Staying in the Workforce: Navigating ADA Rights and Accommodations

Presented by:
Jamie R. Hall, Esq.

Yahaira Rivera:
Good evening everyone. Welcome to MSAA's live webinar, Staying in the Workforce: Navigating ADA Rights and Accommodations. This program will be presented by disability attorney Jamie R. Hall. My name is Yahaira Rivera, and I'm Senior Director of Health Education and Healthcare Relations at MSAA and I'm your host for the program. And just in case this is the first time that you're joining one of our webinars, here's a brief overview of who we are and how we support the MS community nationwide.

MSAA is a national nonprofit organization dedicated to improving lives today through vital services and support. Our programs include a national toll free helpline providing services Monday through Friday, equipment and cooling distribution programs to support mobility, safety, wellness and heat sensitivity, and of course, we also offer educational programs and webinars and publications to help you stay informed about the latest in MS care. And we also provide digital tools and resources, an online community forum, and much more. To continue learning about MSAA, our programs and services, please visit our website, mymsaa.org. And we want you to stay connected with MSAA, so you can do that three different ways: you can go to our website, sign up to receive email updates, you can also follow us on social media, and you can text MSAA to 75101 and you will get MS related news updates about our programs and different ways to support the MS community right on your phone.

And this is just a friendly reminder. Our program is for educational and informational purposes only and does not constitute any formal recommendations. Please speak with your doctor for specific questions and concerns.

And now I would like for you to join me in welcoming our guest speaker, attorney and counselor at law, Jamie R Hall. He's a founder of the Law Office of Jamie R. Hall, where he focuses on helping individuals navigating the disability claim process. For over 15 years, Jamie has worked closely with the multiple sclerosis community nationwide, assisting claimants in providing educational programs for both patients and healthcare providers. Welcome Jamie. We are so excited about this topic and this presentation, and we'll pass it now to you.

Jamie R. Hall:
Perfect. Thank you. It's a pleasure being here tonight and sharing all this information with your clientele here. And I appreciate you folks having me on to speak about these topics and everything. What's always fun to do is to get an idea of what the community is looking for, what their questions are before we even start. So we all know we're here to talk about accommodations and things of that nature. But, the staff at the MSAA reached out and got a confirmation of who has what issues going on and things like that, and it's interesting to see, and go back one slide if you would there, that we have got a mix of folks. We have some who have already asked about workplace accommodations. We have some who have not asked about them, and some who it's not relevant to. So it'll be kind of interesting to hear about you folks at the end of this session today about what's worked for you or what questions you may have. And just to reiterate, what was said earlier, if you have questions, make sure you note those in the box there so we can touch on those at the end and everything. You can go to the next slide.

So here we have to talk about accommodations, as you can see in the title: Staying in the Workforce with the ADA and Accommodations. And I'm Jamie Hall, disability attorney, as noted earlier. I've been doing this kind of work for quite some time out of Pennsylvania. I practice formally out of Pennsylvania, New Jersey, New York and Ohio. But frankly, because of the nature of what I do, I can do most of it nationwide. So I help folks in 40-states-plus across the country, we're adding on to that each year as time goes by and everything, again, primarily on the disability side of things. So what I do sometimes in my practice is we talk to folks who haven't left work yet and what the steps are before leaving work. So once they do leave work and look at disability, we know they've exhausted every step they can to maintain their income, maintain their lifestyle before they take that leap into disability. So we're here to talk about before you leave work, the accommodations to keep you at work in that scenario.

It's important here to note the disclaimer, as it says there, today's presentation is really general information. So this information may not apply specifically to you and your scenario, it may not apply specifically to you and your location, your state or your region, things like that. So before you act on anything we talk about today, make sure you get specific legal counsel advising you on your specific situation and your specific area there. Next slide, if we could.

So what's really important here is in the MS community, obviously, none of you have asked for this issue. It's been given upon you here. So many MS patients want to control their work and want to control their timeline here. So in that scenario, continuing to work is a very personal decision here. What is enough for one person may not be enough for another person there. And there are various reasons to look at accommodations or look at leaving work. Most importantly, at least I've seen from my clients, it's the medical, financial and legal issues that they're looking at and help them strive to continue working as long as they can manage this disease and maximize their productivity, maximize their activities and things of that nature. Next slide.

So the number one topic here is disclosure. And that is what we get a lot of calls about and a lot of concerns about - when do I disclose, what do I say, how do I do it, whatever it may be. And it's a really important moment as an MS patient who is employed, because it's really when you're coming out to your employer as having limitations. So what disclosure looks like is different for every individual. And those individuals looking at potential disclosure have to weigh a lot of different factors here. On the pro side, you no longer need to hide your condition. Once

you've come out to an extent, you're now, either the HR or to your employer or to your supervisor, you're known to be an MS patient. You don't have to necessarily hide the condition as much anymore if you don't want to. Disclosing doesn't mean you have to tell each of your coworkers about your condition. This may not entirely apply, but to an extent, there can be a feeling of relief that you shared that with the community that you're working in probably 40 hours a week.

You can also be direct with your supervisor and, if you choose, coworkers about your limitations, you're no longer going to be trying to hide the fact that you may not be as effective at work or as quick at work as you used to be. And you can be direct with those and get more direct assistance with those. Also importantly, you can seek feedback about how to improve work. And that's we're going to talk about in a moment here. Disclosure is a step towards working with the employer to solve these problems, and that's how you should approach it. It's not just talking about the limitations you have, but it's working towards a solution. And that's what this webinar is about today is working towards solutions.

If we look at cons or negatives here, if you disclose, your employer may more closely monitor your work. They can do that for positive reasons, to make sure they're helping you to the best extent they can, to evaluate whether there are additional things they can do to help you at work. But as we all know, we're in the real world here, and once you note that you have these issues, the employer may look for little things to target you as an employee. And it's not appropriate to do so, but again, these things can happen. We also know that the employer may be less flexible for indefinite limitations. A person who seeks accommodations because of pregnancy, the employer knows that within nine months that accommodation is no longer going to be needed. For MS, it is a lifetime declaration here, and it's a lifetime requirement for accommodations. So the employer's flexibility or willingness to be flexible may be a bit different because they know that, going forward, they'll have an employee who has some special requirements there. Again, that shouldn't be the case, but we're in the real world here. We want to address it accordingly.

When you're looking at disclosure, you certainly want to take a look at how your MS is impacting your work product. If the impact is zero or minimal, it may be worthwhile to sit on that information for the time being. You also want to look at the corporate culture and their willingness to help. Some employers want to do everything for their employee. They want their employees to succeed because they know that, one, it's a good thing to do as a person, and two, it's good business. Employees are difficult to replace. It's difficult to retrain a new person to do your position. So it's economically advantageous to the employer to make sure you're able to do your job. Make sure you're able to excel and everything like that. But not all employers see it that way. So before you disclose, you want to weigh these different pros and cons, and also weigh just the people in the corporate culture that you're dealing with in these scenarios. Can we go to the next slide?

So before we even talk about whether you want to disclose, you've got to assess whether you have to disclose. Is disclosure required? And disclosure is required only if you're unable to perform the essential duties of your job without accommodations or you're a safety risk, essentially. So what is an essential duty? It's something that the employee must absolutely do as part of the job. So minor tasks and things like that will not be considered as an essential duty. For instance, if you have a peanut allergy, and part of your duty is to help clean the break room. The effects of a peanut butter sandwich may be a problem for you there, but for most folks, it's not going to be an issue. Because being around those things are not essential duties there. So sometimes it goes to the very core of what you do as an employee, and that would change the

very definition of your job to shift that task away from you. So again, our focus here is on the essential duties and the inability to perform those essential duties.

You want to also consider, and this is where a lot of my clients get crossed off as far as the requirements go, you don't necessarily need to disclose your diagnosis. You're required to disclose only enough to tell the employer why you're medically unable to do your work as it's currently set up. We note there for MS patients, you do not, and I stress you do not, in almost all circumstances need to go ahead and say I'm an MS patient, I need these changes. What you can do is something much more narrow, go in and say I have neuropathy, I need some modifications. Personal neuropathy could have a lot of different conditions, could be a diabetic or something like that. Or it could be someone with a short term injury or something. You're not signaling the employer it's a permanent issue, necessarily, with some of these items. You're also not signaling it's a progressive issue, if that's the case here, with your MS. So you want to get a very narrow description of what your limitation is or what your condition is that's causing you to have issues at work. So rarely do you want to come out and say, I have MS, because of the stigma associated with that. You want to simply say I have a neurological condition, or more narrowly, again, describe the limitation you have. I have neuropathy. I have spasticity. I have leg weakness, whatever it may be, to stay really tight to the point of what you're trying to accommodate there. Next slide.

So further - is disclosure required? And this is where - can the employer ask you? So we just talked about do you have to disclose it. And that's basically - it's impacting the essential duties of your job, you have to disclose it there. But can your employer ask you if you need an accommodation or if you have a condition there? And it's interesting. And most of these have somewhat firm answers, but there's always exceptions to these answers. And if you're interviewing for the job, generally the employer cannot ask you to disclose a condition, but they can ask you if you have or if you can perform your job functions with or without reasonable accommodations. So if you know that you have some issues where you would need Dragon software to read on the computer screen, or things like that, you can say, yes, I can perform my essential job functions with or without reasonable accommodations. The “or” there's really important. So at the interview, they can only ask you, if you can do it, if we give you accommodations, can you do this job? They can ask you that.

In some limited circumstances, an employer can ask you to demonstrate you can perform your job if the employer reasonably believes you cannot due to an obvious disability. So, and we always give crazy... one of the fun parts about accommodations, we can give crazy examples here. So if you go into work and you apply to be a horse racing jockey, that's what you're applying to be, and you come in with a walker, the employer can reasonably say at that point, can you demonstrate to me that you can be a horse racing jockey? It's a legitimate thing for them to ask because there is an obvious disability or an obvious issue they can see of you performing that job function. But in most circumstances, they cannot ask anything beyond: if we give you accommodation, can you do this job's essential functions? And if the answer is yes, that's about all they can ask here. When you're hired, can they ask if a condition needs to be disclosed? They might. And it's if the employer asks all candidates the exact same questions, they might be, but it's pretty limited there. Because again, the the law does recognize a right to privacy as to these issues. After hire, again, maybe. But we have that right to privacy that the government focuses on here. After hire, it's primarily job-related and consistent with business necessity. Again, we're looking at situations where the employer can to an extent see there are significant issues going on there. But it's very limited. We want to protect your privacy here.

If the employer gives you the option to disclose to join an affirmative action program, they can require disclosure to get into that program and everything. As we'll touch on in a moment here, if you ask for accommodations, yes, your employer can require disclosure for you to get those accommodations. Otherwise, in general, the law leans towards the employer cannot ask. One of the things you want to keep in mind, and look back again to the prior slide, here, we talk about willingly disclosing on your own. Are there benefits to doing that? One of the benefits is you get the protection of the ADA. You get the protection of your job and things like that. If you're doing your work slightly slower because of your condition, the employer is more limited in their ability to let you go or have adverse employment actions as a result of those issues there. So again, you want to kind of weigh - do I want to disclose, can the employer require me to disclose. You want to weigh all these things as you move forward there. If we could, next slide.

So either you've disclosed or your employer has legally asked you and you've disclosed - what happens next? Well, again, the whole purpose of that disclosure is to obtain job accommodations, and to obtain job accommodations so that you can do your job effectively. That is our end game here with everything we're talking about - staying at work, doing your job effectively. So what is a job accommodation? It's a change to your job to permit you to continue working despite your medical condition. So it's virtually any change out there that allows you to continue working despite your condition.

Accommodations are important because they let you continue working and delaying loss of an income, delaying an application for disability. It's important in the moment because you can preserve your job, preserve your health benefits, preserve your income. But it has some long term importance as well, because if you go through accommodations, continue working, and at some point they fail, if your condition progresses, there's a new flare, there's something else that pops up, and the accommodations that let you stay and work for another two years no longer work after those two years because of another flare, it's much easier in front of a disability judge to walk the judge through this downward trajectory as time goes by and say, Your Honor, I've done everything I can. Very much as if you're taking new medications as new symptoms pop up as well.

And it's also important to note that it's not just one job accommodation necessarily. A lot of what most patients go through is complex and what we call multifactorial, a lot of different causes of what's going on. It may take 2 or 3 accommodations to allow you to continue working. We can consider all these accommodations in tandem, not just individually there. So you want to really think about all the issues you have at work. And if you're requesting accommodations, how each of those issues individually can be addressed, whether it's one solution or the combination of several solutions there. Again, you can be a little bit creative as far as how you do things here. Next slide.

So when does the ADA apply? When doesn’t it apply? So the ADA obviously is the Americans with Disabilities Act. And that's what governs accommodations that we've talked about primarily. And it's also what governs how the employer responds and what the entire give-and-take system is, as far as these claims go. The ADA does not apply to small private employers. If you're an employer with less than 15 employees, you're not covered under the ADA, which is a federal entity, a federal mechanism. So, for instance, my law office, we have less than 15 employees. All my employees are not going to be covered by the ADA. However, there are state laws out there, and many states do have laws that require employers of less than 15 employees to follow either the ADA itself or something very similar to the ADA. All governmental entities are required to follow the ADA. So if it is a sheriff's office in a small county with three employees, even though it's less than 15, you're still required to follow the ADA. And all federal government

entities, obviously, have to follow the ADA. So it is fairly well covered. And most states, again, even cover less than 15 employees, but you'd want to check on that.

The ADA applies only to individuals who have a physical or mental impairment that substantially limits a major life activity. We look at major life activities, those are things that most of the population can do with no limitations, no issues whatsoever. Again, walking, standing, concentrating, performing manual tasks, these simplistic activities that most people can do just as a matter of course. It's important to note, when the ADA looks at folks who can, who have an impairment that substantially limits a major life activity, they're not looking at what we call mitigation. So in the event you have medications or devices such as a wheelchair that allow you to do that major life activity despite your limitations, the law does not consider your condition with those mitigations. They consider you before you take your meds, before you use the wheelchair and things like that. And that's part of how the ADA requires employers to let you take those medications, to let you use the wheelchair, because you qualify for the ADA before those things are considered. Can we look at the next slide?

Let's talk more about accommodations here. Accommodations must simply be effective. They don't need to be the best solution. They don't need to be the employee's requested solution. They just have to be effective. So you could request that, you know, you have gait issues there, and you have trouble walking to the office. So if we're in the late 90s here, you'd say I request that, you know, Fabio, bring me into my desk and set me in my chair each day. But the employer is not required to follow your request. Anything that's effective. I could say no, we're not hiring a third party to carry you to your seat every day. We're going to go ahead and we're going to have you use your wheelchair or your cane to get to your seat. That's an accommodation here. It's effective, maybe not as fun or entertaining for people, but it's an effective accommodation here.

If the medical need is not obvious, the employer can request medical proof that there's a legitimate medical need for that accommodation. So, again, with the wheelchair use, if, for some reason, the employer doesn't obviously see that you need the wheelchair, they can request that your neurologist give them a letter or documentation stating that you require use of the wheelchair there. Again, that letter doesn't need to say that you have multiple sclerosis, therefore you must have a wheelchair. But that letter would have to say that we've done an assessment, we identified there is leg weakness, we identified there is spasticity or balance issues, vestibular problems. And because of these issues, a wheelchair is needed.

It is also helpful when you're talking to your doctor if you share with them not just the accommodation needed and the issue that's going on, but the frequency with which you think you need it. So the doctor can go ahead and kind of back you up on that. If the wheelchair is only needed when you have a flare, maybe the doctor is going to note only when they have a flare. If it's needed just when you're getting from the parking lot to the front of the building, the doctor could note that as well. But again, when you're giving the employer proof of your accommodation, you want to try to have your doctor back up as much of your request as possible, because what it does is it limits the employer's ability to play by their own rules regarding those accommodations.

The accommodation cannot cause the employer undue hardship. And there's a bit of a battle between these two things we've talked about. The accommodation must be effective, but it must not cause the employer undue hardship. And the undue hardship part of this equation is going to overrule the effective part when the two really, truly come head to head. The accommodation cannot be unduly expensive, disruptive, or a threat to coworkers. Threat to coworkers is

interesting because that's come up a lot more recently, with regard to service dogs and things like that. A poorly behaved service dog or things like that may not be allowed at the employer. Now, what's interesting is the employer could say we're not permitting you to have that service dog as he's a threat to the coworkers. But, we'll let you have a service dog who perhaps doesn't have the issue with the coworkers that this dog has.

Again, just expensive, kind of self-explanatory. If the employer has no walkway to get up to the building, they may be required to put a pathway in, or something like that, that is handicap accessible. Those are the kinds of things that we can look at there to solve problems. Again, looking at undue hardship, looking at expensive - if you have issues typing, and, again, you're looking at that Dragon software to do talk-to-type and things like that, you can request issues with typing, and Dragon software may be a cost effective solution for doing that. But, for instance, hiring someone to do your typing for you - for most people, most positions, is not going to be an appropriate solution, again, due to the cost and possibly the disruptiveness of that solution, there.

It's important to note that the employer is not required to lower their quality standards to allow your accommodation to occur. So if it does mean that your work product is going to be considerably less good, or those of your coworkers is going to be reduced, then they don't necessarily have to follow that accommodation there. They also don't need to fundamentally alter your job to allow an accommodation to occur. Again, this goes with what we talked about earlier with those base requirements of your position at work and the base duties that you have. They can play around on the edges and take away some more incidental tasks to your job, but the core tasks that you have as an employee, the employer doesn't necessarily need to get rid of those or alter those.

The employer also doesn't have to tolerate abusive behavior. So if your accommodation again is seen as aggressive to other employees or is seen as harming other employees, they don’t have to allow you to use that accommodation. What's interesting is when you do an accommodation, there's a back and forth with the employer. So again you go and you'd say, hi, I have neuropathy, therefore I need talk-to-text software because due to my neuropathy, my hands, I can't type as efficiently. And the employer will say, well, we can give you this accommodation, but not that one. So we can give you talk-to-text software, but the other things you're asking for, we cannot do. And you go back and forth and back and forth until hopefully you find some middle ground where everyone can work with that.

However, there are some limited circumstances where there literally is no reasonable accommodation. Where the issues you have and the employer's ability to accommodate those issues, there's just no middle ground there. If no reasonable accommodation exists for your specific job, the employer is allowed to reassign you to a vacant or a lower position in that scenario. And if there's no reasonable accommodation and they have to put you down to a lower position to find something you can do, you can have a reduction in pay that is the same as people in that lower position. If that's the employer's pattern and practice prior to that date and time. So just be aware that when you look at these accommodations, you want to walk in with a game plan, and you want to walk in knowing specifically what your condition is, know how that condition impacts your job, and know a reasonable way to try to meet in the middle with the employer to find a way to keep you at work and keep you productive there, because you don't want to start this process and essentially tell the employer, I can no longer be effective at my job as things currently stand, unless you're confident that you and the employer can find a solution that gets you back to effectiveness at that job, because if you can't find a meet in the middle

spot, you may be demoted there to an extent. And that's something you want to keep in mind that a lot of people don't realize here. Next slide.

So we talked about accommodations, you know, when you notify the employer that you have a condition, how the accommodations process works. And again, the accommodations are a two way street. As I talked a moment ago, you have your request, the employer has their position, you go back and forth and try to meet in the middle here. What are typical accommodations we see for MS patients now? So as you're kind of building your menu and you're saying, what should I be requesting from the employer? What should I discuss with my neurologist or physical therapist before I go in and ask for accommodations? Here are some things that are typically on the menu for MS patients. Number one is shifting hours, because for most employers, shifting hours is essentially free for them to do. A lot of folks will take Wednesdays off or take a day off and work four ten-hour days instead. This allows you to have that Wednesday as a rest day where you can just breathe and everything and get your fatigue back in line. It allows you not to commute that day, take that stressor off of you. That tends to be a fairly effective solution for people dealing with significant physical fatigue there. Again, shifting hours.

Now, if your employer has a position where you have to physically be present at the job, you're working on an assembly line, and the guy to your left and the guy to your right are there five days a week, it's tough to have you not there one day a week to have the line keep moving. If you're a video surveillance monitor and you're working security, it's tough to not have you there one day a week, if that's how it's set up. But in many offices, just shifting hours is an effective way to do things there.

Shifting tasks is another really important thing to look at. Moving physical tasks to another employee is oftentimes an appropriate accommodation. Now, it's not in all circumstances. You know, there are some jobs where physical tasks are a basic part of what you're doing. If you're a bar back for instance, and your job is to, you know, move kegs around behind the bar and carry things about, you can't really say, I can't lift more than 10 pounds, let's accommodate me, because the job is lifting more than 10 pounds. But for most jobs out there, you can move some of the most difficult physical tasks to someone else, and that may buy you time at work while your condition is how it is.

Moving parking is another common one that we see. Again, especially in hot climates where you might be walking a distance to the front of the building, having parking closer to an entrance is really important. Or if there's no assigned parking, having an assigned parking spot can be really helpful as well. Also big one with pregnant females, and everything - a closer parking spot can be really helpful there, too. A workstation near the restroom is also an important accommodation, not just for fatigue purposes, but also for that urgency of bladder and bowel that we so often see, or frequency of bladder and bowel. If you only take so much time on break each day from your employer, if the options are either to be closer to the restroom or to get additional or longer breaks at work each day, most employers will try to find a way to put you closer to the restroom. It can be as simple as that. Again, that may be no cost to the employer, may just be flipping desks or putting you in a vacant desk. And that's a really effective, cost efficient solution there.

I've touched a couple of times on talk-to-type software. It assists those with hand dysfunction, also just assists with fatigue issues and things like that. So that's a really important one here for the MS community. Extra breaks, you know, maybe have a shorter lunch or an extended day to build in time to allow you to take twice as many breaks. Maybe your employer just allows

additional unpaid breaks, whatever it may be. Getting that additional rest time is an accommodation, but it's an accommodation that's awfully very cheap for an employer to look at and very effective in allowing MS patients to get additional rest throughout the day. Same note - leave, paid or unpaid. We'll talk about FMLA in a moment, but FMLA gets you additional unpaid leave can be a really helpful resource here as you're trying to manage your condition, doctor's appointments, things like that.

Finally, for certain positions, working from home. It's amazing how the world can change. It was just over five and a half years ago that COVID came in. At this point, working from home is something that a lot of employers will consider, at least on a part time basis. This, again, can be a major perk for people, to work from home some days of the week to allow that reduced stress from not commuting to work and things like that. Another one you want to keep in your kind of index of different accommodations you may have work out there. So if you're thinking of what accommodations might I want to try to help me out, these are typical ones people look at that may help with the common conditions of MS. Next slide please.

So we talked earlier a moment ago about FMLA. So FMLA is different and separate from the ADA, totally different program here. FMLA provides unpaid time off from work for serious family health issues or preserving the individual's job. It includes at least or up to 12 weeks per year of time off. It must be requested from your employer with support from your doctor, so you can't simply walk in and say, I'm having real issues, I need FMLA. You have to coordinate with your doctor first, then request the accommodations from the employer. What's important to note is FMLA is not simply used in one period. It's not that you have a flare and you can then take three months off. It can also be used intermittently. So FMLA could be used every Wednesday off for quite some time until you've used those entire 12 weeks of days off there to give you those Wednesdays to recover. It can be used when you have doctor's appointments, be used when you have a periodic flare, or if you have like symptoms after taking a medication or something. There's a lot of different ways to do it there. But FMLA provides you 12 weeks per year of time off, no matter how it's broken up, as long as it's reasonable from your doctor and your employer can go ahead and accommodate that.

Again, FMLA is a great tool to supplement sick days. It doesn't require that you be paid for those days, but it requires that your job be held for you for those jobs. It's important that you use FMLA when you can, because if you use your FMLA once you're actually leaving work, once you're done, it gives you a little bit more time when your employer holds your job open in case you decide to go back, and they may hold your health insurance benefits open as well. They're not required to, but they may, while you're on FMLA as well. At the end of the day, FMLA is a good signal to the court that you've exhausted everything you possibly can to stay in the workforce before leaving your job and pursuing disability, should that be the case down the road. Again, FMLA is a fantastic way, combined with the “Taking Wednesdays Off” program we talked about in the last slide, or things like that. You put some of these together and that's how you can build out and extend your timeline at work here, if possible. Next slide please.

Part time work. And I touch on this, it's not necessarily part of the accommodation program today, but I want to touch on this because a lot of folks don't know that you can work part time and you can look at Social Security Disability as well. They're not mutually exclusive here. And Social Security allows people that earn under $1160 per month, 1-1-6-0 per month, and qualify for SSDI benefits. If a person is looking at working part time and applying for Social Security Disability, you typically want to get up to about 20 hours per week but not go over that. And you want to ensure that your work is consistent with your symptoms. So if you pursued all the accommodations you can, you've taken some days off, you've changed your duties at work and

things like that, and you just can't work full time and you fall back to part time work that meets these requirements, you can then look at Social Security Disability as a supplement to your part time income there, as well. Next slide, if we could.

So a few things here before leaving the workforce or before requesting accommodations. Speak with your doctors. You know, if you're looking at a disability claim, make sure they support it here, if everything else has failed. And again, if you're looking at accommodations, talk with your doctor before you pursue the accommodation to make sure they're on board and make sure they don't have other ideas for you. Many employers are able to, or many, I should say, many doctors have been doing this for a very long time. They may know of accommodations that have worked for other people they've treated. So talking with them first may give you ideas above and beyond what we've talked about today and angles that you haven't thought about as of yet. Same thing with their support staff. If your neurologist has a social worker on staff, which many MS centers do, oftentimes they'll have a good idea of what accommodations are out there and what have worked. So coordinating your plan with a neurologist, with the physical therapist, with a social worker before you take these steps is really important.

Also evaluate if you should try mobility devices, physical or occupational therapy, and medications before leaving work. Again, we want to exhaust everything we can do to stay at work as long as we can. These are devices that are really important to help you extend your stay. And these are also devices that may let you stay at work with accommodations and things like that. So you should be looking at these items. If you're on your way out of work, you do want to look at any additional exams that you can do, functional capacity evaluations or neuropsychological evaluations to fully assess your limits. These aren't just for when you're leaving work, but for when you're staying at work. And these exams assess your physical and mental capacity and may say here specifically where this person's struggling and may indicate what specific accommodations may allow you to stay at work. You may not realize it, but your hands are a lot slower than they used to be. And you may think it's your mind or something like that, that you've lost some cognition. But the testing makes you know the cognition is good, the hands are slow. In that scenario, we now know to look at hand accommodations, not cognitive accommodations. These tests are really important to help assess where you're at and help you figure out how to best accommodate where you're at.

Last but not least, whether we're talking about accommodations, whatever it may be, document your symptoms. Make sure your doctors know about it. We all have a tendency, as we go through our treatment, to focus on what is worst and leave the other things out for the moment here. And it makes sense to an extent. You know, we want to focus on the fire before we focus on everything else. But don't let other things get lost in the mix. Because when the flare recedes or when we address the gait, the other conditions are still there and they may still be disabling at work and everything. So again, document your symptoms before you go to your neurologist, regularly check your treatment records, see what they're actually documenting and their narrative there, and either let your doctor know in person at your next visit or a lot of places have the online systems where you can go to the portal and tell the doctor things, put a note in the portal, get in the system there. Just do your part to let your doctor know what's going on. Because if you look at accommodations, it's going to be important to have a medical record for the doctor to rely upon. And if you leave work, it's going to be important as well.

One last note here as far as accommodations go - we talked earlier about that give and take between you and the employer, how you propose an accommodation, your employer can propose and push back and forth trying to find a middle ground there. In some circumstances there is no middle ground. If there is not, you can then take it to higher levels and everything.

You can take it to HR. You can take it to the internal ombudsman there if your employer has one. From there, if your employer can't find a middle ground with you, you can go to the EEOC, the Equal Employment Opportunity Commission, request that they intervene. The Job Accommodation Network is a really good entity out there. And if you're looking at accommodations and cannot find a middle ground with your employer, you want to note down the Job Accommodation Network has an entire set of series that describe different accommodations that might work and can also take calls from you about different accommodations and what might be a good middle ground there. So the Job Accommodation Network is a good place to go to as well. And again, if you can't reach a middle ground, looking at the EEOC, the Equal Employment Opportunity Commission, filing a complaint with them, and then if they can't assist in resolving that, working with counsel, taking things to court might be a way to go as well. So there are programs out there to protect you. Use them all because they're there to protect you and make sure you can do things as need be. Next slide, if we could.

Again, not to a berate this much more than I need to, but these are programs that are out there, whether it's Social Security Disability or Private Long Term Disability, if the accommodations that we've discussed so far simply are not sufficient, you can look at these. These typically assess your ability to work your job eight hours a day, five days per week. And they are looking at cash benefits and medical coverage under these programs there if you indeed cannot work in any position eight hours a day, five days per week. Next slide, if we could.

That's kind of a summation of what we're looking at in this program here as far as different accommodations - when to disclose, when your employer can ask you to disclose, what you disclose, what accommodations you can request and how that process looks, and then other random discussions about medical records and things like that. But that being said, we're looking for questions here at the moment. I believe several have come in. We had several come in prior to the discussion today. So, when you folks are ready, I'll take questions.

Yahaira Rivera:
Wonderful. Thank you Jamie. It has been such an informative presentation. We already received feedback in the chat, and everyone is thankful that you're answering questions already with the information. We do have some time, so let's get started. One of the questions says: What happens if your employer discriminates once you disclose with them that you have multiple sclerosis?

Jamie R. Hall:
So, your employer is not permitted to discriminate. And we've all been on the schoolyard. We've all been in the real world here. So what the rules say and what happens and what's enforceable are not the same thing. That's one of the things I talked about earlier, is try to judge your employer and the employer's culture before you take these steps, because even though the rules say certain things, it doesn't mean the employer is going to do the things the rules say. So if your employer discriminates against you, there's different levels of that there. If your employer is simply looking over your shoulder, trying to see if there's errors that you're making to push you out of work, there's not a ton you can do about small things like that. But if your employer is taking steps that are clear and obvious discrimination, you should initially probably go... it depends on your employer's set up, the larger employer that has an independent HR, going to them and filing a complaint can be a way to go.

If working with the employer is not a sufficient way to go, again, that's when we're going to the EEOC. The Equal Employment Opportunity Commission can be effective as well, or the state equivalent of that. A lot of states have their own version of the EEOC as well. And you can file a complaint and they will then talk to the employer, see if the complaint is legitimate, see if they can find a middle ground to work this out, or if not, they can work on bringing charges against the employer for that discrimination. But again, typically that discrimination has to be something that is fairly dramatic that they're doing - terminating you when you've had good reviews, terminating you when there's no good reason to when you're the only employee who's being let go. But if you declare that you need accommodations and have a condition, six months later there's a layoff that lays off 10% of your employer's employees, that's typically not going to rise to the level of an EEOC type issue. If you notify your employer your need for accommodations and a week later, you and you alone are laid off from a large employer, that's going to signal that there's something wrong going on in the background. That's typically where one of these issues will occur.

What's an interesting wrinkle here is if it's not you who has the condition, but someone close to you who you're caring for, and your employer refuses to promote that person because they have the assistance of somebody else on their docket, essentially, as one of their tasks, that's also something that can cause an issue there, too. So if a caregiver is not being promoted because they're a caregiver and may have those requirements in the future, that's also version of discrimination there too. But again, it all rises to how dramatic the discrimination is and things like that.

Yahaira Rivera:
Thank you so much. That's such great advice. Our next question is a story, they asked for ADA accommodations from their employer, however, I was dismissed and denied, then placed on a forced leave of absence due to them claiming that because of my MS, I'm not able to perform my job. I'm not sure where to go from here. What is your advice?

Jamie R. Hall:
Yeah. So this goes back to what we talked about earlier when we said that by filing an accommodations request, you're taking a bit of a risk because you're telling your employer, as things currently stand, I can't really do my job effectively as you hired me to do it. But what you're also saying is that I really want to be here, and I want to find a middle ground so I can be a good contributing employee. Then you go back and forth as to what the accommodation could be and everything. If there's legitimately not a middle ground that you guys can meet on, that is reasonable, that is cost effective for the employer, that is safe for the other employees, the employer, as I mentioned earlier, can demote you or essentially set you aside and lay you off, because there's no middle ground there. Employers tend to think there's no middle ground a lot more often than that's actually the case.

So if that has happened to you and it's gone that far, if it's a large employer, I'd reach out to HR again and say, I want to figure this out and request a meeting with HR, preferably in person, or if it's a small employer, or if you think that'd be fruitless, you may want to talk to counsel about an EEOC complaint or whatever the state equivalent is. And again, that's E-E-O-C, Equal Employment Opportunity Commission, which is out there basically to enforce these parts of the ADA and make sure that your employer is not being retaliatory because you filed a request for the ADA or something like that. But it sounds here like the employer, if nothing else, they're following the letter of what the ADA says on paper. The question is, are they running a legitimate process for trying to find a middle ground to get to that point? And that's something you want to discuss with somebody there.

Yahaira Rivera:
Thank you. Our next question, what is the difference between long term and short term disability?

Jamie R. Hall:
Yeah. So people use those phrases in a couple of different ways. Technically speaking there's three different disability programs out there. There is short term disability, long term disability and social security disability. Three separate things. Short term and long term disability are typically through your employer. That's an insurance program. So you're working with MetLife or Cigna or someone like that, the Hartford, to get private coverage. And if you're out of work for a short period of time, such as for a pregnancy or a broken leg, less than six months, normally, it's short term disability. Or if you leave work for MS, the first six months are typically private short term disability covered. After those first few months are up, typically six months, it converts into long term disability. So when an MS flare prevents you to work for two months, short term disability. If your recovery from that flare never gets you back to baseline and you're out indefinitely, it converts to long term disability after six months. Those are private plans paid for through your employer. If you look at your pay stubs, it'll typically say on there that you're making payments to long term disability, to short term disability.

There's a separate item out there, Social Security Disability. And that's what you and everyone pays into, essentially, to the federal government. And that gives you disability benefits, but only if your condition is going to be disabling for at least 12 months. So if your condition is just a temporary flare, it's not going to qualify. But if you're going to be out indefinitely, you can look at Social Security as well. And there's no coverage through your employer and nothing like that. Just that you've worked, that you've paid into the system, you have a qualifying condition, you can look at Social Security Disability. And some states have short term disability programs within the state as well - New Jersey, California, are the primary ones that do that. But those are kind of your three disability programs. Again, employer based short and long term disability, and then federal government based social security disability, if you'd be out for 12 months or longer.

Yahaira Rivera:
Thank you so much for that. I think that's important to keep in mind as open enrollment season is around the corner to have clear expectations and those benefits. Our next question is: What if you have requested accommodations, but your employer is taking a long time to give you an answer? How do you follow up with that?

Jamie R. Hall:
So a long time is a sliding scale. And there are some accommodations that are complex, and some accommodations the employer has to figure out logistics, has to figure out what they can move about, has to figure out funding. So it shouldn't be an overnight decision for a lot of accommodations out there. Now, if you have Dragon software you're looking at for talk-to-text, that's buying a software program, having IT download it. That's a pretty quick process. But if we're talking about something major and in-depth, it'll take a little bit of time.

In my view, it depends on how much you're around that person, but with HR, checking in periodically every couple of weeks is probably reasonable. Not saying I want a decision today, but, hey, just checking in. Want to see where we're at? It seems pretty reasonable to me. And when you do check in and they do give you an answer, ask them directly - when should I follow up again? Because that's a way of respectfully saying I get this takes time, I get I'm not in HR,

but can you tell me where we're at and when I should follow up again? That way, it puts the burden on them to say, oh, in three weeks, follow up, or in a month, follow up. You can say, hey, you told me to check up in a month, where are we at now? Now again, a month is a long period of time here, but that concept carries the day. Let them tell you when to check up, that way, when you follow up, you can say, you told me to check up at this point.

Yahaira Rivera:
Thank you so much. Another question that is interesting is: What about disclosing about MS if they're returning to their work, the workplace? So what would you recommend?

Jamie R. Hall:
So I would initially ask what the purpose of that is. So if you've never disclosed you have MS, you're going back to the workplace, whether you've taken time off for helping a spouse or for your condition, whatever it may be, but you've never disclosed it, when you come back to work, why are you now disclosing the condition? If you're disclosing it because you now are coming back and you're saying, hey, I took just sick time because I had a flare, but post flare, I still have these limitations, you go back to the rubric we talked about earlier, which is disclose the most narrow definition of your limitations you can that apply to something specific at work. So again don't just walk back in and tell HR, I have MS, accommodate me. Tell HR, I have this specific physical issue and here's specifically what it impacts me at work, and here's a specific solution that can get me back to square one on this one. So again, a very narrow, very directed solution as far as that goes.

Yahaira Rivera:
Thank you so much. And we do have participants asking, where are you practicing because they need a lawyer. Could you repeat the states that you practice?

Jamie R. Hall:
Yeah. So it's kind of unique in what I do. So I'm based out of Exton, Pennsylvania. I'm admitted to practice as well in New York, New Jersey, Pennsylvania, and Ohio. But most of what I do is Social Security Disability based work, getting people on that program, getting people those benefits. I do that work nationwide, because it’s a single federal program, so I can do it anywhere across the country. I've got clients currently, I think, from Hawaii to Massachusetts and from Florida to Washington state. So we do it all over, half my clientele are from the MS community. We've been servicing the MS community for, I think, over 15 years, and with the MSAA for about ten years or so now. So we can help anyone, anywhere with what we do, which is disability claims. We also do private long term disability claims as well, if someone's denied that. So we can assist with that, too, in most of the country as well. If you're looking at specific accommodation based questions, we're very limited. We don't formally practice in that area, but we can give some advisement and things like that depending on your location. But a lot of those questions, we also refer out to the Job Accommodation Network, who does a fantastic job with these issues here, too.

Yahaira Rivera:
Thank you for sharing that with our community. Our next question is: What is the typical process for getting approval for FMLA? Is there a specific documentation needed or does that vary according to the employer?

Jamie R. Hall:

So there are some more generic forms that are out there. The typical process I see, and some of this depends on what kind of neurologist you go see. So if you go to an MS center that's out there, one of the bigger MS groups, and you go see their person who's a social worker, who's a nurse case manager, or something like that, they will typically have FMLA paperwork cued up ready to go. And your neurologist has probably seen that a dozen times before, because there's some very generic documents for FMLA where they'll check some boxes that say, here's a diagnosis, here's a limitation, here's what they can't do at work, and things like that. And then FMLA will say, here's the amount of time off they need. Is it intermittent, whatever it may be. And you give that to your employer.

You can also... and that's the way you want to go typically, because that gets the neurologist on board before you go to the employer, because the worst thing you can do is tell your employer you're having these issues, you want FMLA, and then go to your neurologist and he says, I don't agree with you, I think you can work full time, you don't need these days off. So, go to the neurologist first. Ask them about it. I bet nine times out of ten they will have an FMLA form on hand. If not them, if you have a better rapport with your primary care physician because you just see your neurologist one time per year or something like that, that's a virtual visit, ask your primary care physician to do an FMLA form, or your ophthalmologist or whoever it may be that's treating you for your limitations there. But there are forms that are out there. Typically, your doctors are the first clearinghouse for that document.

Yahaira Rivera:
Thank you so much. That's great advice as well. And then we have a comment: What if it doesn't directly impact my basic job duties, but it does indirectly, because I need the time to go to my doctors and getting my treatment? How would that apply to accommodations?

Jamie R. Hall:
Yeah. So from what I've seen, that comes up as more of an FMLA kind of issue there. So again, you have enough doctor's visits, and I've seen the files of folks with MS, between neurology, physical therapy, the infusion visits you guys have, all these different doctors that you go see, you're going to burn through your sick time really quick, let alone trying to go to a child's concert or something like that. So to allow you to continue working and to meet all your medical demands, FMLA is a great item. And intermittent FMLA where you have 12 weeks per year, and that's 12 times five. So I can do the math here - 60 days. So you'd have 60 days over the course of a year that you could take off, and your employer has to hold your job, cannot penalize you for doing so. It gives you a lot of slack to do those things and to go ahead and keep your job. Now the catch is they don't have to pay you for all those 60 days. They still got to pay you for your sick days you're taking, but not all 60 FMLA days. But again, if we're weighing, do I go to see the physical therapist so I maximize my function? Or do I get that day of pay? You got a decision to make there. But if you're just looking at can I keep treating, FMLA intermittently can get you a lot of that stuff there.

Yahaira Rivera:
Thank you Jamie. What will be your advice before we close our program? What will be your advice to our community that is listening today that still have questions or still needs support? What will be that last advice that you can give them?

Jamie R. Hall:
Yeah, a couple things here. Number one, keep working. What you're doing is really difficult. It's a real challenge. And those of us who are around the condition, you know, the MSAA staff,

myself, we know you have a real challenge ahead of you there. Maximize your potential there. Because once you leave work, most people don't make it back. Use these accommodations and things like that. Work with your doctors to build a combination game plan, confirm what's going on. Call the job accommodation network, talk with their advisors there about what accommodations may be out there, and work with your employer, try to find a middle ground in everything. Maximize your potential. Because as a disability attorney, I don't want to see you coming to me until you've maximized everything you possibly can to stay at work. And I want to hear that you've made this decision on your own after maximizing your function. And that's the whole purpose of the presentation today. And I wish you folks the very best. And I thank the MSAA for letting me share this time with you.