



Transcript of Session 4: 4th Thursday ADA Talks

ADA, Employment, and Long COVID

Recorded: April 27, 2023 (1 hour)

Presenter

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Slide 1: The ADA, Employment, and Long COVID

Welcome to ADA Talks. My name is Pam Williamson. I am the Assistant Director of the Southeast ADA Center, a member of the ADA National Network. I want to say thank you to Jason Jones for giving me the opportunity to share about this important topic, the ADA, Employment and Long COVID. Next slide, please.

Slide 2: ADA National Network

So, as I mentioned, we are part of the ADA national network. There are ten regional centers and an ADA Knowledge Translation Center that provide information informal guidance, training and resources for businesses, and service providers, and anyone who wants to learn more about the Americans with Disabilities Act. We do this to make it possible for everyone with a disability to be able to live a life of freedom and equality. Next slide, please.

Slide 3: Where are the ten regional ADA Centers?

As mentioned before, there are ten centers in the ADA National Network. Region 4, the Southeast ADA Center serves the states from Kentucky to Florida, from Mississippi to the Carolinas. Next slide, please.

Slide 4: Funding

We are funded by the Administration on Community Living and the National Institute on Disability, Independent Living, and Rehabilitation Research. And we are now in our second year of this current grant cycle. Next slide, please.

Slide 5: Disclaimer

As a disclaimer, so we have to let you know that these materials were developed under grant monies from the National Institute on Disability, Independent Living, and Rehabilitation Research. And they are located within the Center on Administration for Community Living under the Department of Health and Human Services. This information is provided as, solely as, informal guidance and we are not an enforcement agency. if you have any questions, you can contact 1-800-949-4232 or 404-541-9001.

Slide 6: ADA Reminders

So, let's dive in here and do a few ADA reminders. Next slide, please. Next slide.

Slide 7: Overview of the Americans with Disabilities Act (ADA)

Alright, we'll go through this pretty quick. So, if you have any questions, So, because we're, in order to be able to understand how long COVID applies within the ADA, we need to understand what the ADA is. This is a reminder

for most of you, I'm sure. That the ADA was passed in 1990. And in front of us we have a picture of President George H.W. Bush accompanied by four people who are watching him sign the bill into law. And what we have to remember is that the ADA is a civil rights law. Basically [the ADA] says it's illegal to discriminate against people with disabilities and employment, state and local government services, private businesses, telecommunications, and transportation. The four pillars of the ADA, or as I like to call them, the foundational pieces of the ADA, is equal opportunity, including employment opportunities, full participation in community life, independent living, and economic self-sufficiency for people with disabilities. Next slide, please.

Slide 8: Americans with Disabilities Act (ADAAA)

We also need to remember that in 2008, the Americans with Disabilities Amendments Act was passed because there had been many court decisions that were made that really had narrowed the definition of disability. And so, Congress wanted to restore the ADA's broad protections as they initially intended to do so. And they wanted to take the Supreme Court's view that disability should be determined by taking into consideration the effects of mitigating measures. And really take that back and say no. We're going to look at the disability as a whole. Make sure that when we have this definition of disability, that it's going to be as broad as possible So that as many people as possible can be covered under the law. It really didn't change the law as many people might have thought, truly enhanced it. Because, for example, people with epilepsy who were not having seizures all the time, were not covered with the information that had come out of the Supreme Court. Yeah. Now, people with epilepsy who are

not having seizures yet, they're controlled by medication, would be considered an individual under the law. Next slide, please.

Slide 9: Defining Disability

As we look at the definition of disability under the ADA, we need to remember it's a legal term, not a medical term. And there are three parts to the ADA definition of disability. First is a physical or mental impairment that substantially limits one or more major life activities. It's a person with a record of such an impairment, such as an individual who may have had cancer in the past, or someone who is regarded as having an impairment. Maybe someone who has a birthmark on his or her face, but they don't currently have a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with the person with a disability, a parent who has a child with a disability cannot be discriminated against under the ADA. Next slide, please.

Slide 10: ADA Title I – Employment

Now today we're going to be focusing on ADA Title one (I) and the employment provisions. And we have two images on the screen. On the left we have a woman sitting at a desk who's using a caption telephone. And then on the right we have a man using arm braces who is standing before a grief group of people who are sitting in chairs. Now the employment provisions under the ADA basically state that an employer may not discriminate against an individual with it, excuse me, may not discriminate against an employee on the basis of disability in any aspect of the employment relationship. This starts from the application process to interviewing, to promotion, testing, medical examinations, hiring,

termination, evaluation, compensation, disciplinary actions, leave training, and benefits. Next slide, please.

Slide 11: Qualified Individual with a Disability

However, an employer does have the right to hire the most qualified individual, and this means that the individual with the disability must meet the requisite skill, experience, education, or other job-related requirements of the position that the individual holds or desire with or without reasonable accommodation. So, they need to be able to perform the job with or without reasonable accommodation and be able to do the essential functions of the job. Title One does apply to job applicants that are part-time or full-time as well as seasonal workers. And we need to keep this in mind as we move forward. Next slide, please.

Slide 12: Reasonable Accommodations and Disability

Now, I have talked to a lot of employers over the years. And the one thing I have learned about all of them as they are not mind readers. So, we have to understand that an employer must provide reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability. So and so in order to be able to get a disability, a person must be willing to disclose, excuse me. In order to get a reasonable accommodation, a person must be willing to disclose his or her disability. Next slide, please.

Slide 13: When Should an Employee Disclose?

So that can mean that a person might need so I monitor that is bigger than ones that are normally put out there. If they have a visual impairment, it could be a person who is Deaf or hard of hearing may need an interpreter

in order to be able to participate in staff meetings. So, but there are also many other times that an employee might need to disclose. So, an employee with a psychiatric disability might need a reasonable accommodation to attend counseling appointments. So, these are things that folks need to think about when they're going to disclose. When they're looking at disclosing, they need to understand that it's a voluntary decision to disclose, but in order to get a reasonable accommodation, then they must disclose their disability. Next slide, please.

Slide 14: Why Interactive Process (slide 1 of 2)

That's why we want to talk about the interactive process. Because the interactive processes it what I like to call a conversation between the employer and the employee. The interactive process, it benefits both parties. And it really helps sides to understand what's being considered and why, and also to, to work together more effectively to make some good decisions about reasonable accommodation. Next slide, please.

Slide 15: Why Interactive Process (slide 2 of 2)

It also shows that the employer has made the effort to accommodate. And it also, an employee who is qualified, feels valued, and typically it improves performance and productivity. And the law does require the interactive process. Next slide, please.

Slide 16: COVID-19

So now we're going to talk about how this applies in the world of COVID-19 and long COVID. The picture on the screen shows a picture of COVID-19 cell. And so, we're going to look at this more deeply. So next slide please.

Slide 17: What is Long COVID?

So, what is long COVID? This is a question that is being bounced around amongst all of the experts at CDC, the World Health Organization, and many others. But the CDC has come up with a definition basically saying it's a wide range of new, returning, or ongoing health problems that are experienced after being infected with the virus that causes COVID-19. Unfortunately, there's no tests to diagnose post-COVID conditions right now. Although the symptoms do usually start at four weeks or later, and the symptoms can go away and then come back again. These can be a long, can be a variety of conditions and we're going to look at some of those now. Next slide, please.

Slide 18: Long COVID Symptoms (slide 1 of 3)

Long COVID symptoms] can be a tiredness or fatigue, the interferes with daily life, and the symptoms typically get worse after there's been any type of physical or mental effort. And this is also sometimes known as post exertional malaise. And then there's also difficulty with thinking or concentrating, sometimes called brain fog. There can be shortness of breath or difficulty breathing, headaches, or dizziness on standing. Next slide, please.

Slide 19: Long COVID Symptoms (slide 2 of 3)

Other symptoms include chest pain, cough, joint or muscle pain, depression or anxiety, a fever, the loss of taste or smell. Next slide, please.

Slide 20: Long COVID Symptoms (slide 3 of 3)

Sleep problems, a pins and needles feeling in your nervous system, diarrhea, stomach pain, rash, and changes in the menstrual cycle for females. And this list is not exhaustive. This is just a snapshot of some of the symptoms that have been seen with long COVID. And so there could be a wide variety of other health problems that start to appear that may or may not be part of the long COVID symptoms.

Slide 21: Who Gets Long COVID?

So, who gets long COVID? People who've experienced more severe COVID illness, especially those who are hospitalized or needed intensive care. People who have underlying health conditions such as a heart condition or diabetes, prior to having COVID. People who did not get the COVID vaccine may get long COVID. And then people who've experienced multi-system inflammatory syndrome or MIS during or after COVID. And we

have also found that because of the health inequities for people with racial or ethnic minority groups and people with disabilities, that unfortunately, those folks tend to get long COVID more than others. Next slide, please.

Slide 22: Number of People with Long COVID

Yeah, Last year we did a similar presentation on the ADA and long COVID. And at that time, we did not have the numbers to be able to show us how prevalent long COVID is in our society. In the United States alone, there are one in 13 adults, or 7.5% who are reporting having long COVID symptoms. This number is actually on the low side. Some of the reports are stating that it's as high as 20% of the American population who is having long COVID symptoms. Next slide, please.

Slide 23: Long COVID's Impact on the Workplace (slide 1 of 6)

The impact on the workplace is staggering. This was done through with a report to the Disability Management Employer Coalition. And it's like, the likelihood of missing work for medical reasons is 3.6 times higher for folks with long COVID than those with this baseline COVID-19. It's resulted in significant time and productivity loss for both patients and employers and exposes all of the parties to business and financial risks. Next slide, please.

Slide 24: Long COVID's Impact on the Workplace (slide 2 of 6)

Also, one in four adults or 25% of adults with long COVID have reported significant limitations in day-to-day activities. So, they've been, not been able to keep up with their regular activities prior to getting long COVID. And they've been, they've had significant limitations on their ability to work. Next slide, please.

Slide 25: Long COVID's Impact on the Workplace (slide 3 of 6)

And according to the U.S. Department of Health and Human Services, long COVID is keeping approximately 1 million people out of work. And it's actually contributing to what's being called a national labor shortage due to the situation. And a survey of the Chief Executive Officers or CEOs, they're saying that labor shortages are ranked as the greatest external threats. So globally at this point in time. And the Bureau of Labor Statistics is reporting that 11 million job openings on December 22, that cannot be filled. And due to the fact that so many people are out of work. Next slide, please.

Slide 26: Long COVID's Impact on the Workplace (slide 4 of 6)

There's also been a 203% increase in medical spending per member per month within the first six months following an initial COVID diagnosis. That's approximately \$9,000 per case increase in medical spending. This is a huge impact on the health care spending. And it's been shown that the folks who are having to do this, that the monies being spent are probably going to increase even more. Next slide, please.

Slide 27: Long COVID's Impact on the Workplace (slide 5 of 6)

There's also been a 421% increase in inpatient hospital spending for the first six months following the initial COVID diagnosis. And it's again the predicted increase of \$6,000 compared to similar patients without long COVID.

Slide 28: Long COVID's Impact on the Workplace (slide 6 of 6)

There's also been 126% increase in costly diagnostic laboratory and imaging procedures and 110% increase in outpatient visits for patients who are actually having to go to the doctors. And these are actual costs that are, that are coming across. One of the statements from this report says

that while there is much data still to consider, one thing is clear, whether we face a disability tsunami or a massive deterioration wave in which millions of people feel ill but not sick enough to stop working, employers will continue to experience a significant decline in the well-being of their workforce. Next slide, please.

Slide 29: Is Long COVID a Disability?

So, is long COVID a disability? Well, as we know, the answer to many ADA questions is -- It depends! And the other long-term effects of COVID are going to cause many people to develop disabilities where they had not had one in the past. And for some people with existing disabilities, long COVID is going to worsen the disability. So, we really have to look closely at the definition of disability. And if you'll remember, the definition of disability is the impact on a substantially limiting one or more major life activities. So, we've really got to look at how the person's long COVID is impacting their daily life. What major life activities are being affected? And we've also got to look at whether or not these symptoms are impacting the person temporarily or is it, or is it continuing as it goes along? So next slide, please.

Slide 30: COVID Caused Substantially Limited Major Life Activities

Here are some examples of how COVID can substantially limit major life activities. There's a person with long COVID who's had lung damage that causes shortness of breath, fatigue, and related effects. And they're substantially limited in their respiratory function among other major life activities. There may be a person with long COVID who has symptoms of intestinal pain and vomiting and nausea. And these have lingered for months. And so, they're substantially limited in the gastrointestinal function.

And then we also have a person with long COVID who experiences memory lapses and brain fog. So, they're substantially limited in in brain function, concentration and thinking. These are just very small examples of how COVID, long COVID can affect folks.

Slide 31: Rights of People with Long COVID (slide 1 of 2)

Now, people with long COVID who do have a disability and meet the definition of disability, are entitled to the same protections from discrimination as any other person with a disability under the ADA. Basically, they are entitled to full and equal opportunities to participate in and enjoy all aspects of employment, civic, and commercial life. Next slide, please.

Slide 32: Rights of People with Long COVID (slide 2 of 2)

But we also have to look at the retaliation piece because it has been the most frequently alleged form of discrimination and EEOC charges overall. And as the COVID-19 pandemic has created new situations, so there has been more retaliation. So the EEOC is looking closely at the ADA and how employers are treating individuals with long COVID because they want workers to be able to speak up for their rights without fear of retaliation and to create a healthy and safe work environment. Next slide, please.

Slide 33: Meet Courtney Garvin

I now want you to meet someone who has long COVID. On the picture you see a young lady in the background with the purple hat on and she's in a stair lift. Her name is Courtney Garvin. And in the front of the picture, you see her partner and he is with the wheelchair and there's a dining room set to his right. This is an article that was just posted in the LA Times last week. Courtney is 37 years old. At the age of 34 in 2020, she was a storyboard artist, a musician, and a graduate student. Then she got COVID. She has now, has long COVID with fatigue, migraines, and shortness of breath. She can only walk up to about 150 steps per day. She uses a wheelchair for longer distances. She's unable to work, and her partner is her full-time caregiver. Out-of-pocket, they have spent over \$62,000 in trying to meet her disability needs and paying for the wheelchair lift, and the co-payments for insurance. And she's no longer able to work due to the long COVID. And so, she's, she's always looking for solutions at this point to find out whether or not she will be able to get past long COVID, or if this will be something that will be with her for the rest of her life. Next slide, please.

Slide 34: Long COVID Accommodation Solutions

Now, we're going to discuss some of the long COVID accommodation solutions that might be available for persons in the employment arena. So next slide, please.

These are all from the Job Accommodation Network. I highly recommend them as a resource if you have any questions about various job accommodations.

Slide 35: Transitional, Modified, and Flexible Work Arrangements

But first of all, there may be the need for transitional, modified, or flexible work arrangements. And this can be anything from transitioning back from full-time work over a short period to modified or light duty work that's temporary or permanent depending on person's needs. So, it might be working at any time or anywhere as long as the business needs are met. It can include flexible scheduling, flex time, compressed week, or part-time work. It could be alternative scheduling such as shift worker staggered schedules, or hybrid work where you're working part-time from home, or part-time from the office or telework or remote work. Next slide, please.

Slide 36: Solutions to Address Difficulty Concentrating

Some additional accommodations to address difficulty concentrating or to reduce distractions in the work area. Providing spatial enclosures or a private office. Allowing the use of an environmental sound machine or headset to listen to music. Increasing natural lighting to provide full spectrum lighting for a person who might be having difficulty seeing. Reducing clutter in the employee's work environment. Planning for an uninterrupted work time. And then dividing a larger task into smaller tasks and steps. Next slide, please.

Slide 37: Solutions to Address Memory Deficits

For memory deficits or brain fog So we might look at written instructions or checklists for the employee. The use of a voice recorder to be able to get information and listen to it a later time. Having additional training time for new tasks or environmental cues for the location of items, things such as labels, color-coding or bulletin boards. Having refresher trainings for things

that are important to the business and helping folks to be able to remember those items. Making sure there are minutes or notes of meetings and trainings. Having a flowchart to indicate steps in a task, or verbal or pictorial cues. And we've already talked about color coding schemes to prioritize tasks, and then having notebooks planners or sticky notes to record information. Next slide please.

Slide 38: Solutions to Address Anxiety and Depression

Solutions to address anxiety and depression. You can identify and reduce the things that affect your emotional state. So, looking at having a flexible schedule, a modified break schedule, or contacting a support person when anxiety appears. The employer might be able to provide a rest area or private space when a person might need a short downtime. So, the employer might need to allow a person to have a support animal or service animal in the workspace, or a support person in the workspace. Next slide, please.

Slide 39: Solutions to Address Fatigue, Difficulty Standing, Sitting

Solutions to address fatigue, difficulty standing, or sitting. There could be periodic rest breaks. Again, a reduced or flexible work schedule. Time for sitting if a job requires a lot of standing. So maybe a low task chair or a stand-lean stool. Could also be breaks to change position or an adjustable workstation. Anti-fatigue matting. Or where it might work, job restructuring or telework. Next slide.

Slide 40: Solutions to Address Difficulty Lifting

Now solutions to address difficulty lifting. If it's a marginal function of the job, it could possibly be reallocated to another worker. So, there might need

to be assistance when moving objects or more than one person to help reduce the weight that's being carried. Organize items in a way that reduces the need to move items. Place frequently used tools and supplies at or near waist height. Reduce the weight by separating items into smaller groups and use a compact material handling device to lift, push or pull. And I love this because my sister always says that "use the power of the wheel." Then the possibility of using a lift cart to move or raise items.

Slide 41: Reassignment to a Vacant Position

Now, there could also possibly be the reassignment to a vacant position. And this can be a form of accommodation when there is no alternative effective solution in the original position. It can be a temporary or permanent reassignment.

And as a reminder, the ADA does not require an employer to create a position. However, they can explore equivalent vacant positions for which an individual is qualified. There may be other forms of accommodations such as telework equipment or a schedule modification to be explored. And this is an accommodation of last resort. Now, there are times when an employer may need to consider liability for an employee with a disability. Borrowing undue hardship if there is no other effective accommodation

Slide 42-43: Leave

So, if an employee is not eligible to take leave under the Family Medical Leave Act but has a qualifying disability under the ADA. Next slide.

Or when an employee is eligible for Family Medical Leave Act, but they need additional time beyond the 12-week allowance under the FMLA statute. Or when an employee has exhausted all paid and sick leave and

requires additional intermediate time off because of medical impairments.
Next slide.

Slide 44: Employer Rights When Accommodating Long Haulers (slide 1 of 2)

Now, there are, we've talked about a lot of accommodations. And one of the things that we've got to remember is that employers are not required to honor accommodation requests that create an undue hardship for the business are extensive, disruptive, too costly, or fundamentally change the essential functions of the job. Or are dangerous or illegal. Next slide, please.

Slide 45: Employer Rights When Accommodating Long Haulers (slide 2 of 2)

An employer also asks when they recall employees to the workplace do not have to continue telework automatically as an accommodation. This would need to be part of the interactive process and would need to be discussed amongst the employer and employee to determine if telework could be continued. An employer can also restore essential functions of a job if they were temporarily altered during the pandemic to do to mandatory telework. And they can also decide whether telework was affected during the pandemic. And as they look at the how relevant is to deciding employees' requests for telework after the workplace reopens. Next slide, please.

Slide 46: Vaccinations

We also need to talk about vaccinations. And the EEOC has provided guidance on this issue. And if an employer has a vaccination requirement and claims to be unable or to be vaccinated due to a disability. The

employer must show that the requirement is job related and consistent with business necessity. They also would have to show that the employee with a disability poses a direct threat if they remain unvaccinated. Now, direct threat is an individualized decision. And so there would need to be a discussion about whether or not this could be alleviated through reasonable accommodation. Next slide, please.

Slide 47: Confidentiality of Medical Information

As always, a COVID diagnosis, symptoms of COVID-19, the vaccination status or long COVID are all subject to ADA confidentiality. The supervisor or management may only share the name of someone with COVID-19 or long COVID with those who have a need to know. And that's typically a very small group. And they cannot disclose the name of the employee to the workforce, but just maybe able to say that someone has tested positive for COVID-19.

Slide 48: Tying It All Together

So, let's bring it all together. First of all, let's face it. Covid-19 is something of a magnitude that most of us have never faced in our lives. The fact that our whole world has been shifted and turned upside down for the last three years is, has really changed the way many of us think about work, how we do work, and where work is done. It's also to help, brought in new things that we need to consider such as long COVID and whether or not it's a disability and how to accommodate individuals with COVID, long COVID and the many symptoms that come with it. It's also reinforced the need for and really the value of disability disclosure and the interactive process and along with accommodations. And today we've been able to go through just a very small portion of all of this information. And it's with, however, I want

to encourage you to look at the resource sheet that's available and will be posted online.

Questions?

And so, and also want to make sure that we answer your questions to the best of our ability here today. Well Marsha, if you would please take us to the Contacts slide because I want folks to have this information. So, if after today's session you still have questions, please do contact us at 404-541-9001 or 1-800-949-4232. So, at this time, Marsha we can take questions if you can read those to us.

>> Marsha: Yes Pam, we do have one, is more of a comment, "That it's important for us to remember that post viral infection syndrome can be caused by a variety of infectious agents. Long COVID is notable because there were so many viral infections in a brief time. Legislation and research dollars that are focused only on long COVID inadvertently exclude persons disabled by other infections.

>> Pam: And that's an excellent point and thank you for bringing that up. There are millions of dollars being spent on research around long COVID. And there may be other viruses, as you mentioned, that have long-lasting effects. And that's why it's important for us to remember the definition of disability and look at that along with whether or not to disclose and if a reasonable accommodation is needed for the essential functions of the job.

>> Marsha: Thank you. Pam. We have another question. "Is there a location to get a full list of long COVID symptoms? Is feeling cold like in the upper arms now considered a symptom?"

>> **Pam:** The CDC has the best list that I have found of long COVID symptoms. And I encourage you to download the PowerPoint if you've not done so already. And go to the resources listed within the PowerPoint where we have the list of the various symptoms that might be caused.

>> **Marsha:** Great. Thank you, Pam. "And also, can a person who is blind or visually impaired request working from home, from an employer due to visual impairment combined with symptoms of long COVID that are exacerbated by an auto-immune disease.

>> **Pam:** As with any accommodation requests, a person can talk to their employer and disclose the disability and a requested accommodation. And then you would need to participate in the interactive process to determine if that is an accommodation that will be workable both for the employer and the employee, and also to explore other options that might be available. And please remember that the employer gets the final say on the accommodation as long as it is the effective.

>> **Marsha:** Great. And we have another comment question. "You suggest a support person as a possible accommodation. Is this like a job coach or someone else or something else?"

>> **Pam:** A support person could be a job coach. It might be that a person might need to call in someone as extra support if you're having a particularly rough day. In my case, I have, I have disclosed this is not related to long COVID, that I have disclosed my disability to a couple of close coworkers whom I will message if I'm having a rough day and say, "Okay, this is what's happening. Help keep me calm." And then, I consider them part of my accommodation strategy for my disability.

>> Marsha: All right. We've got two more questions that came in. "In the medical field, sometimes an employer, employee is unable to meet the production standards of their position. After providing this employee with several accommodations, the employee condition did not improve enough to allow her to her job Therefore the department is wanting to terminate. Is this, okay?"

>> Pam: Hey, remember a person must be qualified in order to be considered a qualified individual with a disability. And if you've tried multiple accommodations and the person is no longer qualified for the job. Termination is something that can be considered. I do encourage you to make sure you've gone through the interactive process. And that you have tried multiple accommodations to make sure that the person truly is not able to meet the essential functions of their job.

>> Marsha: And Pam, they could also contact their regional ADA Center and discuss that in more detail if you need more information or resources.

>> Pam: Yes.

>> Marsha: All calls and contacts are confidential. We're not an enforcement agency.

>> Pam: Thank you, Marsha. And that phone number that will route you to your center is 1-800-949-4232.

>> Marsha: How about this question, Pam? "How can an employer effectively address the possibility of long COVID as a disability during the interview process?"

>> Pam: I would encourage an employer to remember that during an interview. So, you need to treat it as you would any other disability. You

can't ask questions related to a disability during the interview process. So, you know, you're looking to make sure that a person is qualified to do the job. So, this this is no different than any other disability that a person might have when they're going through the application or interview process.

>> **Marsha:** And can an employer require masks in the workplace for all employees or certain select employees in certain positions?"

>> **Pam:** An employer can require masks throughout the organization if they deem that to be necessary. And so just keeping in mind that there may be people with disability who are unable to wear masks due to the disability. And you would need to go through the interactive process and older to discuss what options might be available for accommodation. And I would encourage you to look at our paper on Face Masks and the ADA that is on ADAcovid19.org. Did I get that right, Marsha?

>> **Marsha:** That is correct. Alright. Also, "if an employee has intermittent leave as an accommodation and it's been accommodated thus far. However, the leave is becoming more frequent and becoming a burden on other employees and workflow. Can anything be done since there does not seem to be an end to long COVID coming?"

>> **Pam:** Again. So, you need to be able to look at the essential functions of the job. If the person is still qualified to do the job, are there other accommodations that can be put in place to address that? And if not, if it's an undue burden, then you would need to be able to look at the resources of the company overall. And also look at the administrative burden as well as the financial burden to make any decision related to that person and whether or not they can continue in the job.

>> **Marsha:** That's the last question at this time, Pam. Thank you.

>> **Pam:** All right. So again, if you have any other questions, we do encourage you to contact your ADA Center at 1-800-949-4232. As we all know that long COVID is still going to be with us for quite a while. And we need to really be looking at this to determine how we're going to address it in our own workplaces.

>> **Marsha:** We have another question Pam that just came up.

>> **Pam:** Okay.

>> **Marsha:** "We've always been taught that reassignment is the accommodation of last resort. However, I was recently informed by our legal department against what I feel is right now we're no longer offering that as accommodation. Do you foresee this maybe as an issue?"

>> **Pam:** Reassignment is always going to be one of the things. Again, I have to reiterate. It will be the accommodation of last resort. Again, you have to evaluate each case individually and to look at the situation as to whether or not, you know, reassignment is going to be: One, a reasonable accommodation, emphasizing reasonable. Two, is it an undue burden? And three, whether or not, and make sure that the person is qualified for reassignment. Though - Just to say out and out now that a certain accommodation will not even be considered, really does kind of put you on some shaky ground since the EEOC states very clearly that the interactive process has to happen, and those conversations have to happen in order to make those decisions.

>> **Marsha:** "And we'll see if any follow-ups to that, but I think to just make a blanket statement without an individualized assessment might be a violation of the ADA.

>> **Pam:** Yes. And that's what I want to reiterate. Again, the interactive process. is there for a reason. And that's so that the employer and the employee can have those conversations. And to have and to make a blanket statement that at a certain accommodation won't even be considered, really does put the employer on shaky ground.

>> **Marsha:** And then we're getting lots of thanks, Pam, for your presentation and excellent resources and very informative. Another question is, "could you please distinguish between personally accommodating oneself with the help of co-workers and the employer's responsibility which would not task other employees with providing you the support?"

>> **Pam:** Yeah. In my case, it is a personal decision to have a support person that I call on with my personal disability. However, it may be that an employer needs to provide or needs to allow a job coach or employment support specialist or some other person to be able to assist the employee with a disability with their job. Now, keep in mind, that does not mean that they do the job for the person. They just may need to be there for assistance on a temporary basis or come in on intervals. Or the individual may need to be allowed to call that person when they need when they need the assistance.

>> **Marsha:** And let's see if there's any additional questions follow up. Here we go, Pam. "You have any guidance for an effective reassignment

program, for example, providing employee time to apply and complete any recommended timeframe?"

>> **Pam:** Can you reread that for me, please?

>> **Marsha:** Yes. Do you have any guidance for an effective reassignment program, for example, providing an employee time to apply and complete any recommended timeframes for that?

>> **Pam:** That's an excellent question and it's one that I would refer you to the Job Accommodation Network because they work closely with employers who have various programs as best practices, and I would encourage you to contact them. Their website is askjan.org and that would be that would be the best place to get information.

>> **Marsha:** Let's see if there's any other. They said, "Thank you very much. That clarified." Any additional questions. Again, just a few minutes before we wrap up here.

>> **Pam:** Well, Marsha, why don't we go ahead and move into the ending slide so that if folks who need the credit certificate of participation will have the information they need, and then we'll check for questions one more time.

>> **Marsha:** Sounds good, Pam. Alright, so thank you again very much for joining us. Thank you, Pam, for this wonderful informative presentation and resources. And thank you all for joining us today in our fourth Thursday ADA Talk Series session #4. Today's topic has been ADA, Employment and long COVID. For this webinar a certificate of participation is available. To receive a certificate, you must meet four requirements. You must be registered. You must listen to all of the webinar. Your attendance to this

webinar must be verified. And you must complete the online post-test eval and verification of attendance. And you'll want to note, excuse me. You want to note, take note of this important piece of information for the post-test. We have a bow-bow from Bandit. And you might want to note that information for the post-test. Pam, do you have any information to add about Bandit?

>> Pam: It's just that he's my 11 pounds spoiled, rotten miniature picture and he will play a part in the post-test. I can't give you any more information, better information than that.

>> Marsha: Perfect. So, the post-test link for this session will be emailed to all participants. At the conclusion of this session. I will also put it in the chat area as well. And in addition, this session has been recorded. The recording and a transcript will be available on Friday, May the 5th at disabilitywebinars.org. The materials for this session are currently available in two file formats, an accessible PDF, and a rich text format.

>> Pam: Alright, Marsha, thank you so much again, Jason, thank you for allowing us to speak on ADA fourth Thursday Talks. We're thrilled to be here with you today, And I don't see any additional questions at this time. So, let's we will wrap up today's session and I hope all of you have a great rest of the day. And we look for you to join us in our next session on this series. On Thursday, May the 25th. Topic is ADA, Higher Education and Section 504. Thank you, everyone. Again, this concludes our session.

Contact and Questions?

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