

# JAN

Job Accommodation Network

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## Accommodation and Compliance Series

# Accommodation and Compliance Series: Caregivers

Job Accommodation Network  
PO Box 6080  
Morgantown, WV 26506-6080  
(800)526-7234 (V)  
(877)781-9403 (TTY)  
[jan@askjan.org](mailto:jan@askjan.org)  
[AskJAN.org](http://AskJAN.org)



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## JAN'S Accommodation and Compliance Series

### Introduction

Many workers have caregiving responsibilities and need access to some level of workplace flexibility in order to care for a spouse, child, or family member with a medical impairment. Workplace flexibility can include benefits or privileges of employment, like flexible and alternative scheduling, working at home, and access to leave. This flexibility can strengthen employee morale and increase retention by enabling employees to constructively manage work responsibilities and personal obligations, but many workers do not have general access to these benefits or privileges of employment. As a result, JAN often receives inquiries about whether the Americans with Disabilities Act (ADA) can be applied to caregivers of individuals with disabilities who request workplace flexibility as a form of reasonable accommodation. Workers with caregiving responsibilities are not entitled to receive workplace reasonable accommodations under the employment provisions of the ADA, but alternative federal, state, and local requirements can apply. The following Q&A addresses some of the most common inquiries JAN receives related to caregivers, accommodations, and the ADA.

### Questions and Answers

#### **Are caregivers of individuals with disabilities protected from workplace discrimination under title I of the ADA?**

Yes. Caregivers of individuals with disabilities do have non-discrimination protections under the “association” provision of title I of the ADA. The association provision prohibits discrimination based on a known relationship or association of an applicant or employee with an individual with a disability – such as a child, spouse, or other family member. The association provision is meant to prevent employers from taking adverse employment actions against an applicant or employee on the basis of stereotypes and assumptions about individuals who associate with people who have disabilities. For example, when an employer decides not to hire a qualified candidate whose spouse has a disability because of the unfounded fear that health insurance premiums will rise if the candidate is hired, the employer may violate the ADA’s association provision.

For more information about the association provision of the ADA, see the Equal Employment Opportunity Commission (EEOC) resource, [Questions and Answers About the Association Provision of the Americans with Disabilities Act](#).

#### **Are caregivers of individuals with disabilities entitled to receive reasonable accommodations under the ADA?**

No. Caregivers of individuals with disabilities are not entitled to receive workplace reasonable accommodations under the ADA. This is because to be eligible to receive

workplace reasonable accommodation, an individual [must have an “actual” or “record of” a disability](#), as defined by the [ADA Amendments Act](#). The EEOC makes this clear in [Questions and Answers About the Association Provision of the Americans with Disabilities Act](#). Question 4 states:

“Does the ADA require an employer to provide a reasonable accommodation to a person without a disability due to that person's association with someone with a disability? No. Only qualified applicants and employees with disabilities are entitled to reasonable accommodation. For example, the ADA would not require an employer to modify its leave policy for an employee who needs time off to care for a child with a disability. However, an employer must avoid treating an employee differently than other employees because of his or her association with a person with a disability.”

**Are there federal, state, or local laws that might require an employer to provide workplace flexibility, like access to leave, for a caregiver of an individual with a disability?**

Yes. Federal, state, and local laws might require an employer to allow workplace flexibility, typically to provide access to various forms of leave, for a caregiver of an individual with a disability, depending on the facts of the situation. Consider the following:

**Family and Medical Leave Act (FMLA)**

The [FMLA](#) is a federal law that applies to private employers with 50 or more employees, federal, state, and local government employers, and public or private elementary and secondary schools, regardless of the number of employees. This federal law provides eligible employees up to 12 workweeks of unpaid, protected leave, during a 12-month period, for specified family and medical reasons. Leave can be used to care for a spouse, child, or parent with a serious health condition, and/or for reasons related to an employee's own serious health condition. Leave may also be taken for any qualifying exigency arising out of the active duty military obligations of a spouse, son, daughter, or parent.

FMLA protected leave can be taken for an extended period, intermittently, or to allow an employee to work a reduced work schedule for a period of time. Leave time can be used by a caregiver for many reasons. For example, to provide personal medical assistance to a spouse with a serious health condition, to transport a family member to appointments with healthcare providers, and even [to attend school-related Individualized Education Program \(IEP\) meetings](#) addressing the educational and medical needs of a child with a serious health condition.

The federal FMLA is enforced by the U.S. Department of Labor, Wage and Hour Division. Their site has detailed information about [employer responsibilities and employee rights under the FMLA](#), or contact DOL, Wage and Hour at 866-487-9243.

**State and Local Family Leave Laws, Paid Sick Leave Laws, and Benefits**

Many state laws require employers to allow employees who are caregivers to take job-protected leave, sometimes paid leave, for family and medical reasons. These laws sometimes apply to smaller employers that are not covered by the federal FMLA, generally overlap with FMLA requirements, and can offer greater benefits, like providing longer periods of leave than FMLA, and extending coverage to care for more family members (e.g., siblings or grandparents).

Also, a growing number of states and local jurisdictions require private employers to provide paid sick leave, and/or offer state-issued partial wage replacement insurance benefits when caregivers are unable to work while caring for a child, spouse, partner, or family member who is sick or has a medical impairment. For example, in California, caregivers may be eligible to take job-protected leave under the [California Family Rights Act \(CFRA\)](#), and/or receive partial wage replacement benefits through the [Paid Family Leave \(PFL\)](#) insurance program when leave must be taken to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner.

JAN does not provide technical assistance on state or local leave laws or wage replacement benefit programs. To learn more about these laws and programs, try contacting the [fair employment practices agency](#), [state department of labor](#), or short-term disability insurance or temporary disability insurance program in the state of employment. The following resources may also be useful:

- [National Conference of State Legislatures](#)
- [National Partnership for Women and Families](#)

**Can an employer be held liable for treating workers with caregiving responsibilities disparately when compared to workers without caregiving responsibilities? For example, by not allowing a flexible schedule for a worker who needs this flexibility to care for a child with a disability, but allowing other workers this flexibility for personal reasons.**

Yes. Employers may not treat workers with caregiving responsibilities, including caregivers of individuals with disabilities, disparately when compared to workers without caregiving responsibilities. When employees ordinarily have access to benefits and privileges like being permitted to occasionally work at home, working a flexible schedule for personal reasons, or taking intermittent leave as-needed, then employees with caregiving responsibilities should have access to the same types of workplace flexibility, without being held to different standards to gain access to this flexibility.

The EEOC offers enforcement guidance that explains the circumstances under which discrimination against a caregiver constitutes unlawful disparate treatment, and also shares best practices related to employing workers with caregiving responsibilities. For more information, see the following resources:

- [Unlawful Disparate Treatment of Workers with Caregiving Responsibilities](#)
- [Employer Best Practices for Workers with Caregiving Responsibilities](#)

- [The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Laws](#)

## **Additional Resources**

- [Accommodation and Compliance Series: Leave](#)
- [Accommodation and Compliance Series: Association with a Person with a Disability](#)

## Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

### **An administrative assistant for a large medical practice needed time away from work to care for her mother, who has cancer.**

She used one week of accrued paid leave, but needed four additional weeks off to care for her mother while she received treatment. The employee was granted this job-protected time off as a right under the Family and Medical Leave Act (FMLA).

### **Joe is a machinist for a manufacturing company. He has a school-aged child who has a seizure disorder.**

Although seizures are infrequent, in the event that his child has a seizure while at school, Joe must leave work to provide care for the child. He has a limited amount of personal leave time and so the employer allows Joe to make-up time missed. The employer allows this for other employees who also need this workplace flexibility.

### **A marketing sales manager was unable to attend a monthly meeting that was moved to a different date at the last minute.**

She could not attend because her husband needed to receive dialysis for end stage renal disease. The manager did not want to miss the meeting, but she needed to provide care for her spouse. The employee's supervisor sent copies of the meeting presentations and handouts, and contact information for the presenters so the employee could follow-up with questions or comments. Supporting the employee in this way ensured that she had access to the information presented and enabled her to stay informed, offer input, and perform her job duties.

### **Asia's daughter has a learning disability and her academic progress is monitored through the Individualized Education Plan (IEP) process.**

As part of the process, Asia attends IEP meetings annually, and as-needed. When attending these meetings, she takes job-protected time off from work under the Family and Medical Leave Act (FMLA).

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