Federal Exchange on Employment and Disability (FEED) Meeting
The Federal Government and Inclusive Workplaces
April 17, 2024
Today’s Agenda

Introduction (1:00-1:05 p.m.)
• Akinyemi Banjo, Senior Policy Advisor, Office of Disability Employment Policy (ODEP), U.S. Department of Labor (DOL)

Creating an Inclusive Workplace for People with Non-Apparent Disabilities, Including Mental Health (1:05-2:15 p.m.)
• Lisa Mathess, Principal Consultant and Americans with Disabilities Act (ADA) Specialist, Job Accommodation Network (JAN)

Research on Disability Employment Practices Across the Federal Government (2:15-2:25 p.m.)
• William “Bill” Erickson, Senior Research Specialist, Yang-Tan Institute on Employment and Disability, Cornell University

U.S. Office of Personnel Management (OPM) Updates and Resources (2:25-2:35 p.m.)
• Jennifer Croft, Diversity Program Manager, Office of Diversity, Equity, Inclusion, and Accessibility (ODEIA), OPM

FEED Community Peer Exchange: Disability-Inclusive Workplace Practices (2:35-2:50 p.m.)
• Akinyemi Banjo, Senior Policy Advisor, Office of Disability Employment Policy (ODEP), U.S. Department of Labor (DOL)

U.S. Equal Employment Opportunity Commission (EEOC) Updates and Closing Remarks (2:50-3:00 p.m.)
• Wendy Doernberg, Senior Attorney-Advisor, Federal Sector Programs, Office of Federal Operations, EEOC
Introduction

Akinyemi Banjo, Senior Policy Advisor
Office of Disability Employment Policy (ODEP), U.S. Department of Labor (DOL)
Creating an Inclusive Workplace for People with Non-Apparent Disabilities, Including Mental Health


**Lisa Mathess**, Principal Consultant and Americans with Disabilities Act (ADA) Specialist, Job Accommodation Network (JAN)
Our Panelists

Elyssa Santos-Abrams, Esq.
Attorney Advisor
Outreach, Training, and Engagement Division
Federal Sector Programs
Office of Federal Operations
U.S. Equal Employment Opportunity Commission

Lisa Mathess
Principal Consultant
Americans with Disabilities Act (ADA)
Specialist
Job Accommodation Network (JAN)
Reasonable Accommodations for Individuals with Non-Apparent Disabilities

Elyssa Santos-Abrams, Attorney Advisor
Outreach, Training, and Engagement Division
Federal Sector Programs
U.S. EEOC
The Rehabilitation Act

Protects **persons with disabilities** against discrimination

Requires **reasonable accommodation(s)** to persons with disabilities where needed

- Prohibits employers from making improper disability-related inquiries or requiring improper medical examinations;
- Requires that employers keep the medical information of all employees confidential;
- Requires that employers comply with anti-harassment standards; and
- Prohibits retaliation by employers
Who Does the Rehabilitation Act Cover?

Individuals who:

- Have a **physical or mental impairment** that substantially limits a major life activity
- Have a **record of** a substantially limiting impairment
- Are **regarded as** an individual with a disability
- Are **associated with** an individual with a disability

Reference: 29 C.F.R. §§ 1630.2
An agency is required to make a **reasonable accommodation** of a known mental or physical limitation of an individual with a disability who is **qualified** unless doing so would cause an undue hardship.

Polling Question

How familiar are you with your agency’s reasonable accommodation guidance?
RA Process Steps 1 and 2

Reasonable accommodation requested

Management consults with the individual to determine what accommodations would enable them to do the job
RA Process **Steps 3 and 4**

- Determine the essential functions of the employee’s job
- Request documentation of the disability, limitations to be accommodated, and need for accommodation

**RA Request**

1. Management consults with the individual
2. Assess the effectiveness of various accommodations
Select the accommodation that is most appropriate given the individual’s and agency’s needs.

Determine essential functions and request documentation if needed.

Assess the effectiveness.

Request promptly referred.

RA Request.

Complainant was terminated during her probationary period for, among other things, moving her work desk without permission and leaving her work desk without permission on two occasions. In her formal complaint, Complainant alleged that the Agency had denied her a reasonable accommodation and discriminated against her on the bases of disability (PTSD) and reprisal for protected EEO activity. On appeal, the EEOC found that the Agency failed to provide a reasonable accommodation. Specifically, the Agency failed to engage in the interactive process and did not provide any explanation for its refusal to grant Complainant’s accommodation request.
Common Types of Reasonable Accommodation

- Schedule change or a switch to part-time work
- Allowing the use of unpaid leave after accrued leave is exhausted
- A job coach
- Modifying a supervisory method
- Altering when and/or how a task is performed
- Permitting an employee to work from home or a remote location
- Making written materials accessible through alternative formats, readers, or other means
- Modifying a workplace policy
- Providing ASL interpretation, CART, or other means for communication
- Purchasing equipment or modifying existing equipment
- Reassignment to a vacant position as a last resort

Complainant claimed discrimination based on disability (Chronic Refractory Migraine and Asthma) when she was denied a reasonable accommodation. Previously, Complainant had an accommodation that allowed her to telework four days per week. When her office moved to a different facility that exacerbated her symptoms, she sought to telework full-time. The Agency refused, arguing that Complainant failed to provide medical documentation explaining why she needed the fifth day. On appeal, the EEOC found that the record clearly established that the accommodation was not effective and contrary to the Agency’s assertions, Complainant had provided medical documentation explaining her need to telework full-time. Management officials were unable to explain why allowing that fifth day was unreasonable or amounted to an undue hardship.
## Disability-Related Questions

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<thead>
<tr>
<th>Period</th>
<th>Rules</th>
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<tr>
<td><strong>Pre-Offer:</strong></td>
<td>General rule - None</td>
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<tr>
<td><strong>Post-Offer but Pre-Employment:</strong></td>
<td>If required of all entering employees in same job category</td>
</tr>
<tr>
<td><strong>During Employment:</strong></td>
<td>Permissible if job-related and consistent with business necessity</td>
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Complainant, an applicant for a police office position, filed an EEO complaint alleging discrimination on the basis of disability (diabetes) when the Agency rescinded his conditional offer of employment. On appeal, the EEOC concluded that Complainant was qualified for the position because all of Complainant’s treating physicians stated that his medical conditions were well controlled and would not impose any restrictions on his ability to work in the position. The EEOC acknowledged that in some situations, diabetes could render a person medically unqualified. However, in this case, the Contract Physician’s assessment of Complainant’s condition was based on unwarranted assumptions about Complainant’s abilities in violation of the Rehabilitation Act.
Supporting Documentation

If a disability and/or the need for accommodation are not known or obvious, an employer may obtain reasonable documentation that an employee has a disability and needs an accommodation.

Requested documentation must be **sufficient**, but the amount of documentation required must be **reasonable**.

- **Sufficient**: establishes the existence of an impairment and whether the impairment is substantially limiting and substantiates why the requested accommodation is needed.

- **Reasonable**: entitled to no more information than is necessary to determine employee has an ADA/501 disability and that the disability requires reasonable accommodation.
EEOC Decision: Notice of Proposed Removal


Complainant, a Letter Carrier, alleged that the Agency discriminated against him on the basis of disability (obsessive compulsive disorder) when he was issued a notice of proposed removal for unacceptable conduct. After a hearing, an AJ found that the Agency discriminated against Complainant as alleged. On appeal, the EEOC affirmed the AJ’s finding that Complainant established that the Agency’s reason was a pretext for discrimination because the Postmaster simply refused to believe Complainant’s statement that his duplicate scanning could be attributed to his disability, even after receiving confirmation from Complainant’s union representative that there was medical documentation of Complainant’s disorder on file.
Reassignment

- **Accommodation of last resort** – available when employee can no longer perform essential functions of original job because of disability unless the employer can show it would be an undue hardship.

- **Position must be vacant** – employer does not have to create a position or bump another employee to create a vacancy.

- **Equivalent** or as close as possible to original position

- Employer does not have to pay cost of relocation where it does not do so for other employees who transfer.
Undue Hardship

Reasonable accommodation to the known mental limitations of an individual with a disability who is qualified is required unless the employer can show undue hardship.

Decision Maker must consider:

- Nature of the accommodation
- Net cost of the accommodation
- Overall financial and other resources of the employer
- Impact of the accommodation on employer’s operation

Must be *significant* difficulty or expense.
Polling Question

Is an agency required to allow an employee to bring their service animal into the workplace?

The Commission found that the Agency unlawfully denied Complainant a reasonable accommodation when it refused her request to bring her medical alert dog to work. The Commission further found that the Agency did not offer Complainant an effective alternative accommodation when it suggested that Complainant take leave or use a personal monitoring device. It is not an effective accommodation to require an employee to take leave when another accommodation would enable the employee to continue working, and it is not the Agency's role to dictate what type of assistive or monitoring device an employee uses. The record showed that Agency representatives observed Complainant and her dog in the workplace, and nothing in the letter denying Complainant's request stated that having the dog in the workplace would have caused any difficulty or that the Agency would have incurred any costs.
Actions *Not* Required as Reasonable Accommodation

- Removing an essential function or hiring someone else to perform it
- Lowering performance or production standards
- Changing supervisors
- Creating a position as reassignment
- Excusing misconduct in violation of uniformly applied rules that are job-related and consistent with business necessity
- Providing “personal use items,” such as eyeglasses, wheelchairs, or prosthetic limbs
Resources

- EEOC Disability-Related Resources
- EEOC Disability-Related Resources, Mental Health Conditions: Resources for Job Seekers, Employees, and Employers
- EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the ADA
- Applying Performance and Conduct Standards to Employees with Disabilities
- Employer-Provided Leave and the ADA
- The Digest of Equal Employment Opportunity Law
Accommodations for Non-Apparent Disabilities, Including Mental Health

Lisa Mathess, SHRM-CP, Principal Consultant/ADA Specialist
About the Job Accommodation Network

• JAN was 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).

Happy 40th JANniversary! JAN is celebrating 40 years of providing expert and trusted guidance on workplace accommodations.
JAN is a Trusted Partner in the Accommodation Process

- JAN consulting staff are highly qualified, experienced, and serve as a member of a specialty team:
  - ADA
  - Cognitive/Neurological
  - Motor
  - Sensory
  - Self-Employment

- Practical guidance and technical assistance for employers, people with disabilities, and others on:
  - Accommodation process strategies
  - Job accommodation solutions
  - Title I of the ADA & related legislation
  - Self-employment & entrepreneurship options for people with disabilities
Non-Apparent Disabilities
Polling Question

Which of the following is considered a non-apparent disability?
Examples of Non-Apparent Disabilities

- HIV/AIDS
- Cancer
- Diabetes
- Heart conditions
- Epilepsy
- Sleep disorders
- Respiratory impairments
- Respiratory impairments
- Fibromyalgia
- Brain injuries
- Learning disabilities
- Multiple sclerosis
- Migraine headaches
- Gastrointestinal disorders
Examples of Non-Apparent Disabilities (2)

Mental health impairments:

• Addiction
• Anxiety disorders
• Bipolar disorder
• Major depression
• Obsessive-compulsive disorder (OCD)
• Panic disorder
• Post-traumatic stress disorder (PTSD)
Common Limitations

- Memory
- Concentration
- Fatigue
- Managing stress/emotions
- Breathing
- Sleeping
- Fine and gross motor function
- Temperature sensitivity

- Dietary needs
- Managing time
- Pain
- Photosensitivity
- Coworker interaction
- Suppressed immunity
- Panic
Common Misconceptions

- Non-apparent disabilities are not as severe as apparent disabilities.
- Non-apparent disabilities are difficult to accommodate.
- People with non-apparent disabilities do not need accommodations.
- Accommodations are expensive.
Kayce was born with a heart defect. Kayce was employed as an account manager for nine months. Due to high stress levels of the job, Kayce decided they needed to disclose their medical condition and request an accommodation.

After reviewing the medical documentation, the employer noted it was a lifelong condition and fired Kayce for not being truthful on the job application.

Is this a good approach?
<table>
<thead>
<tr>
<th>Myth</th>
<th>Truth</th>
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</thead>
<tbody>
<tr>
<td>Applicants should disclose their disability and need for accommodation during hiring.</td>
<td>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.</td>
</tr>
<tr>
<td>An employee can’t request accommodation later if they didn’t disclose their disability during hiring.</td>
<td>Employees may disclose a disability and request accommodation at any time.</td>
</tr>
<tr>
<td>I don’t need to share information about my medical condition to receive an accommodation. My personal medical information is private.</td>
<td>When the disability or need for accommodation is not known or obvious, an employer may request reasonable medical information to provide an accommodation.</td>
</tr>
</tbody>
</table>
Pre-Offer Disclosure — Solution

ADA
• Engage in the interactive process.
• Accommodate disability-related need absent hardship.

Best Practice
• Create a safe space for disability-disclosure and self-identification.
• Train management, human resources staff, etc., to recognize and respond to accommodation requests and to be solution-focused.
• Be flexible and creative when exploring accommodations.
Timing of Disclosure — Situation

Leena, an office employee who works on the first floor of the building, is unable to use the stairs due to PTSD from an assault that took place in a stairwell. She does not need to disclose her inability to use the stairs because she has not been required to use the upper floors.
Timing of Disclosure — Solution

Once the HR department moves to an upper floor, Leena may need to disclose that she has PTSD and is unable to use the stairs when the elevator is out of service. If the elevator is out of order when she is scheduled to meet with HR, the meeting could be rescheduled or moved to a location on the first floor.
An employee who has been having emotional outbursts at work asks to bring an emotional support animal to work.

The employer is not able to determine whether this will be an effective accommodation and can’t come up with alternatives, so stops there.

Is this a good approach?
Emotional Support Animal (ESA) — Solution

ADA
Accommodations must be effective in meeting the needs of the individual.

Best Practice
Consider a trial period when not certain.
An employee with bipolar disorder is allowed to bring her emotional support animal to work. She requests to modify her break schedule, so she can take the dog out for breaks. The employer denies the request because it’s for the dog, not the employee.

Is this a good approach?
Bipolar Disorder & ESA — Solution

ADA
Employees are responsible for caring for their service or emotional support animals, but employers may need to provide accommodations to enable them to do so.

Best Practice
During the interactive process, ask the employee if any accommodations are needed related to caring for the animal while at work.
A hospital HR director addresses an employee’s continued tardiness by terminating them. The employee is a registered nurse in the ICU and has accumulated numerous incidents after a final warning a week ago.
The nurse discloses that they have OCD and have difficulty getting out of the house in time to get to work by 7:00 a.m. Because the final warning was given the previous week and the employer saw no improvements, nor did the nurse disclose that they were having difficulty because of a disability, the hospital chose to continue with the termination.
A bus driver with Hashimoto’s Thyroiditis was performing well in his day-to-day work but tended to miss or be late to meetings required by his employer. When the employer approached him about the issue, he said the brain fog was causing him to forget about the meetings or to lose track of time when his daily routine was interrupted by a meeting.
The employer emailed reminders, but the employee was forgetting to check his email. The employer provided a smartwatch so that email notifications and meeting reminders could be received on the employee’s wrist.
An employee with hypertension who found it very difficult to talk to (sometimes irate) customers on the phone asked to be reassigned, as an accommodation, to an admin position that required only internal phone contacts. The employee was asked to interview before a panel of evaluators.

We require employees who are interested in applying for a different position within the company to interview. Are we required to forgo this practice for employees with disabilities who request reassignment? Is this fair?
After consulting with JAN, the supervisor better understood how reassignment works as a job accommodation and, with the help of the HR department, determined whether the employee was qualified for the admin position.
Interactive Process

A process for collaboratively identifying accommodation solutions

AskJAN.org A to Z Topic: Interactive Process
Questions?
JAN Social Media

- JAN on Facebook
- JAN on LinkedIn
- JAN on Twitter
- JAN on YouTube
Research on Disability Employment Practices Across the Federal Government

William “Bill” Erickson, Senior Research Specialist
Yang-Tan Institute on Employment and Disability, Cornell University
Long Term Goal

• Build an understanding of how federal employers are meeting the accommodation and accessibility needs of applicants, candidates, and employees with disabilities, and:
  ▪ Gather available information on the baseline state of accommodation and accessibility.
  ▪ Identify appropriate key informants within agencies.
  ▪ Inform the development of a maturity model.
  ▪ Inform new items for the Federal Employee Viewpoint Survey (FEVS).
Environmental Scans

• Environmental scans will summarize existing documentation and reports on policies, procedures, and practices for a sample of agencies.

• We will conduct parallel but separate accommodation and accessibility environmental scans to understand how agencies manage these disability-related processes together.
Environmental Scan: Research Questions

• What are the commonalities and differences among accommodation and accessibility procedures and policies of federal agencies?
• What accommodation practices within agencies have been particularly effective, and what areas could be improved?
• Who are the appropriate key informants in each agency who can aid in further data collection?
Data Sources for Environmental Scans

• EARN will review and summarize existing data across a sample of agencies:
  ▪ Agency reasonable accommodation policy and procedure documentation
  ▪ Agency accessibility policy and procedure documentation
  ▪ MD-715 Part J and AAP responses
  ▪ DEIA strategic plans
What would you like to learn about accommodation and accessibility procedures and practices in other federal agencies?

Please enter your ideas in the chat!
Next Steps

• EARN team will share environmental scan findings with FEED members and others.

• Based on the environmental scans conducted this year, EARN will plan further data collection to address knowledge gaps and engage with key informants to better understand effective implementation of accommodation and accessibility procedures.

• Are you interested in sharing initiatives or practices in your agency? What is working well or barriers? If so, please share your email in the chat.
U.S. Office of Personnel Management (OPM) Updates and Resources

Jennifer Croft, Diversity Program Manager
Office of Diversity, Equity, Inclusion, and Accessibility (ODEIA), Office of Personnel Management (OPM)
FEED Community Peer Exchange: Disability-Inclusive Workplace Practices

Akinyemi Banjo, Senior Policy Advisor
Office of Disability Employment Policy (ODEP), U.S. Department of Labor (DOL)
U.S. Equal Employment Opportunity Commission (EEOC) Updates and Closing Remarks

Wendy Doernberg, Senior Attorney-Advisor
Federal Sector Programs, Office of Federal Operations, EEOC
Mark Your Calendars

EARN Webinar
“Supporting the Mental Well-being of Gen Z Workers”
  o March 15, 2024, 2:00-3:30 p.m. ET

June FEED Meeting
  o June 12, 2024, 1:00-3:00 p.m. ET

September FEED Meeting
  o September 11, 2024, 1:00-3:00 p.m. ET
EARN Resources

**Toolkit:** [Workplace Mental Health Toolkit](AskEARN.org/page/mental-health-toolkit)

**Resource Guide:**
[Schedule A Excepted Service Hiring Authority for People with Disabilities](AskEARN.org/publication/schedule-a-resource-guide)

**Frequently Asked Questions:**
[FAQs About the Schedule A Excepted Service Hiring Authority for People with Disabilities](AskEARN.org/publication/schedule-a-faqs)

**Webinar Recordings and Learning Guides:**
[Strategies to Promote Culturally Competent Mental Health Awareness in Workplaces](AskEARN.org/event/culturally-competent-mental-health-awareness)

[Navigating Mental Health in Skilled Trade and Industrial Occupations](AskEARN.org/event/mental-health-in-skilled-trade-and-industrial-occupations)

[Supporting Employee Mental Health and Well-Being: The Importance of an Individualized Approach](AskEARN.org/event/supporting-employee-mental-health-and-wellbeing)
The Employer Assistance and Resource Network on Disability Inclusion (EARN) is a resource for employers seeking to recruit, hire, retain, and advance qualified employees with disabilities. This publication is fully funded by the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP) under cooperative agreement No. 23475OD000002-01-00 with Cornell University. The total five-year cost of this agreement amounts to $10,000,000. This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.
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