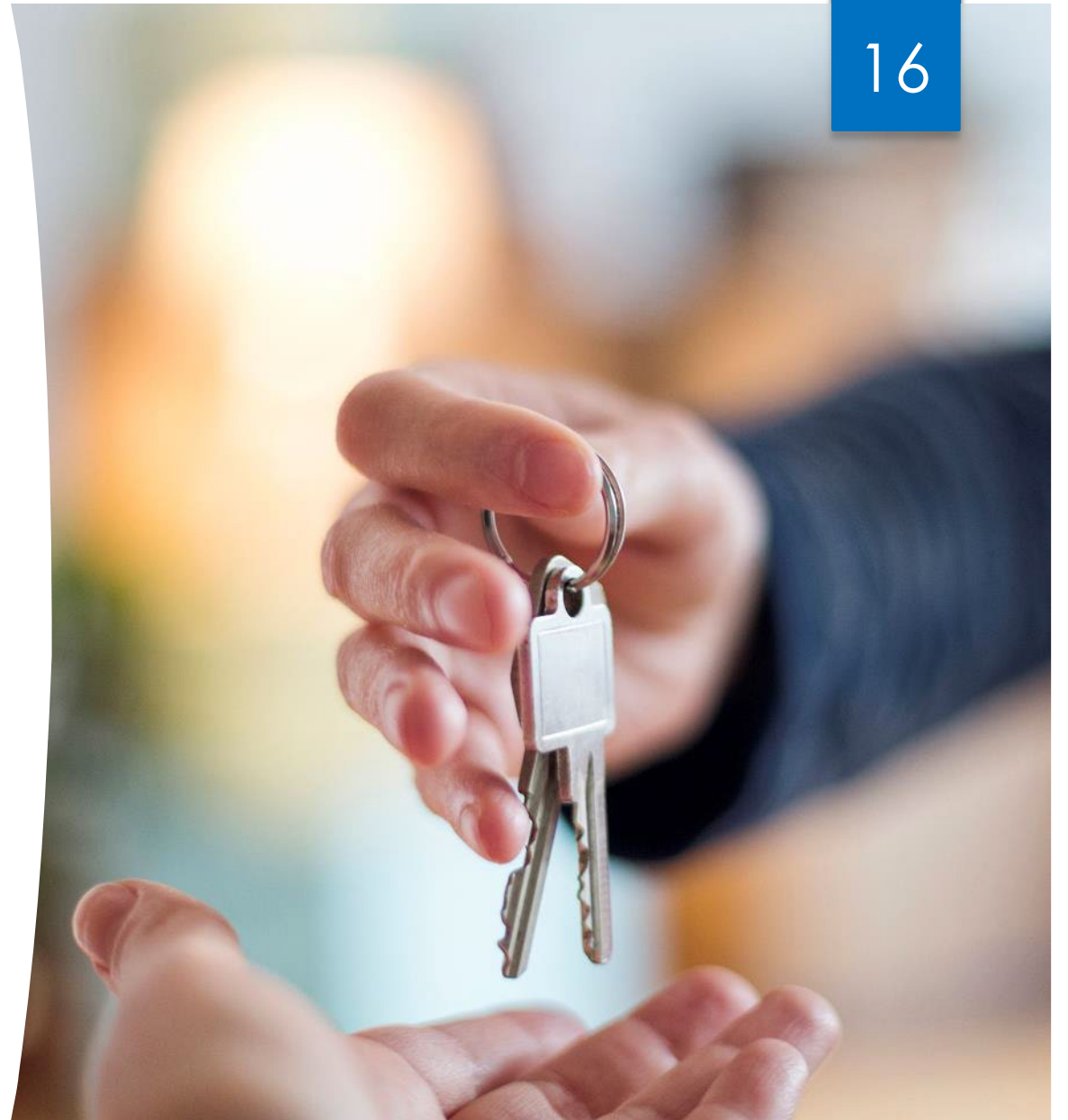


Disability Disclosure Tips & Requesting Accommodation



- ▶ Don't disclose *too soon* or *too late*
 - ▶ Disclose when accommodation is needed
 - ▶ Disclose before performance suffers or conduct issues occur
- ▶ Share that an adjustment is needed at work *for a reason related to a medical condition/disability*
- ▶ Request accommodation from someone who can act on the request (e.g., supervisor, human resources)
- ▶ Don't disclose to *everyone*

ADA Rights and Requesting Job Accommodations



ADA, Title I

- ▶ Federal civil rights statute that removes barriers to equal employment for qualified individuals with disabilities
- ▶ Prohibits disability-based discrimination in all employment practices
- ▶ Requires reasonable accommodation when employer knows about disability and need for accommodation
- ▶ Does not require accommodations that create undue hardship for the employer
- ▶ Enforced by the U.S. Equal Employment Opportunity Commission (EEOC)

ADA Covered Entity

- ▶ Job discrimination against *individuals with disabilities* is unlawful if practiced by an *ADA covered entity*:
 - ▶ Private employer of 15 or more employees
 - ▶ State and local government employer of 15 or more employees
 - ▶ Employment agency, labor organization, labor-management committee
- ▶ *Rehabilitation Act, Section 501, applies to executive agencies of the U.S. federal government (same non-discrimination and accommodation requirements as ADA)

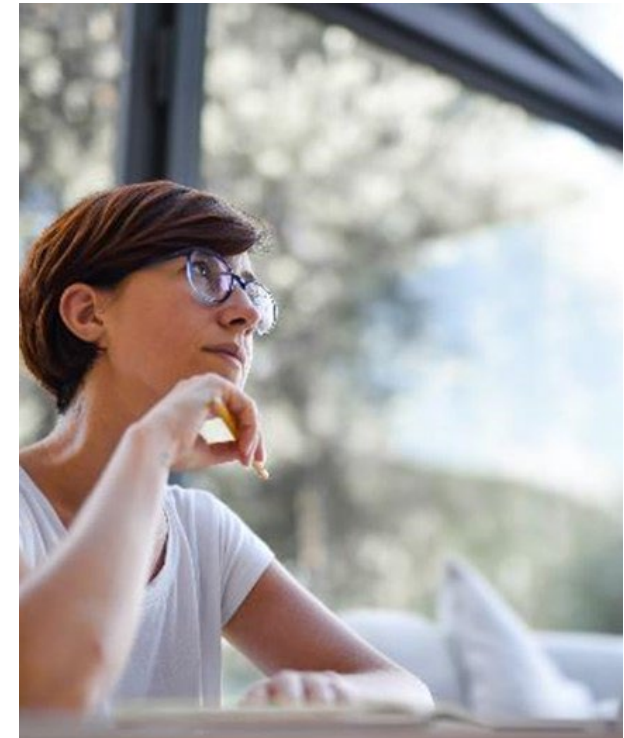
[Your Employment Rights as an Individual with a Disability](#)

[Employees' Practical Guide to Requesting and Negotiating Reasonable Accommodation Under the ADA](#)

Qualified Individual with a Disability

Applicant or employee who:

- ▶ Has, or has a history of having had, a physical or mental impairment that *substantially* limits/limited a *major life activity* (e.g., hearing, seeing, walking, lifting, breathing, performing manual tasks, learning, etc.)
- ▶ Satisfies the employer's requirements for the job (e.g., education, employment experience, skills, licenses)
- ▶ Can perform the *essential functions* of the job, with or without reasonable accommodation



Reasonable Accommodation

- ▶ An adjustment to a job or work environment that permits an applicant or employee with a disability to:
 - ▶ participate in the hiring process
 - ▶ perform the essential functions of a job, or
 - ▶ enjoy equal benefits and privileges of employment
- ▶ **Reasonable** means feasible or plausible—*possible* to provide without causing the employer undue hardship
- ▶ **Undue hardship** is an action requiring *significant* difficulty or expense—unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business

ADA Accommodation Request

Any request by an applicant or employee for an adjustment or change for a *reason related to a medical condition* is an ADA accommodation request.

- ▶ “I’m having difficulty concentrating because of the side effects of new medication.”
- ▶ “My wheelchair won’t fit under my desk.”
- ▶ Healthcare provider’s note states employee needs 3 months of leave for medical treatment
- ▶ “I need to go to counseling appointments once a week, so I need to leave early on those days.”



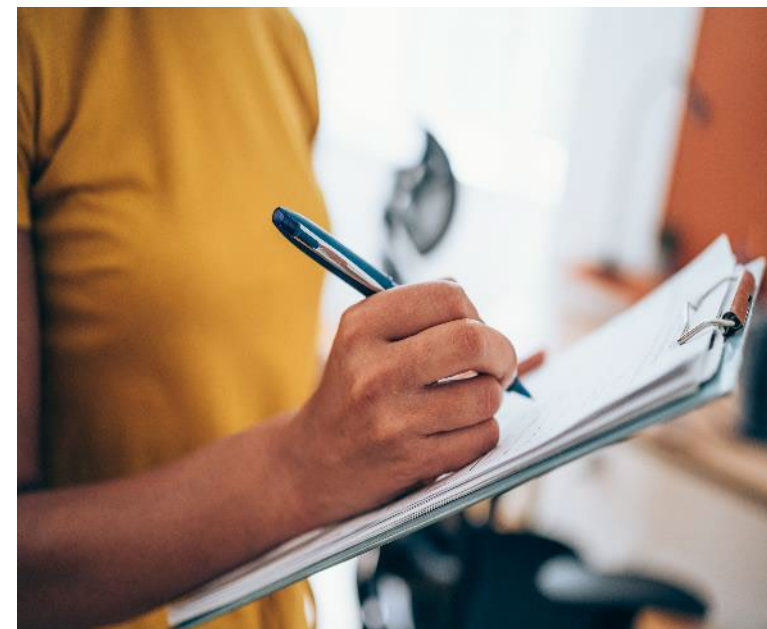
ADA Accommodation Request Facts

- ▶ May be made by either the applicant/employee or a family member, healthcare professional, or other representative acting on the individual's behalf
- ▶ May be made orally or in writing, and no particular words are required
- ▶ Need not be made at a certain time
 - ▶ E.g., may be made after hiring, even if not requested during application process
 - ▶ E.g., may be made after performance problems have arisen (but employer is not required to forgo or rescind any consequences for what has already occurred)

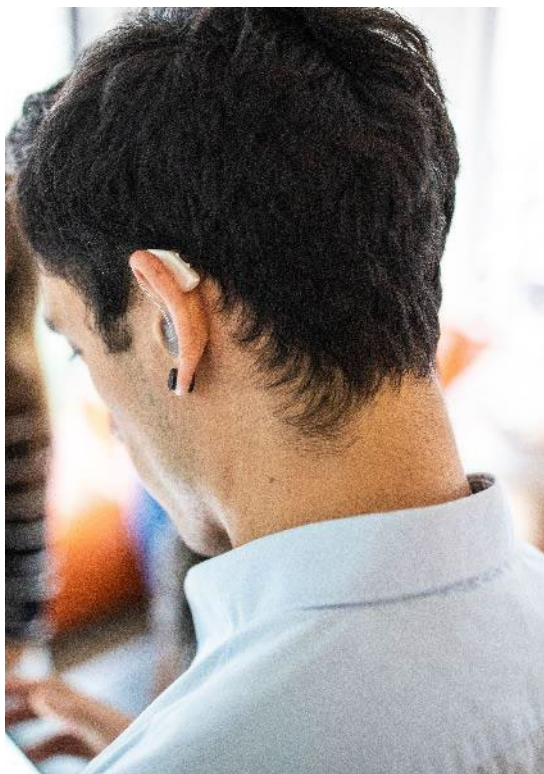
[Reasonable Accommodation and Undue Hardship Under the ADA](#) (EEOC)

Accommodations are Not One-Size-Fits-All

- ▶ Accommodations should be explored case-by-case
- ▶ No comprehensive list of ADA “reasonable” accommodations
- ▶ Employer decides what is reasonable and has the right to choose among effective accommodation solutions
- ▶ Preference of applicant/employee should be given primary consideration when possible



Not Required Under the ADA



- ▶ Accommodations that pose an undue hardship—*significant difficulty or expense*
- ▶ Providing *personal use items* needed in accomplishing daily activities both on and off the job (e.g., hearing aids, prosthetics, wheelchair, etc.)
- ▶ Removing *essential* functions, lowering production standards, or creating a new job, but may go beyond ADA compliance

[Reasonable Accommodation and Undue Hardship Under the ADA](#) (EEOC)

Accommodation Examples

- ▶ Making existing facilities accessible and useable
- ▶ Job restructuring
- ▶ Flexible or modified work schedules
- ▶ Modifying policies
- ▶ Acquiring or modifying equipment
- ▶ Telework
- ▶ Providing a qualified reader, interpreter, job coach
- ▶ Access for service or emotional support animal



Requesting a Job Accommodation

- ▶ Decide how to make your request (e.g., face-to-face, email, formal letter, etc.)
- ▶ Decide who to ask (e.g., supervisor, human resources)
- ▶ Explain why you need an accommodation and offer accommodation ideas
- ▶ Follow up on your request as needed
- ▶ If requested by the employer, provide necessary medical information

[Requesting and Negotiating a Reasonable Accommodation](#)

[How to Request an Accommodation: Accommodation Form Letter](#)

Sample Accommodation Request Letter

Sample Language for Accommodation Request Letters

Dear [Insert employer's name here]:

I have been having medical issues that have affected my mood, sleep schedule, concentration, and focus. I would like to request accommodations so that I might be able to perform my job effectively before my performance starts to suffer.

Workplace distractions interfere with my concentration and focus, so I would like to try noise cancelling headphones to minimize sound distractions. In addition, having a list of what I might need to do for the workday/week could also help me keep track of my work.

Please let me know if you need additional information or would like to discuss additional ideas. Would you please let me know in the next week? Thank you for considering my request.

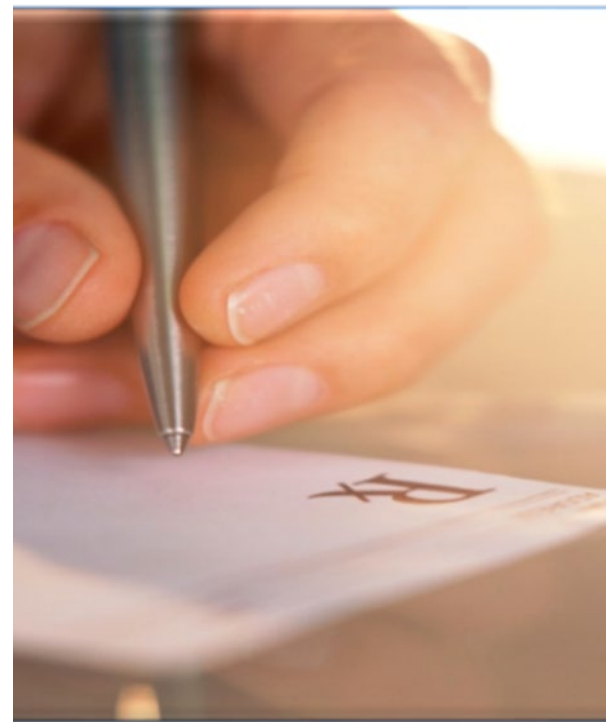


JAN's Sample Interactive Process

Reasonable Documentation

Documenting a Disability

- ▶ When the disability or need for accommodation is not obvious or already known, the employer is permitted to request supporting medical information from an appropriate professional
- ▶ How much? Reasonable information to allow the employer to determine “disability” and that the accommodation is needed



Appropriate Professional

ADA documentation comes from an appropriate professional:

- ▶ Medical Doctor
- ▶ Physician Assistant or Nurse
- ▶ Speech Therapist
- ▶ Licensed Mental Health Professional
- ▶ Psychiatrist or Psychologist
- ▶ Physical or Occupational Therapist
- ▶ Vocational Rehabilitation Professional
- ▶ Educational Professional

[Who Can Provide Medical Documentation for ADA Purposes?](#)

Medical Documentation Examples

- ▶ Because of Patient X's depression and associated concentration problems, she is having difficulty completing reports on time
- ▶ Because of Patient X's rotator cuff injury and associated limitations of lifting no more than 25 pounds, pushing/pulling no more than 50 pounds, and no overhead work, he is having difficulty moving some of the boxes in the warehouse
- ▶ Because of Patient X's progressive vision loss and associated blurred vision, they are having difficulty reading their computer screen

[Dealing with Improper Requests for Medical Documentation from an Employer](#)

Medical Information Example

Joe has bipolar disorder and has worked for his current employer for four years without incident. He is starting to have difficulties due to symptom flare-ups but is hesitant to request accommodations, knowing that he will have to disclose the nature of his disability. Joe decides to disclose to HR, asking specifically that his supervisor not be told the diagnosis.



Medical Information Solution



HR verifies an ADA disability from the medical documentation, files the information separately, then schedules an accommodation meeting. There is no need to disclose the diagnosis to the supervisor. Joe's limitations in concentration and focus will be discussed to explore effective accommodations.

Accommodation Process Tips For Employees

- ▶ Know your ADA rights and document your request
- ▶ Approach the employer with accommodation solutions
- ▶ Provide sufficient medical information in a timely manner
- ▶ Use available resources and work collaboratively to explore effective accommodation solutions
- ▶ Be open to trial accommodation solutions
- ▶ Inform the employer if/when an accommodation is not effective

When an Accommodation is Denied

- ▶ Ask for information about why it was denied
- ▶ Provide additional medical or other information if the information initially provided is considered *insufficient* by the employer
- ▶ Offer alternative accommodation solutions



When an Accommodation is Denied (2)



- ▶ Engage in internal appeal and/or complaint options, if available
- ▶ Contact state Protection and Advocacy (P&A) for advocacy/legal assistance
- ▶ Contact the Equal Employment Opportunity Commission (EEOC) and/or state Fair Employment Practices Agency (FEPA) to file a formal complaint

Resources: General ADA Employment Rights

- ▶ [Employees' Practical Guide to Requesting and Negotiating Reasonable Accommodation Under the ADA](#)
- ▶ [Your Employment Rights as an Individual with a Disability](#)
- ▶ [Disability-Related Inquiries and Medical Exams of Employees Under the ADA](#)
- ▶ [Preemployment Disability-Related Questions and Medical Examinations](#)
- ▶ [Reasonable Accommodation and Undue Hardship Under the ADA](#)
- ▶ [Job Applicants and the ADA](#)

Resources: Disclosure & Requesting Accommodations

- ▶ [Disability Disclosure Topics](#)
- ▶ [Disclosing a Disability Before an Accommodation is Needed](#)
- ▶ [FAQ: Basic ADA and Accommodation Process Questions](#)
- ▶ [How to Request an Accommodation: Accommodation Form Letter](#)
- ▶ [Sample Language for Accommodation Request Letters](#)
- ▶ [Requesting Accommodations for Employment Testing](#)
- ▶ [Practical Guidance for Medical Professionals: Providing Sufficient Medical Documentation in Support of a Patient's Accommodation Request](#)

Resources: Negotiating Accommodations at Work

- ▶ [Employee Accommodation Inquiry Letter](#)
What to do if an employer doesn't respond to an accommodation request
- ▶ [How to Inform an Employer That an Accommodation is Not Effective](#)
What to do if an employer offers an accommodation that doesn't work
- ▶ [Dealing with Improper Requests for Medical Documentation from an Employer](#)
What to do if you believe an employer has made an inappropriate medical inquiry
- ▶ [Leave as an Ineffective Accommodation](#)
What to do if an employer forces you out on leave after an accommodation request
- ▶ [Your Accommodation Request Was Denied. What Now?](#)
What to do when an accommodation request is denied

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Questions?

