

12.13 ADA—Defenses—Good Faith in Interactive Process

Good faith is a defense to a claim seeking damages for discrimination under the ADA where the alleged discriminatory practice involves the provision of a reasonable accommodation.

To prevail on this defense, the defendant [*name*] must prove, by a preponderance of the evidence, that the defendant [*name*] demonstrated good faith efforts, in consultation with the person who informed the defendant [*name*] that accommodation is needed, to identify and make a reasonable accommodation that would provide that person with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

If you find that each of the elements on which the plaintiff [*name*] has the burden of proof has been proved, your verdict should be for the plaintiff [*name*], unless you also find that the defendant [*name*] has proved each of the elements of this affirmative defense, in which event your verdict should be for the defendant [*name*].

Comment

In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 791 of Title 29, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

42 U.S.C. § 1981a(a)(3).