>> Matan: Good afternoon and welcome to the last in our exciting Accessibility and Equity webinar series: including people with disabilities in nonprofits and foundations entitled, How to Ensure Legal Rights and Compliance Obligations: Exploring the Rights of Employees and Participants and the Obligations of Nonprofit Organizations Under the Law. So, first of all, if you were looking for something else, you are probably logged into the wrong webinar. Second of all, I want to say a couple of things. Number one, this is going to be a really exciting guide for you, but this is not meant to offer legal advice. Second, that we offer this as the last one in the series specifically because our previous sessions have all focused on all of the positive and exciting steps that you can and do want to take to incorporate people with disabilities, their strengths and their power into your mission. But any time you are dealing with any interaction involving one or more people, there are sometimes points of disagreement and points of contention and because this is a regulated environment and there are laws that pertain, it is important for everyone to understand what their legal rights and responsibilities are. But this should be seen in light of the entire series, which of course, those who haven't seen it are encouraged to go back and watch. Most are available online.

Jumping right in, next slide please, we want to thank our incredible group of series partners, of co-promoters. I will not read them all off to you. But the slide is here for you to peruse at your leisure. Thank you so much for helping this happen and make it the great resource that it is.

Next slide, please. So, at its heart, we know that organizations are at their best when they welcome, respect and include people of all backgrounds. This includes people with disabilities.

Next slide. And then we have some pictures here because generally speaking, people might not realize who people with disabilities are. Most people know that Stephen Hawking had a disability, but we add in folks that you might not have known. Richard Branson, you might not have known Whoopi Goldberg is open sometimes so you might know, you might not know. But these are all people with disabilities that contribute amazing things to our society.

Next slide, please. And, in fact, that is 61 million people in the U.S. have some form of disabilities and of course, as we know, people with disabilities want opportunities just like anyone else. And so, that 61 million people includes one in four adults. Why is it one in four adults when it is one in five overall? Because people tend to acquire disabilities as they age. As life goes on. Not every disability is a disability that we are born with. And disabilities can be temporary, permanent, visible and non visible and as I mentioned from birth or acquired. So, I'm really privileged today to be here with Tracie DeFreitas, the lead consultant and ADA specialist at the Job Accommodation Network who uses she/her/hers pronouns and will be giving you the strong, meat and potatoes content of this webinar. I'm here as well, your moderator, Matan Koch, the director of Project Moses and general counsel at RespectAbility. And then we're going to join together to answer questions once Tracie completes her main presentation. But now, with thanks and gratitude, I'm going to turn it over to Tracie to take it from here.

>> Tracie: Thank you so much Matan and RespectAbility also for including the Job Accommodation Network and having me share with everyone some information today that may help non profit employers in learning about how to apply the Americans with Disabilities Act in the work place. That will be our focus today. And on the responsibilities of employers to engage in what we call the interactive process and to provide accommodations in the work place. Today I'm going to cover the essential elements of Title I of the ADA and I'm gonna try to do it in a very practical way. So we're going to jump ahead and get started right away on the next slide with learning about the basics of the law.

So, what is Title I of the ADA? The ADA is a federal civil rights statute and Title I of the ADA is the part of the law that is designed to remove barriers to equal employment opportunities for individuals with disabilities who are qualified. The ADA was amended in 2008, known as the ADA Amendments Act or the ADAAA as some of you may have heard the ADAAA changed the interpretation of disability under the ADA in determining who is covered under the law. All the other parts of the ADA like reasonable accommodations and non discrimination stayed the same. So if you're talking about those parts of the law, we generally just use the term ADA. When there's a focus on the current definition of disability, then we tend to reference the ADAAA. For ease of discussion today, and to keep me from being too tongue tied during this discussion we're just going to go with ADA. So, the ADA has two essential requirements. First, Title I prohibits disability based discrimination in all employment practices and during every stage of the employment life cycle, so from hiring to retiring. The law does prohibit covered entities from discriminating against qualified individuals on the basis of disability and this is when an employer treats a qualified individual with a disability unfavorably for a disability related reason. The other statutory requirement is to provide reasonable accommodations. Covered entities are required to provide reasonable accommodations to an applicant or an employee when it is known the individual needs accommodation and when providing accommodation won't create an undue hardship for the employer.

Next slide. A covered entity is an employer in the private sector who employs 15 or more employees. And this includes private, nonprofit employers. Covered entities are also state and local government employers, employment agencies, labor unions and joint labor management committees. Religious entities, while exempt from the Title III public accommodation provision of the ADA - They must follow the Title I of the ADA as employers but they may give employment preference to people of their religious affiliation. There are some coverage exclusions, so corporations owned by the U.S. government, Indian tribes and bona-fide private membership clubs that are exempt from taxation are excluded from Title I compliance. Also, executive agencies of the U.S. federal government are excluded from the ADA but they're held to non-discrimination and reasonable accommodation obligations applied under Section 501 of the Rehab act which has the same requirements as the ADA.

Next slide. Title I protects individuals with disabilities who are qualified, and protects applicants and employees. It does not extend to individuals who might be classified as independent contractors and most volunteers, because there has to be an employer/employee relationship that exists. This is often dictated by the control the employer has over the manner and means of work that someone performs. An individual who is qualified is someone who meets the definition of disability under the ADA and who possesses the qualifications, the skills and certifications needed for the job and also can perform the essential functions of the job, desired or held with or without reasonable accommodation. So it's real important to make sure that somebody is qualified. The ADA doesn't require employers to hire or retain individuals who are not otherwise qualified and able to perform the job duties with or without accommodation.

Next slide. And did you know - this is where we will start focusing on practical ADA information. So for example, did you know that the ADA prohibits discrimination based on a relationship or association with an individual with a disability. This means that employers can't treat someone unfavorably because they have a known relationship with someone who has a disability. So for example, discrimination occurs when an employer denies health insurance to an employee on the basis that their spouse or child has a known disability. Also, while caregivers of individuals with disabilities are protected from disability based discrimination by association, the ADA does not require employers to accommodate an employee without a disability who has to care for a family member with a disability. Employees with care giving responsibilities may be entitled to workplace flexibility that's generally available to all employees though, and employers need to be aware that they don't treat caregivers disparately. For more information about disparate treatment of workers with caregiving responsibilities, the Equal Employment Opportunity Commission does offer information on their website at eeoc.gov Finally, there are certain protection exclusions, so for example, individuals who are currently engaging in the illegal use of drugs are not protected on the basis of current illegal activity. Also certain sexual and behavioral disorders like pedophilia and compulsive gambling are not disabilities, and homosexuality and bisexuality are also not disabilities under the ADA because they are not impairments.

Next slide. Now how is disability defined? Every law comes with its own set of definitions and terms to set expectations for coverage. So, to be covered under the ADA, an individual must have a disability as defined by the ADAAA. So, how is disability defined? Well, the basic definition has three prongs. An individual with a disability under the ADA is someone who has a current physical or mental impairment that substantially limits one or more major life activities. And this is where someone has what we call an actual disability. There's no exhaustive list of covered impairments that are considered actual disabilities and so each situation must be evaluated case by case. Individuals who have an actual disability are those who are entitled to request reasonable accommodations. The next prong of the definition is someone who has a record of a physical or mental impairment that at one time substantially limited one or more major life activities. Individuals who have a record of an impairment are also entitled to request reasonable accommodation. And then finally the third prong is the "regarded as" prong. And this is used when an employment action is taken based on an individual's impairment or their perceived impairment. This is where an individual has been subjected to some sort of prohibited discriminatory action like termination or failure to hire because of an actual or perceived impairment. There's no accommodation requirement under the "regarded as" prong of the definition of disability.

Next slide. Now, just a few facts related to the definition of disability. Conditions that would be considered both transitory and minor, so a common cold, a flu, a minor broken bone - are generally not covered under the ADA. But temporary impairments can be an ADA disability. How long an impairment lasts doesn't by itself determine whether a person has a disability. So, a temporary condition can be an actual disability if the condition is sufficiently severe. For example, this means that maybe a condition lasting fewer than six months can rise to the level of a disability if it is sufficiently limiting enough, like a temporary injury that results in a 10 pound lifting restriction that lasts for several months, just to give you an example. While there's no comprehensive list of impairments under the ADA, the individualized assessment of some kinds of impairments will require a little analysis. We call these predictable assessments. For example, diabetes, blindness, HIV, epilepsy, cancer, bipolar disorder - these are examples of what we would call predictable assessments and they are impairments that should be easily found to substantially limit a major life activity for purposes of coverage under the ADA.

Next slide. What is meant by reasonable? Moving on to discuss reasonable accommodation. When individuals with disabilities are faced with barriers in performing job duties or meeting productivity standards, reasonable accommodations may help. What does reasonable accommodation really mean? It's any change or adjustment to a job or the work environment that permits a qualified applicant with a disability to participate in the application process or the hiring process, or an employee to perform the essential functions of a job or to enjoy equal benefits and privileges of employment. So, an accommodation is essentially a change in the way things are usually done. Finding another way to do the work or to access a benefit. Reasonable means that the accommodation seems feasible or plausible. That is the term the EEOC uses. Essentially, is it possible to provide the accommodation without it causing significant difficulty or expense, which would be considered undue hardship under the ADA. But this always has to be determined on a case by case basis. Also, reasonable accommodation has to be effective. So, this means that it must enable participation in the hiring process, or performance of job duties or access to equal benefits or privileges of the job in some way.

Next slide. Now, there is no comprehensive list of accommodations that are reasonable under the ADA. Employers actually have the right and the responsibility to determine what is considered reasonable. And while an individual with a disability may request a specific accommodation, ultimately the employer has the right to choose among effective accommodation solutions. This means that they don't have to provide the exact accommodation requested if there's an alternative effective and less burdensome accommodation. But if more than one accommodation will be effective, EEOC does say that the preference of the individual with the disability should be given primary consideration. We generally encourage individuals to ask for what they believe is needed and then the employer and employee should engage in an interactive process to determine the best course of action. EEOC does make reference to some accommodations they believe are reasonable on their face like job restructuring, making facilities accessible, modifying a policy or schedule or reassignments. But they also make reference to accommodations that they consider not to be reasonable like removing essential job functions, providing personal use items that are used both on and off the job, lowering production standards and creating new jobs. EEOC refers to those as changes that would not be necessary or required or not reasonable.

Next slide. Now, having established some of the fundamental requirements of the ADA, we are going to dig deeper by navigating what we call the interactive accommodation process to explore some of the ADA requirements that continue to pose challenges for employers like determining who has a disability, knowing when and how to request disability related information and deciding what accommodations are reasonable. Navigating this interactive process does expose us to some of the intricacies and nuances of applying the ADA. This is a good way to bring out some of the other basic principles that you need to know. Simply put, the interactive process does require employers and individuals with disabilities to work together to identify reasonable accommodation solutions. Note that no specific interactive process is required under the ADA, meaning that covered employers may draft a reasonable accommodation procedure that's effective for their organization. The process should be interactive and flexible and it can be informal or formal. We do say that formal written reasonable accommodation procedures are a good idea because they do facilitate the interactive process and they're recommended as a best practice. JAN consultants advise employers on what we call a six step interactive process. This may work for some organizations but not for all but it's something that we offer to help employers walk through the steps of providing accommodations. That interactive process can be found on our website at AskJAN.org under the A-to-Z topic section of the interactive process. The process includes recognizing a request for accommodation, gathering information, exploring and identifying accommodation solutions and assessing effectiveness, choosing and implementing accommodations and then ultimately monitoring the accommodations as well. What we are going to do now is sort of engage in that process and pull out sort of the ADA best practices and practical information that can help you in employing and accommodating individuals with disabilities. So

Next slide. I can offer some tips for engaging in that interactive process and so, for example, you want to know the ADA rules. So management staff and Human Resources has to be knowledgeable about the basic principles of the ADA, about disability-related inquiry rules, and about reasonable accommodation. They must know the employer's obligations and general accommodation requirements and how to avoid discrimination. And you want to engage employees with a solution-oriented approach. When HR and management are supportive and open to identifying positive solutions that improve employee productivity, this creates a disability inclusive culture. And so, engaging all employees, including employees with disabilities with a solution oriented approach is a way to go about this in a positive way, and asking "how can I help" is a way to do that. Also, staff responsible for handling reasonable accommodation requests should be expected to respond without delay and to gather reasonable information to explore and choose and implement effective accommodation solutions. You want to use the best available resources and information to make accommodation decisions like using the individual, using internal subject matter experts, external resources like the Job Accommodation Network or JAN. There's lots of information and resources out there to help you with this process. And finally, don't make it complicated to engage in the interactive process and to provide accommodations. It really shouldn't take significant analysis to determine if someone is entitled to receive accommodations and the process of determining what accommodations will be provided doesn't have to be difficult if you focus on solutions. Of course it is important to document the process and keep employees informed along the way. Employees who understand what steps the employer is taking and why are more likely to be satisfied with the accommodation outcome if you keep them in the loop.

Next slide. So, let's explore step one of this process where we are recognizing a request for accommodation. Requests for accommodation, they don't generally come in a tidy, easily identified package. But when an individual asks for an adjustment or a change at work for a reason related to a medical impairment, a disability, this is a request for accommodation under the ADA and there must be a connection between an impairment and a work related issue. Without that nexus, that connection between those two things, then we don't have a request for accommodation. Here are some examples. So, let's say an employee says something like I'm having trouble getting to work on time because of medication side effects. Or an employee returns to work using a wheelchair and says the wheelchair won't fit under the desk. Or maybe a healthcare provider indicates an employee requires leave for a medical reason. These statements can be interpreted or these situations can be interpreted to be requests for accommodation under the ADA because you have that impairment causing a problem and a work related barrier.

Next slide. The ADA doesn't require that reasonable accommodation be requested at a particular time. But should be requested when it becomes known that there's a workplace barrier affecting job performance due to a medical reason or an impairment. As a practical matter, it is in an individual's best interest to request accommodations before performance suffers. But the individual must determine when it is the right time for them. So, disclosure in requesting accommodation is a very personal decision. There's no requirement to include words or terms like ADA or reasonable accommodation in a request for accommodation which can make it difficult to know what someone is asking for unless you are trained to recognize that nexus I just mentioned. So, if there's a medical impairment causing a problem and there's a work related barrier, you have that nexus there. Also accommodation requests are not required to be documented, but JAN always recommends a documented request to avoid a dispute about whether or when a disclosure occurred and an accommodation was requested. It is best to have these sorts of things documented. Next slide? Generally, the obligation to request accommodations falls on the individual with the disability because employers aren't expected to assume someone has a disability or to guess what accommodations are needed. Therefore, when the disability and the need for accommodation are not known or obvious, disability disclosure is necessary to receive accommodation. Because employers aren't required to provide accommodations under the ADA unless they know of the disability. So, only if they know will they have to act on that. When the disclosure occurs with the request for accommodation and the disability is not known or obvious, an employer may request disability related documentation to substantiate the disability. And when requesting accommodation, the individual should inform someone who could act upon the request such as a manager, supervisor, human resource professional - There's no requirement under the ADA to make the request through a certain entity within that employment but obviously it is important for someone to get in touch with someone who can act on the request. So that then triggers the interactive process.

Next slide. Here's some tips on recognizing an accommodation request. Basically, it is important to err on the side of caution. So, when you are not sure whether an employee has requested an accommodation, ask the employee to clarify what's being requested and why. Also, you want to act quickly once an accommodation request is recognized. Get to work. Engage in that interactive process and do it without delay. It is important to assign responsibility for responding. So sometimes an employee will request accommodation but no one acts on the request. Maybe it gets passed around from one person to another and no one takes responsibility for moving the interactive process forward. It's important for employers to make someone or a team of people responsible for acting and to make sure that they're trained on how to do this. Employers have actually been found liable under the ADA when management or HR have failed to recognize and act on a request for accommodation. And finally, does the organization have a formal reasonable accommodation procedure? A formal reasonable accommodation procedure creates a standard of practice for everyone to follow which increases the likelihood that accommodation requests will be handled properly and consistently. Formal procedures that are followed effectively also help employers document their efforts to comply with the ADA. So, it is always a good practice. As part of a formal procedure, some employers do have in house ADA forms that employees are asked to complete. JAN offers a sample request for accommodation form that can be used to document requests and formalize the interactive process when a request hasn't been submitted in writing by an individual. This and many other sample forms can be found on the AskJAN.org website, through A-to-Z, under the topic of sample forms.

Next slide. Now it's also important to know what is not considered a request for accommodation under the ADA. Something employers aren't sure or individuals think they are putting the employer on notice but they may not be doing so in a very clear way. Again, if you're not sure an employee has requested an accommodation, ask the employee to clarify what is being requested and why. To give you an example of what might not be a request for accommodation, when there's a voluntary self identification of disability for affirmative action purposes under Section 503 of the Rehab act for example, or when there's a disability disclosure absent a work-related barrier or specific request. These are not requests for accommodation. There needs to be that nexus, remember, between having an impairment and a work related barrier. Those things have to come together. So if an employee is simply identifying as having a disability, often for affirmative action purposes, this is not necessarily a request for accommodation. Also, a request for work place adjustments or access to benefits available to employees without disabilities is not necessarily a request for accommodation either. For example, if employees are permitted to work a flexible schedule or to telework without specific reason for doing so, employees with disabilities should not be required to jump through extra hoops to receive the same work place flexibility as those without disabilities, just because the need is based on a disability-related reason. Now, if the individual is requesting access to something beyond the flexibility that is available to all employees for a disability related reason, then it can be a request for accommodation. To illustrate this, if employees can telework one day a week but there's a request to telework three full days a week for a disability-related reason, this becomes a request for accommodation because someone is asking for something that goes beyond the ordinary benefit or privilege.

Next slide. Now, once an accommodation request has been recognized, that is when you move to step two in the interactive process and you want to gather the information that's needed to process the request. This process should really be about learning if the employee has an impairment, what the limitations are that are affecting their ability to perform job duties and why accommodations are needed. What's the first thing you technically need to do to determine your next steps under the ADA? Does the individual have an actual or record of a disability, because to be entitled to receive accommodation, the employee must meet those first two prongs of the definition of disability to qualify for an accommodation. So as part of the interactive process under the ADA when the disability and the need for accommodation are not known or obvious, employers are permitted to request reasonable medical information. Documentation is not required under the ADA, so not as a matter of seeking coverage under the ADA. But employers have the right to request disability related information from an appropriate professional to confirm that an individual has a legitimate reason for requesting accommodation. The important thing for employers to remember is not to ask for too much information and that the ADA restricts employers in requesting disability related information at certain times. So, what are those disability related inquiry rules? On the

Next slide. So employers are restricted from asking disability related questions or requiring medical exams during three stages of employment. I'm only going to address these restrictions very briefly, this is something We do hours of training on, so we are just doing to hit this very briefly. The pre-offer stage of employment is most restrictive. This is the hiring period. Application, interview, pre-employment testing. This is when no job offer has yet been made. Generally no non-voluntary disability related inquiries or exams may be asked or required of applicants until after a conditional job offer is made. The next stage is the post-offer stage and this is the least restrictive stage. During post-offer, disability related inquiries may be asked and medical exams can be required as long as all candidates entering into the same job category are asked the same questions or required to undergo the same exams. Also the second rule is that all medical information must be kept confidential. Anything, any medical information that is received has to be kept confidential. And it is true that job offers can be conditioned on the results of these inquiries and exam. After a candidate is hired, we're back to a restricted stage. Disability related inquiries and medical exams of employees must be job related and consistent with business necessity. Today's presentation focuses predominantly on this stage of employment because we're talking about the interactive process and ADA basics with respect to that. When you are gathering information from a current employee to engage in the interactive process, you have to know that your inquiries are job related and consistent with business necessity.

Next slide. So, when will that be true? When will it be true your inquiries meet the standard? When the employer has a reasonable belief that performance of job functions is impaired by a medical impairment and known limitations or there's a direct threat due to a known medical impairment, that is when you can meet the standard. This reasonable belief must be based on objective evidence, obtained or reasonably available to the employer. So it can't just be assumed. Usually the job related and consistent with business necessity standard is met after an accommodation request is received from an employee whose disability and/or the need for accommodation are not known or obvious. This is typically when an employer will go about asking an individual to provide disability related information from an appropriate professional, often times a healthcare professional, to substantiate the request for accommodation. interactive process, and usually a disability related inquiry, but it can also be possible being asked by the individual if it is known that an employee has a disability and the employer has a reason to know the employee is experiencing some workplace problems because of the known disability. So, when there is a known disability affecting performance but there's no reasonable accommodation request, an employer may ask about the need for accommodation provided certain things are known.

Next slide. Now, what can help employers decide when to gather disability related information? Well, when the impairment and the need for accommodation or need for accommodations are known or obvious, disability related documentation may not be necessary. So, for example, if an employee uses a wheelchair and requests an automatic door opener to enter the building, the impairment and the need for accommodation are obvious. Medical documentation is probably not needed but more information about the accommodation may be needed. You want to focus on gathering information about the accommodation in that kind of situation. However, when the impairment is not obvious, employers may request documentation that verifies the existence of the impairment. So, let's say it's a learning disability, or a seizure disorder, or mental health impairment, some things that might not be quite apparent. If we know the impairment affects a major life activity in a significant way, it may be that reading is affected or concentration is affected or interacting is affected. These are the kinds of things that the employer might need more information about, so when an employee shares they are having difficulty meeting the employer's attendance policy because of the side effects of medication but they have never disclosed a disability before, it is possible to gather information about the impairment and the limitations. Why the ability to meet the attendance policy is affected by the impairment or the treatment and maybe what accommodations are needed. You have to think about what do you know about the situation.

Next slide. Now, an important tip for everyone in light of the ADAAA changes in interpreting the definition of disability is to establish coverage under the ADA but don't get stuck on the step of determining disability. You may need to know does or did the individual have an impairment that is or was substantially limiting in some way but don't make it hard to decide who has a disability. Deciding disability should really require little analysis, and we do encourage employers to err on the side of caution. Process accommodation requests without placing too much emphasis on determining disability but rather put your focus on looking at the accommodation that has been requested and whether or not it is reasonable. Certainly you may ask questions to figure out what is going on, like what is the impairment and what are the limitations, what is the duration of the impairment and the limitations, what kinds of accommodations might help, but kind of bring your focus to the accommodation.

Next slide. The gathering information and asking disability related questions can make employers a little bit anxious and so it's important to know that there are resources available to help you in gathering information. The EEOC's enforcement guidance on disability related inquiries and medical exams of employees is helpful. There's also information in the agency guidance on reasonable accommodation and undue hardship under the ADA, that's particularly helpful, question six for example. These should be your go to EEOC resources and JAN consultants can help you find the information you need using these resources. Also we frequently write about requesting medical information. So, JAN offers practical resources on the topic at the AskJAN.org website, again A-to-Z under topic of Medical Exams and Inquiries. Also because there's no required forms for gathering disability related information under the ADA, as I mentioned earlier, JAN does offer sample forms that employers may customize. Again, these are forms that you can access on the AskJAN.org sites through the A to Z under the topic of sample forms.

Next slide. If you are not sure whether to ask about disability or the need for accommodation, that is okay. Situations do arise when there's reason to believe that accommodation is needed but maybe the employee hasn't formally disclosed a disability or requested anything at work. So, I can give you a strategy to think about. Employers who are leery about asking disability related questions might consider the practical approach. Instead of asking if there's a disability or if accommodation is needed, maybe explain what has been observed. What the employer's expectations are for performance and ask how can we help or is there anything we could do to support you in performing your job or meeting performance standards. Asking how can I help is a strategic way of creating a safe space for disability disclosure and can be useful when an accommodation hasn't been requested but there's an obvious impairment or limitations in performs job duties. Asking this kind of question - it doesn't make employers vulnerable to appearing as if they are making assumptions about disability or the possible need for accommodation. Instead it is a good practice for conveying interest in employees and a desire to be part of a solution to resolve a challenging situation, so I do think it is a good best practice.

Next slide. Now, to summarize step two when you are gathering information to process a request for accommodation, you may need to know about the employees impairment and limitations and the expected duration of these. You may need to know about the impact of these limitations on work. What essential functions are affected or standards are not being met and also how those standards are ordinarily applied to others. You may need to know about the environment the duties have to be performed in or any equipment or tools that must be used and how these affect the situation. And of course if there are any known accommodation suggestions. Ultimately, if you are not sure what information to gather, JAN consultants can help you decide.

Next slide. Next, after sufficient information has been gathered about the impairment and limitations and the need for accommodation You want to move to step three in that interactive process which is exploring accommodation. This is the time to brainstorm and consider what accommodations may work. JAN is here to help employers identify ways to maintain and improve productivity through reasonable accommodations. We know that even minor modifications can have a positive impact on productivity, so it's something to think about. JAN does do a study where we receive feedback from employers on accommodations that are made just to kind of get a feel for the cost of accommodations and what benefits employers do receive. For the most part, employers tend to report there are no or low costs involved in providing accommodations. In fact, 59% of employers say that accommodations cost absolutely nothing. And the employers also report direct benefits like accommodations increase the employee's productivity or increased employee's attendance. We know there can be benefits.

Next slide. There are three categories of accommodation. Accommodations can include modifications or adjustments to the hiring process. It can include changes to the work environment or how the job is performed, like installing an automatic door or removing marginal job tasks or having somebody work from home. It can also be related to receiving benefits and privileges like providing accessible parking or providing an interpreter to participate in optional trainings, so they really can range.

Next slide. So just to give you some examples. What is reasonable will vary widely and will depend on the circumstances, but to give you examples of common accommodations, types of accommodations there's a list here. I won't go through to each one of them but making existing facilities accessible, job restructuring, modifying a work schedule, providing leave, work at home, allowing access for a service animal. These are just examples of course.

Next slide. Now, there are some basic ADA accommodation principles that may be relevant during this exploration stage of the interactive process, so, first: accommodations that pose an undue hardship are not required. So, this would be any change that would cause significant difficulty or expense to provide. I will say undue hardship is a truly high threshold to meet though. It is really a defense for when no accommodation can be provided. Also, personal use items needed in accomplishing tasks both on and off the job are generally not required, unless they are only needed to perform job duties. So examples of that might be medically prescribed hearing aids, corrective eyeglasses or powered wheelchairs. And it bears repeating employers are not required to remove essential job functions, create new jobs or lower production standards as accommodations.

Next slide. Now, who can help with exploring accommodations? Employers may need help and so one of the best places to start the process is with the individual who requested the accommodation. They are often the best resource to know what they need and may be able to suggest effective accommodation options. An individual's healthcare provider may be able to offer useful information although it is not their obligation or responsibility to recommend accommodations. But healthcare providers will often support the need for accommodation with information. Vocational rehabilitation specialists, job coaches, other disability-related organizations can also be helpful. Internal subject matter experts like people in information technology or safety or ergonomics can also help. And of course you can also consult with outside resources like JAN, that can provide technical assistance on the ADA and offer a variety of accomodation solutions. You can go to the next slide here. JAN is a free national resource for anyone who's seeking help exploring accommodation ideas. You could start with the JAN website at AskJAN.org, but you could also just contact us directly to speak with someone by phone, by chat, by email. So, we are here and available in a lot of different ways and we provide that one on one assistance for free.

Next slide. Now, after choosing accommodation options, after accommodation options have been explored, step four in the process is choosing accommodations. Employers have the right to choose among effective accommodation solutions. This means they don't have to provide the exact accommodation as I mentioned earlier, but they do need to find something that's effective for the purpose. Of course if an undue hardship is a result, they don't have to provide those kinds of accommodations. But often times there's a real simple solution that will make it so that someone can perform their job duties they need to perform. I mentioned earlier that EEOC says that the preference of the individual should be taken into consideration where it can be. A reasonable accommodation may not be the best accommodation available, as long as it's effective for the purpose. That is, it gives the employee an equal opportunity to perform the essential job functions or access benefit or privilege. When it is not clear whether an accommodation will work, it is possible to test the accommodation and stop it if it doesn't work. So I often suggest that employers start with a trial period or a temporary accommodation to see whether or not it is going to be effective as part of choosing accommodations.

Next slide. Tips and best practices for choosing accommodations, you want to give front line management the authority to implement simple reasonable accommodations so that you make the interactive process uncomplicated and solution focused. It might help to create a list of pre-approved accommodations that don't require a full reasonable accommodation assessment. These might be sort of fast track adjustments that include things like providing a sit/stand desk or ergonomic chair or flexible work arrangements or providing CART captioning for large meetings and employer sponsored events automatically. Having a centralized accommodation fund can also be helpful because it reduces fears of managers and supervisors in spending money from their individual unit, so sometimes they are not sure what to do and in turn it could make it easier to choose accommodations by taking the guess work out of where the funding will come from. [Coughs] Excuse me. Also a task bank can be useful for providing return to work or modified duty accommodations. This is something where you have a list of tasks and jobs that an injured employee is able to perform for maybe a temporary period of time, and it gets them back into the workplace a little bit faster.

Next slide. So after reasonable accommodations have been chosen, it is time to implement. This is step five in the process. Implementation can involve changing when or how certain functions are performed, it can be installing and providing training on equipment, approving a schedule, it could be booking services. So, lots of different things. As part of the process of implementing accommodations it could be useful to document the accommodation approval or denial and/or to draft an accommodation agreement that outlines expectations for implementing the accommodation. This isn't required under the ADA but it could be useful for effective communication and compliance because you are documenting things. Again, JAN offers a sample accommodation approval form as well as a denial form that can be accessed through the AskJAN.org site as well. If the accommodation will be tested or provided temporarily, it is useful to have a written temporary accommodation agreement with the employee that basically indicates the accommodation being tested, how long it will be tested and what will happen if the accommodation doesn't work. That way no one is surprised when the accommodation is revisited and possibly changed later on. And we do offer sample temporary or trial accommodation forms as well. Implementing accommodations often requires communicating important information to essential personnel who are responsible for assuring accommodations are provided, so like a supervisor or parking authority or safety personnel. But you have to remember the ADA confidentiality rules when thinking about who to inform. So for example, on the next slide, a question that often arises during implementation is whether other employees may be informed that a coworker is receiving accommodations. Implementation will often require communication with others but employers may not disclose to other employees that a coworker is receiving accommodations for disability related reasons because of the ADA's confidentiality rules. This can get a little tricky. [Coughs] Excuse me. So, one tip to consider before questions even arise is it can be useful to educate all employees about the ADA and accommodations as a way to curtail questions about accommodations. Also having a work place culture that values work place flexibility and supporting employees in ways that enable bringing your whole self to work can also benefit everyone and this kind of culture emphasizes that employees can ask for things they need at work and will be supported at work. When responding to coworker questions a manager may find it useful to point out they have a policy of assisting any employee who encounters difficulties in the workplace and that many workplace issues are personal and that these circumstances in these circumstances, that the employer has a policy of respecting employee privacy. You don't want to share any details there. When implementing accommodations does require communicating an employee's need for accommodation to essential personnel, then you just want to share that information with those that are on a need to know basis. You want to restrict the sharing of disability related information, even to managers. They may know an accommodation is being provided but they may not need to have the details about the disability.

Next slide. Another issue to consider related to implementation is whether new managers and supervisors should be informed about existing accommodations. And sometimes new management may and probably should be informed about existing accommodations when necessary. Employers need to be aware of the potential ADA risks of violating employees rights in these kinds of situations. You don't want a new manager asking for new, updated detailed medical information to continue to provide an accommodation that was already approved. When it is clear that accommodations were approved by past management and when sufficient information was already provided by the employee, usually new management will not have a reason to request updated information.

Next slide. So, in summary, some practical guidance on implementing. Don't delay. Keep the process moving along. Implement accommodations as quickly as possible. Make sure that all the necessary steps are taken to implement the accommodation, so inform those who need to know. Make sure you schedule any services that need to be provided or communicate formal changes to people who need to know, get the equipment in place, that kind of thing. And communicate accommodation information as needed, so Not everyone needs to know that an accommodation has been implemented but communicate to those who are on a need to know basis. Next step and we're finally in the home stretch of the interactive process. The final step is monitoring accommodations. It's important to ensure that accommodations continue to be effective after implementing by monitoring accommodations. Because sometimes accommodations can stop being effective or there are reasons why there needs to be a change. So, the most important way to monitor accommodations is to encourage ongoing communication. Make sure employees know who they can tell if there's a problem with the accommodation. It is important to remember that accommodations need to be effective. If we find it is not enabling that person to perform the job duties or meet the performance standards, then it may not be effective.

Next slide. Let's just end with these tips. Check on the effectiveness of accommodations that are implemented. As things change in the workplace, accommodations may need to change as well so periodically check the effectiveness of accommodations. Maintain equipment. If you have provided equipment as part of the accommodation, you have to make sure that equipment is properly maintained and updated as needed. Encourage ongoing communication with the employee. This is true for any work place issue, right? So ongoing communication is really key to the success of making sure the accommodation is still working. You want to restrict medical inquiries during the monitoring stage. You don't need to be asking disability related questions during the monitoring stage, so stay focused on the accommodation. And it's also important to document your findings and any new plans. So there's no standard process for documenting and monitoring accommodations, Sometimes it is not obvious what questions need to be asked as part of that process and of course JAN does offer a sample form to help monitor accommodations. But it is just going through the motions and figuring out, making sure that things are working well and documenting it if they are going well as well as if they are not. Maybe reengaging in the interactive process to identify alternative accommodations if you find that the accommodations are not effective.

Next slide. So, I'm going to end it there. The ADA basics and the interactive process - I gave that to you in record time. But by listening and learning today, hopefully you've done some of the work to help your nonprofit apply the requirements of the ADA. Hopefully the information I've shared today will help you build your ADA competence and boost your ADA confidence as well. I wanted to go ahead and stop here just in case we do have some questions that anyone would like to ask. And Matan, I will send it back to you for those questions. And maybe Lauren too.

>> Lauren: Hi. This is Lauren Applebaum. I am the Vice President of communications here at RespectAbility and I will be helping to moderate the Q&A, that questions that both Tracie and Matan can reply to. So in order to ask a question, you can do so in the Q&A box. I am monitoring there, as well as if anyone asks something just in the chat function. The first question comes from Danielle. If an employer provides a reasonable accommodation that potentially comes at a high expense to the employer, is the employee then held at the threshold expense as it relates to considering additional accommodations? For example, an employee removes a job responsibility and outsources it as an accommodation and to out source it, it costs the employer $5,000. Does the employee then have to honor any accommodation that has a financial impact of up to $5,000 to the employer or can that employee still deny other unreasonable accommodation requests even if it has a financial impact under $5,000 that was incurred from the first accommodation?

>> Tracie: Let me go ahead and provide some information. I'm going to hit on a couple of things here. So something to keep in mind. There's a mention of outsourcing a job responsibility. And something to remember is that essential job functions do not have to be reassigned or removed, taken away from somebody's position. If we are talking about something that would be considered an essential duty, the accommodation would be about providing a way for that individual to perform the duty. There's no requirement to remove that duty from the individual's work responsibilities. So if you're outsourcing something that would be essential, you may do that as the employer, but you have no legal obligation to do that. If you have made the choice to do it, then you're going above and beyond what may be required so how you choose to handle that situation is up to you and what threshold or cost involved in that, it's up to you whether to have that expense or not. If we're talking about marginal duties, marginal duties may need to be removed from an individual's responsibilities. Usually that also means maybe some swapping. It might be the individual picks up marginal responsibilities of another employee because they're giving up marginal tasks. I would say that generally speaking, outsourcing of marginal tasks would not ordinary happen or cost the employer perhaps that much money. But the bottom line is that one, you don't have an obligation to reallocate those duties, those essential duties. And then two, we're using a threshold cost here, and under the ADA, there are no cost thresholds in terms of looking at what may be considered an undue hardship. Undue hardship is something that is very case by case. It's something you have to look at it relative to the finances of the overall cost to the employer. So, it may not even be within a particular department. But the overall entity of the employer. So, you want to be real, real careful ever using cost to demonstrate undue hardship because it is such a high threshold and because you're kind of forced to take a look at where you spend your money everywhere. We would ordinarily say you kind of want to stay away from that. So in this kind of situation it maybe kind of focusing on is it necessary to outsource the responsibilities or is there some other way to enable that person to perform the duties.

>> Matan: And if I could just add, what I would say is if you remember early on where Tracie mentioned that within effective accommodations, the employer gets to make the final decision. You also remember the slide where average costs was talked about as $500, you could sort of look at a $5,000 request not as a threshold obviously if your organization can afford it, there's not an undue burden. But is there a more cost effective way to meet the accommodation request and is that part of the discussion that can be had with the employee. Remember this is an interactive process. Not an automatic yes or no based on any previous action. Tracie, would you agree with that? Thank you.

>> Tracie: Absolutely. I would agree with that. I would also like to add to that that you may have an instance where it may have cost an employer something to provide an accommodation and at one time that might have been reasonable. But that doesn't mean that that's always reasonable in every other instance. That's the importance of looking at everything on a case by case basis as well.

>> Lauren: Thank you both for that answer. I'm going to ask another question that was submitted online from Eric. He asks, did he hear Tracie say that the interactive process is not required? How could an accommodation be put in place and be effective without interacting with the individual?

>> Tracie: That is a good question. And so what we are saying there is that a formal process is not mandated by the law. Whereas we know that it is necessary to engage the individual and work through a process together, there's not a formal mandate to have a specified formal interactive process under the ADA. So, for example, the regulations in the EEOC don't lay out steps that an employer must follow in order to provide reasonable accommodation but we do know there must be that engagement. So, it is clear from the EEOC that there should be an interaction between the employer and the individual. It is just it doesn't have to be a formalized process.

>> Lauren: Matan, did you want to add anything to that?

>> Matan: No. I think that covers the distinction.

>> Lauren: So at this point, we do not have any other questions. So, I'm going to hand it back to Tracie, if there's any closing comment that you wanted to give before Matan closes out the webinar.

>> Tracie: Just one last thing. Keep in mind as a resource we are here for you, the Job Accommodation Network is. If you have any questions, I'm sure that RespectAbility is a beautiful resource for you to use as well, and so to make sure you're tapping into the resources that are free and available to you, because we all have to work together to make this work. So, make sure you take advantage of the free resources that are here for you. Again you can visit the askJAN.org website. I would just like to say thank you to all of you for including JAN today.

>> Lauren: Well thank you so much, Tracie and before Matan closes out the webinar, I want to remind everyone that the recording is available. We were receiving a few questions about that. This has been recorded and will be available for everyone to access whether you missed part of it or you wanted to share with any colleagues.

>> Matan: All right. I wanted to close by saying that while this closes out our series, the series remains available online. Most are already available online, all will be available online for you to use as an ongoing resource and we have the URL down there for you. www.RespectAbility.org And of course Zoom being wonderful, it has obscured the last bit. /accessibility-webinars. And want to just in closing as we thank you for coming to this session on compliance, also point out one of the most important themes that I think Tracie pointed out which is that essentially, a lot of this comes into checking in with employees and ensuring success and that despite all of the detailed legal standards that we gave you is sort of your [unintelligible], your north star. And as a reminder, we at RespectAbility are always also happy to answer questions as we can in ensuring the success of your organization and our partners. Lauren is that the final slide? Ah. So here we have also some other digital resources. Our inclusive philanthropy toolkit which really gives you a lot of nuts and bolts pieces as you are figuring out inclusion in addition to the webinars. You can follow us on social media where we are always sharing new and interesting information and you can always contact us by web, by phone or by email as well as following our work on the intersection of disability in politics at the RespectAbility Report, published by my colleague, Lauren Applebaum, who is on the call with us today. Thank you!