



Webinar Course Materials

# **Scent-sational Legal Risks:** How to Master Odor and Allergy ADA Accommodations

# Presented by: **Elisabeth Simpson** Teresa Goddard Job Accommodation Network (JAN)

Thursday, March 9, 2017 1:30 p.m. to 3:00 p.m. Eastern 12:30 p.m. to 2:00 p.m. Central 11:30 a.m. to 1:00 p.m. Mountain 10:30 a.m. to 12:00 p.m. Pacific

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Webinar Course Materials

# Scent-sational Legal Risks: How to Master Odor and Allergy ADA Accommodations

Presented by:

# Elisabeth Simpson Teresa Goddard

Job Accommodation Network (JAN)

March 9, 2017

# **Accommodating Employees with Allergies**



# **Objectives**

- Understand 3 common job-related issues for employees with allergies and fragrance sensitivity.
- Identify 3 accommodation approaches for employees with allergies.
- Identify 3 accommodation approaches for employees with fragrance sensitivity.
- Learn to use JAN's Searchable Online Accommodation Resource (SOAR) at <a href="http://AskJAN.org/soar/index.htm">http://AskJAN.org/soar/index.htm</a> to identify accommodation ideas
- Be able to apply information in JAN's Sample Interactive Process publication and other resources to sample accommodation request situations.



# Overview

- JAN Overview
- Workplace issues
- Interactive Process
- Situations and Solutions
- Searchable Online Accommodation Resource
- Additional Resources
- Questions



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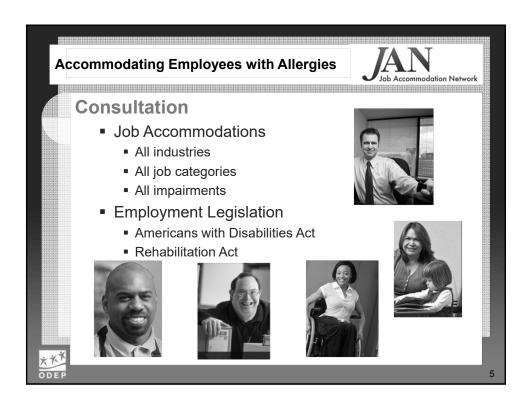
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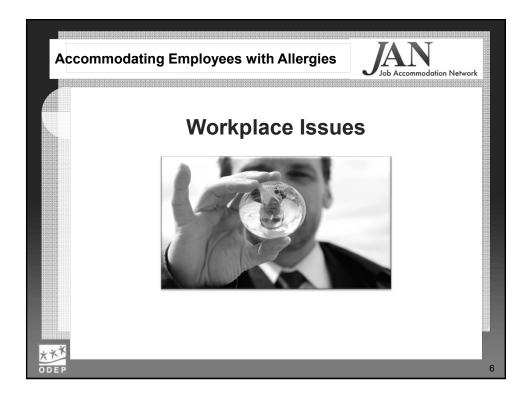
# **Accommodating Employees with Allergies**



- Established in 1983 as a national, free service.
- Specialize in job accommodations and the employment provisions of the ADA.
- Assist with the interactive process.
- Give targeted technical assistance.
- Provide comprehensive resources.
- Maintain confidentiality.
- Communicate via telephone, chat, text, TTY, relay, email, and social networks.
- Offer live and archived training.
- Work as your partner.









# What challenges do employees with allergies experience on the job?

- Interacting with customers, supervisors, and coworkers who wear products or eat foods that trigger allergy symptoms
- Needing access to workstations, common areas, paths of travel, and meeting rooms which contain allergens
- Reactions to PPE and cleaning products
- Difficulty completing outdoor tasks
- Not feeling safe during events where food is served
- Planning for reactions and managing medication side effects



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#### **Accommodating Employees with Allergies**



# What challenges do employers of people with allergies face?

- Conflicting accommodation needs
- Limited ability to impact air quality
- Limited availability of private workspaces
- Some job tasks need to be done on-site
- Security and productivity concerns about telework
- Limited ability to restrict foods and fragrances introduced to the workplace by clients and customers
- Lack of coworker cooperation with policies
- Responding to harassment of employee with allergies
- Safety concerns





# **Accommodations to prevent reactions**

# Remove the allergen

- Remove air fresheners
- Change workplace cleaning products
- Change employer provided soaps in restrooms
- Eliminate mold
- Choose safe caterers for work sponsored events



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# **Accommodating Employees with Allergies**



# Accommodations to prevent reaction

Remove the employee from the area where the allergens are located.

- Relocate workstation
- Trade outdoor tasks for indoor tasks during pollen season
- Restructure job to prevent exposure
- Consider telework/flexiplace on full- or part-time basis
  - Trial periods to assess feasibility
- Allow leave/telework during renovations
  - Leave is less effective than other accommodations
- Reassign last resort





# **Accommodations to prevent reactions**

Reduce the employee's exposure to the allergen.

- Modify the work schedule
- Allow for fresh air breaks
- Provide an air purification system designed specifically for the irritant in question (e.g., colognes versus smoke)
- Modify communication methods
- Consider implementing fragrance policy
- Consider implementing food ban



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# **Accommodating Employees with Allergies**



# **Allergies**

Responsibility of employer to provide reasonable accommodations when a co-worker is allergic to a service animal?

- Eliminate in-person contact
- Reduce amount of in-person contact





## **Example**

A newly hired federal employee requested to bring her service dog into the workplace. After starting, a coworker informed the employer of a severe allergy to animals. The employer moved one employee's workstation, provided an air purifier for the employee with the allergy, established separate routes of travel, maintained a regular cleaning schedule, and allowed the employees to communicate in alternative ways in place of face-to-face communication.



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#### **Accommodating Employees with Allergies**



# Accommodations to manage condition

- Plans of Actionhttp://AskJAN.org/media/epplan.doc
  - Plan ahead in case of a reaction at work
  - Voluntary
  - Develop with employee
- Time off for treatment/recovery
- Safe storage of medication and food
- Accommodations to manage symptoms and side effects
  - Modified schedule
  - Ergonomic management of fatigue
  - Accommodations for pain/difficulty concentrating





# Accommodation Ideas — Fragrance/Chemical

- Maintain good indoor air quality
- Discontinue the use of fragranced products
- Use only unscented cleaning products
- Provide scent-free meeting rooms and restrooms
- Modify workstation location
- Modify the work schedule
- Allow for fresh air breaks
- Provide an air purification system designed specifically for the irritant in question (e.g., colognes versus smoke)
- Modify communication methods
- Modify or create a fragrance-free workplace policy
- Telework

Source http://AskJAN.org/media/fragrance.html

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#### **Accommodating Employees with Allergies**



# Accommodation Ideas — Restricting Foods

Note: While implementing policies restricting certain foods is not fail-safe, it may help to reduce exposure.

- Post signs at entrances to the building and in hallways, restrooms, waiting rooms, classrooms, and cafeterias alerting people that certain foods are restricted due to a severe food allergy.
- Send memos to employees mentioning that if a person has eaten the offending food to let others know so the proper precautions may be taken. Some allergic reactions have occurred when a person has contact with someone who has eaten an offending food.
- Send occasional memos encouraging compliance with the policy.
- Enforce the policy with consequences for violations.

Source http://AskJAN.org/media/eaps/employmentfoodEAP.doc





# What is a "Reasonable Accommodation"?

A reasonable accommodation is any change in the work environment or in the way things are usually done that results in equal employment opportunity for an individual with a disability.

Examples of reasonable accommodation include making existing facilities accessible, job restructuring, modifying work schedules, reassignment, acquiring or modifying equipment or devices, adjusting or modifying policies, and providing qualified readers or interpreters (EEOC, 1992).

Equal Employment Opportunity Commission. (1992). A technical assistance manual on the employment provisions (title I) of the Americans with Disabilities Act. Retrieved December 8, 2013, from <a href="http://AskJAN.org/links/ADAtam1.html">http://AskJAN.org/links/ADAtam1.html</a>

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#### **Accommodating Employees with Allergies**



# **Interactive Process**

Practical Solutions • Workplace Success

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# Why have a process?

- Consistency
- Successful Accommodations
- Good Faith Effort

# **ADA Basics: Interactive Process**

- Recommended
- Shows Good Faith Effort



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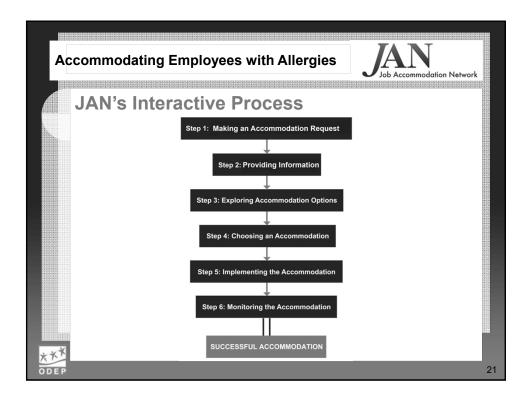
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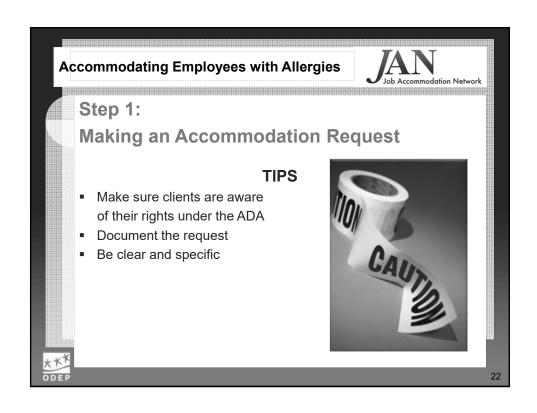


# Who is assisting the individual?

- Doctors
- Speech-Language Pathologists
- Assistive Technology Professionals
- Social Workers
- Rehabilitation Counselors
- Mental Health Counselors
- Occupational Therapists
- Physical Therapists
- Other









An employee has been out of work for six months following a reaction to materials used in remodeling. The employee's doctor sends the employer a letter stating that the employee is released to return to work but with certain work restrictions.

Did we make an accommodation request?



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# **Accommodating Employees with Allergies**



Did we make an accommodation request?

#### Yes.

- Workplace accommodations are needed
- Because of a medical condition



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# Step 2:

# **Providing Information**

#### **TIPS**

- Describe the limitation and problem
- Get information from the individual when possible
- Use ADA language



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# **Accommodating Employees with Allergies**





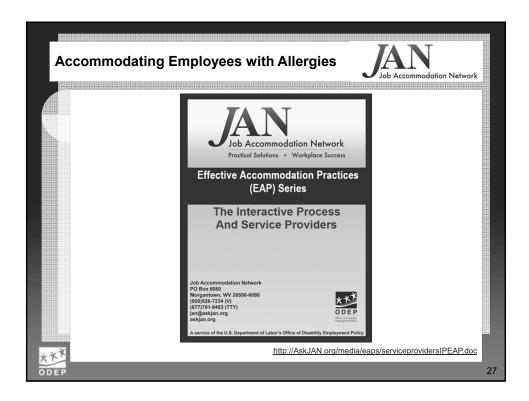
PRACTICAL GUIDANCE FOR MEDICAL PROFESSIONALS: HELPING PATIENTS WRITE EFFECTIVE ACCOMMODATION REQUEST LETTERS

Job Accommodation Network PO Box 6080 Morgantown, WV 26506-6080 (800)526-7234 (V) (877)781-9403 (TTY) jan@askjan.org

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Employment Policy

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ervice of the U.S. Department of Labor's Office of Disability Employment Po





In response to a poor performance evaluation, a teacher provided a doctor's note claiming her allergies are contributing to her performance problems and says she may benefit from an accommodation.

Did we provide all the information?



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# Accommodating Employees with Allergies Did we provide all the information? No. Did not provide limitations Did not provide problem





A social worker with an allergy to cigarette smoke requested to be excused from meeting with clients who smoke.

How can we figure out what else might work?



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# **Accommodating Employees with Allergies**



How can we figure out what else might work?

# Call JAN!

JAN Consultants can be reached M-F 9am-6pm ET by

- Phone (800) 526-7234 (voice); (877) 781-9403 (TTY)
- Email jan@AskJAN.org
- Skype Janconsultants
- Text (304) 216-8189
- Chat available online at <a href="http://AskJAN.org">http://AskJAN.org</a>





#### What if JAN isn't available?

# SOAR: Process of Identifying Accommodations

# Select the Impairment

 Back Condition, Hearing Impairment, Learning Disabilities, Mental Health Impairments

#### Select the Limitation

 Gross or Fine Motor, Fatigue, ADL, Cognitive Abilities, Low Vision/No Vision, Deaf or Hard of Hearing

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# **Accommodating Employees with Allergies**



# Select the Job Function

Standing, Organization, Lifting, Use of Equipment

# Choose the Accommodation

Product and Vendor lists, General Information, and Ideas

http://AskJAN.org/soar/





# Step 4:

# **Choosing an Accommodation**

## **TIPS**

- Explain decisionmaking process
- Justify preferences



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# **Accommodating Employees with Allergies**



A customer service representative could not tolerate personal fragrances worn by coworkers. No private workspace was available. His employer was considering putting up cubicle walls and an air purifier in his work area. His job could be done from home, but the employer was concerned about isolating the employee.

How can we help the employer decide which accommodation to choose?



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# How can the employer decide which accommodation to choose?

# Talk with the employee!

- Employee preferred to work at home so not forced isolation
- Employee was more concerned about the cubicle/air purifier drawing attention
- Employee expressed his preference and concerns to employer

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# **Accommodating Employees with Allergies**



# Step 5:

# Implementing the Accommodation

#### **TIPS**

- Offer assistance during the implementation of the accommodation
- Make sure to involve the individual throughout the implementation of the accommodation



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A secretary with a voice disorder had difficulty speaking for on the phone long periods of time during allergy flareups. Her employer purchased her a text-to-speech communication device with phone connectivity.

How can service providers help with implementation?



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# **Accommodating Employees with Allergies**



How can service providers help with implementation?

- May need customized equipment to meet individual preferences
- Employee may need instruction in use
- Will need integrated with computer or telephone use



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# Step 6:

# **Monitoring the Accommodation**

## **TIPS**

- Check on effectiveness
- Leave the individual in good hands
- Encourage ongoing communication



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# **Accommodating Employees with Allergies**



A park worker with fragrance sensitivity related to perfumes and colognes had been accommodated through an informal fragrance policy and cooperation by coworkers.

Recently the employer purchased fragranced air fresheners for all restrooms in the worker's area, including those not open to the public. She started bringing surgical masks from home to wear into the restrooms, but was still having symptoms whenever she entered a restroom.

After contacting the vendor of the air fresheners on her own, she learned that they make a fragrance-free option.

Could the employer have avoided this problem?





Could the employer have avoided this problem?

# YES!

When purchasing new products and equipment:

- Accessibility issues may need addressed
- Employees may need to communicate accommodation modification needs



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# **Accommodating Employees with Allergies**



# **Situations & Solutions**



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## **Example**

A nurse at a hospital had experienced anaphylaxis when exposed to chlorine fumes even at low concentrations. The hospital had already made a number of accommodations including the following: providing safe paths of travel from the parking lot to the employee's immediate work area and from her work area to the cafeteria, alternative cleaning products at her work location, developing an emergency plan of action, removing the function of patient transport, providing a parking space on the same level as her work area to avoid elevators since her most recent reaction took place when she was exposed to air coming from an elevator door that opened in front of her, and attempts to reduce and eliminate chlorine in the cafeteria area, a challenge in an area open to the public.



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#### **Accommodating Employees with Allergies**



#### Accommodation

Working together, the nurse and hospital have been able to develop paths of travel that allow her to avoid elevators. The employer and employee have explored use of face masks and respirators, but, after consultation with the employee's medical team, it was determined that neither option would reduce chlorine to an acceptable level.





# **Cost** Not reported

**Benefit** Too soon to tell. The employer is still working on finding a way for the employee to access the cafeteria



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# **Accommodating Employees with Allergies**



#### **Example**

A federal employer contacted JAN about an employee who experienced extreme allergies when working in the building. Previously, the employer has cleaned the building, including carpets, and provided an air cleaner. When she continued to have symptoms, they granted temporary telework while the accommodation was reviewed. The employee's doctor gave approval for the employee to return to the building, but when she attempted to do so she became ill again. She went out on leave and then requested reassignment and an "allergen-free" environment.

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#### **Accommodation**

The employer reported that they provided a higher-level work space. (They did not clarify the meaning of the word "higher.")



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# **Accommodating Employees with Allergies**



**Cost** Not reported

Benefit An accommodation was made

#### WHO CHOOSES AN ACCOMMODATION?

Ultimately, the employer has the role and responsibility of choosing the reasonable accommodation, so long as it is effective for the employee and does not pose an undue hardship on the employer. For additional information on reasonable accommodation and the issue of undue hardship, see EEOC's Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, at:

http://www.eeoc.gov/policy/docs/accommodation.html





## **Example**

A worker responsible for licensing childcare settings for a local government had an office in a very old building. She said that the air in the building had irritants that triggered allergy symptoms, including a change in her voice. This and other symptoms flared up during forest fires, volcanic ash plumes, and other times when outdoor pollution was high. She was considering requesting telework or work in a different building and needed information on how to request accommodation and the definition of disability.

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# **Accommodating Employees with Allergies**

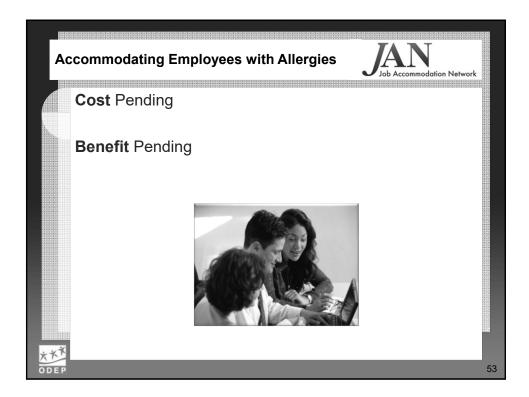


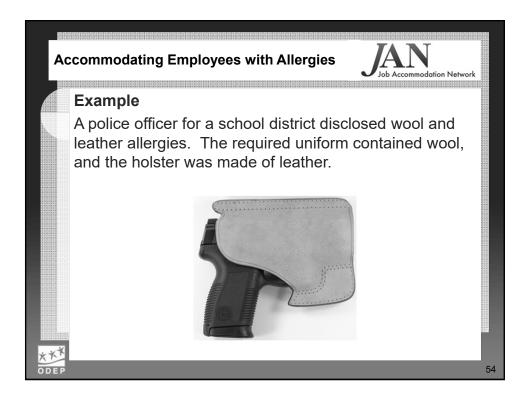
#### Accommodation

The pending accommodation solutions include buying a product or piece of equipment, changes to her work schedule, working from home or telework, and a private office for on-site work.



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# **Accommodation**

The employee found alternatives to wear and made an accommodation request, but no accommodation was made. The employer thought that the employee should pay and that it wasn't the employer's responsibility.



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# Accommodating Employees with Allergies



Cost N/A

Benefit N/A



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## **Example**

An employee at a junior college was experiencing symptoms due to mold/mildew allergy and chronic fatigue syndrome. The employee was told that testing had shown mold in the building but that it was at safe/legal limits. The employee felt that the air quality in the building had become poor. She contacted JAN for information on the ADA and her rights.



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# **Accommodating Employees with Allergies**



#### **Accommodation**

The college agreed to allow the employee to change workspaces.



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Cost None reported

**Benefit** Too soon to tell. Accommodation pending at time of follow-up



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# **Accommodating Employees with Allergies**



# **Example**

A local government employer contacted JAN following a request from an engineer with asthma/sinusitis/allergic rhinitis who had asked for a "sealed space" and had also applied for FMLA. The employer was not able to provide this as they were temporarily renting a space while the office's permanent space was undergoing renovation. According to the employer, all employees "must be in one cube." The employer wanted the employee to stop smoking in the hopes that this would improve his condition.

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# **Accommodation**

The employer provided a modified work schedule using flex time. The employer was not able to grant the employee's request for his own space. Following consultation with JAN, the employer did not attempt to get the employee to stop smoking but instead focused on what accommodations they could and could not offer.



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#### **Accommodating Employees with Allergies**



#### **Cost** Not reported

**Benefit** The company benefited by keeping an employee happy. As the employer stated, "he knows his job so well."

# CAN AN EMPLOYER COMPEL AN EMPLOYEE TO SEEK MEDICAL TREATMENT?

An employer cannot compel an employee to treat or mitigate an impairment (for example, to stop smoking) or to purchase personal need items to mitigate a disabling condition. See "Employer's Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act (ADA)," at http://AskJAN.org/Erguide/Three.htm for more information.





## **Example**

A supply technician in the federal government had been working in a warehouse for about 10 years. She developed allergies to dust and mold and could no longer work in the warehouse. She asked to give her warehouse duties to another employee, leaving her to do office tasks.

The employer countered that this would require removing essential functions of her job. The employer also noted that there was no other available employee who could take on the duties in the warehouse.



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# **Accommodating Employees with Allergies**



# **Accommodation**

The employee was assigned to a new position.



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Cost \$0

Benefit An accommodation was made.



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# **Accommodating Employees with Allergies**



# **Example**

A surgical technologist experienced hot, itchy, and painful rashes when exposed to gloves and surgical gowns. The rashes became so severe that they sometimes caused bleeding. The employee had missed work due to the rashes and was concerned about running out of leave. A representative of the employer had even suggested that she might consider finding another line of work.

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#### Accommodation

Following a formal accommodation request, the employer ordered a different brand of neoprene glove that does not have the accelerators found in other non-latex products.

According to the employee, the treating dermatologist believes accelerators to be the main cause of the allergy.



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# **Accommodating Employees with Allergies**



# Cost Not reported

**Benefit** Too soon to tell. This is the third brand of glove that the employee has tried.



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## **Example**

A clerical employee at a college had a history of cancer and a suppressed immune system as a result of her treatment. She was undergoing allergy treatments to improve her immunity and requested to modify her work schedule so she could get allergy shots once a week. She has asked to leave work one hour early one day each week. The employee's supervisor is unwilling to implement her request, claiming that he may need her in that one hour. The supervisor wants the employee to get shots in the morning instead. However, this would require her to be out for a longer period of time than is necessary (3 hours). The employer called for information on the ADA and schedule modifications.

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#### **Accommodating Employees with Allergies**



#### Accommodation

Following a meeting involving the college's ADA/EEO department's ADA coordinators, the employer made the decision to accommodate. They provided a modified work schedule allowing the employee to leave work to receive treatment. We do not know the exact schedule provided. The accommodation was reported to be extremely effective "because it allows her to receive treatment in order to live."





#### Cost \$0

**Benefit** Direct benefits include doing the right thing for the employee, it helps the morale of other employees, and she can be there more for the professor she works for. Other direct benefits include retaining a qualified employee, no new employee training, saved workers' comp, productivity, and attendance. The monetary value of the direct benefits is more than \$100 but less than \$500. Indirect benefits – productivity, attendance, company morale, workplace safety, profitability, coworkers' interaction, customers' interaction. The monetary estimate of the indirect benefits is \$6,480.



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# **Accommodating Employees with Allergies**



#### Example

A social service worker with allergies and asthma had difficulty meeting with clients in their homes, especially clients who smoked.



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#### **Accommodation**

The employee was allowed to meet some of her clients in a neutral place without smoke.



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# **Accommodating Employees with Allergies**



Cost: \$0

Benefit: Kept an experienced employee.



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#### **Example**

An employee with severe peanut and tree nut allergies asked her employer to restrict these foods from her workplace.



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# **Accommodating Employees with Allergies**

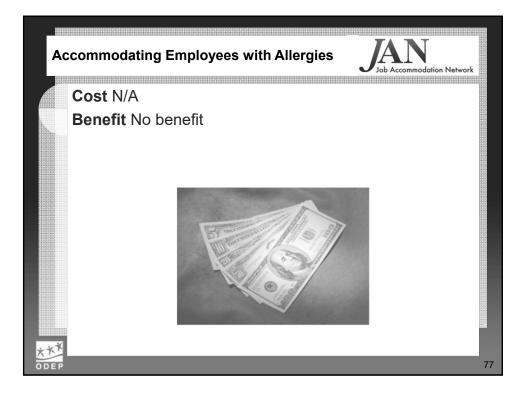


#### **Accommodation**

The employer agreed to accommodate but then left it up to her to put up signs, send memos, and talk to people who have products rather than doing this at management level.

Her co-workers did not follow the signs consistently. As a result, she had an anaphylactic reaction at work. She stated that the employer then wrote her up for having the reaction.

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# **Example**

An educational career counselor with asthma and allergies typically did her charting in an office in the basement of one of the buildings where she worked. Something about that particular building exacerbated her breathing problems and gave her headaches.

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#### Accommodation

She submitted an RA request for an air purifier. However, the employer initially declined to purchase it because they thought it was a personal use item.

After further discussion, the counselor was given permission to buy a desk air purifier, and the employer reimbursed her.

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# **Accommodating Employees with Allergies**



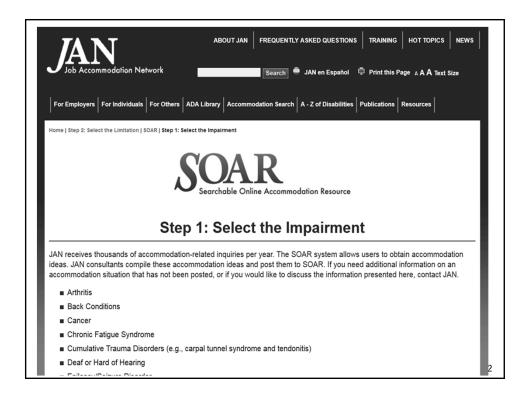
### Cost Unknown

**Benefit** According to the employee, the accommodation is just fine for her office, but does not address other areas at the work site.

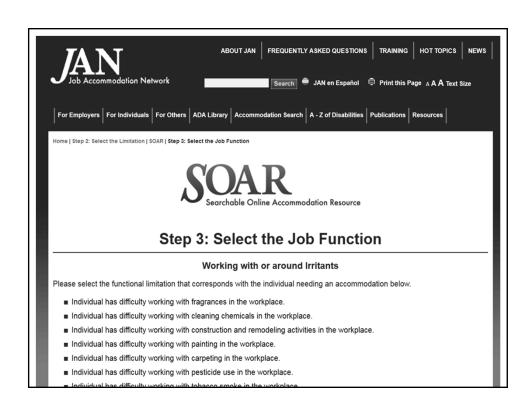


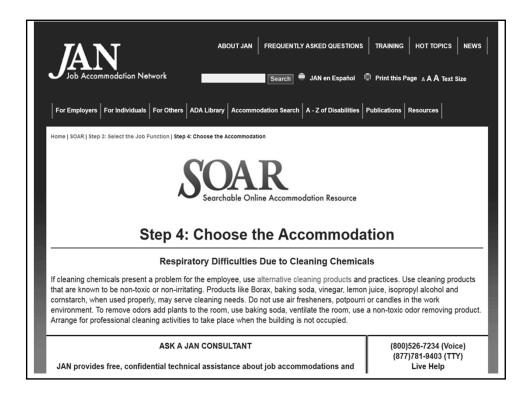
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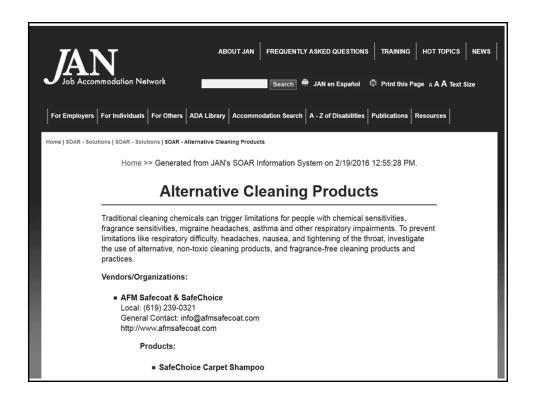


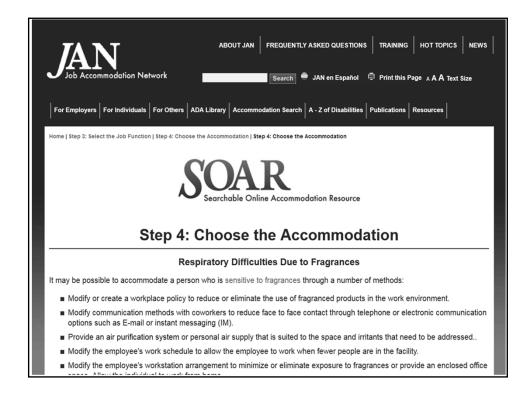


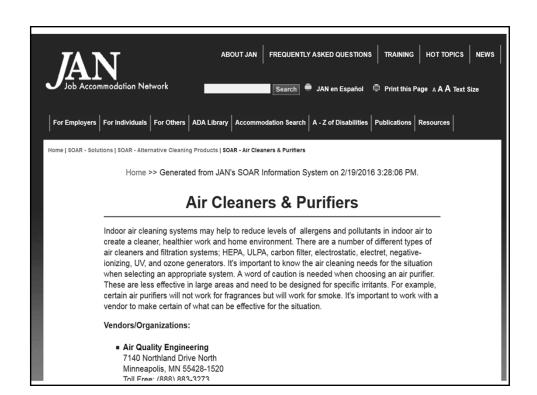














# **Finding Accommodation Solutions**

- Ask the person for his/her ideas
- Call JAN
- Check out the JAN Website
  - A-Z of Disabilities
  - SOAR
- Contact Local and State Resources
  - State Vocational Rehabilitation Agencies
  - State AT Projects
- For Federal Employers
  - CAP

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# Contact (800)526-7234 (V) & (877)781-9403 (TTY) AskJAN.org & jan@askjan.org AskJAN.org & jan@askjan.org Typy | Typy





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# Elisabeth Simpson

Elisabeth Simpson joined the JAN staff in March 2010 and currently serves as the Lead Consultant for the Motor Team. As a Consultant, she fields questions from employees and employers regarding their rights and responsibilities under the Americans with Disabilities Act (ADA) and assists in identifying accommodation solutions for employees with motor impairments. She previously worked on the sensory team, assisting with accommodation solutions for individuals with sensory, immunology, and endocrinology related limitations. Ms. Simpson holds a Master's degree in Rehabilitation Counseling from West Virginia University (WVU) and is working toward her Doctorate degree in Counselor Education & Supervision. As a nationally certified rehabilitation counselor (CRC), Ms. Simpson has worked in the private sector as a Vocational Rehabilitation Counselor, assisting employees and employers with accommodations and career development.

# Teresa Goddard

Teresa Goddard is the lead consultant on JAN's Sensory Team. She holds a master's degree in Speech-Pathology from WVU and has completed ATACP training. Ms. Goddard joined the JAN staff as a Program Assistant in March 2008 and joined the Motor Team as a Consultant in August 2008. As she has now transitioned to JAN's sensory team, she fields questions from employees and employers regarding their rights and responsibilities under the Americans with Disabilities Act (ADA) and assists in identifying accommodation solutions for employees with sensory impairments. Before joining JAN, Ms. Goddard worked as Speech-Language Pathologist and teacher. Teresa has presented at educational workshops in Japan and at assistive technology conferences including ATIA, CSUN and MSAT.