

ADA DISABILITY COMPLIANCE TRAINING:

What is Good Faith, and How Do You Demonstrate it?

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What is Good Faith

Two Mandates of the Employer:

1. Employers must engage in a timely, **good-faith**, interactive process with applicants or employees when triggered, and
2. Employers must provide Reasonable Accommodations for persons with covered disabilities

Each is a stand-alone statutory obligation

Source: ADA - 42 U.S.C. § 12112 et seq. (1990)



The Question

WHAT DOES IT MEAN TO BE IN GOOD FAITH?

What Is Good Faith

How do you define it?

Definitions

29 C.F.R. § 1630.2(o)(3) (EEOC regulations):

- “To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability... This process should identify the precise limitations resulting from the disability and potential reasonable accommodations.”



Defined By Case Law

- Beck v. University of Wisconsin Board of Regents, 75 F.3d 1130 (7th Cir. 1996):
 - The court emphasized that the ADA's interactive process is intended to be a flexible give-and-take and that employers must make a reasonable effort in **good faith** to determine an appropriate accommodation.
- EEOC v. Kohl's Department Stores, 774 F.3d 127 (1st Cir. 2014):
 - The employer must participate in the interactive process in **good faith**, which includes responding promptly, considering possible accommodations seriously, and maintaining communication with the employee.



What You Experience

Often in an interactive process...

- Supervisors **lean** to...
- Union's / Representative's job is to **advocate**...
- Employees often **lean** to...

You Are Managing

Just a list of the requests I got the week that I prepared this deck:

- Silvia has her 4th work injury
- Ben informs you that he diagnosed himself with a disability based on a Tik Tok video and requires remote work now
- Jeremy has called out sick for 18 of the last 25 Fridays
- Micha submitted a note from her acupuncturist indicating that she requires a 4/10 schedule and can't work with Betty

Take a Minute

- Feel the **feelings**
- Then **move forward** with good faith
- Practice remembering **why** you do this work.



Good Faith Is

Feeling the **pressure**...

Understanding the wants on all **sides**...

But doing the **work**, to gather the **data**, to **seek** out a yes, if a yes exists, and to make sure that the yes is **implemented**.

That is Good Faith.

Good Faith

You will not always find a **YES**, but if that was your goal, your effort and actions will help the **NO** be better understood and often accepted.

That Is Your Superpower

Your Role and Your Why

Why Do You Do This work?

The **Why** matters.

- It fuels your efforts to **protect spaces** for persons with disabilities
- It fuels your willingness to **push back** against those that may not be committed to data-based decision-making
- **It can be felt.** When someone can feel your “why,” you will have less resistance, and less interference. (*Less, not none*)
- Your Why *is* **Good Faith** and it is your **Superpower**



Good Faith

So, do it!

Implement a Sound Interactive Processes.





Disability Interactive Process Hallway®

Disability Interactive Process Hallway

DOOR 1

Gather Clear Data: Obtain Clear Medical Work Restrictions; May determine an Essential Functions Position Analysis® (EFPA®) document needs to be created – **Today's Focus**

DOOR 2

Research Accommodations: Call/email/discuss with employee and supervisor the restrictions and begin exploring accommodation ideas

DOOR 3

Schedule, Prepare & Meet: Schedule meeting and invite the right people to attend; confirm attendance in advance; prepare notes for meeting; meet and make decisions

DOOR 4

Do What You Said You Would Do: After meeting, implement decisions; do what was decided

Do It!

Implement Process that Utilizes **Data** to make decisions to ensure that the **feelings**, wishes, preferences and **biases** don't guide **decision-making**.



Good Faith Is

The willingness to **Do The Work** that needs to be done to come to the **Right Decision**



Good Faith Is

Having the courage to **BE BRAVE** enough to do what is right, even when others more **powerful** than you want a different outcome.



"The most common way people give up their
power is by thinking they don't have any."
- Alice Walker



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A large crowd of diverse people, seen from above, forming the shape of a heart. The people are wearing various colored clothing, creating a vibrant, multi-colored heart shape against a dark background.

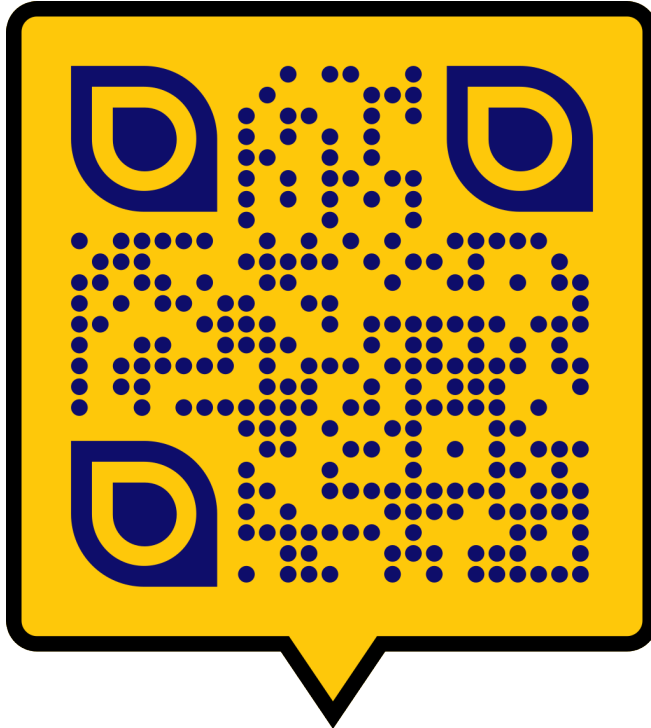
Your Power

Top talent does not come from one specific group.

Those with power have the unique opportunity to create change... if we are first **curious** and then if we are **courageous** enough.

Be in **good faith**. Be willing to **protect spaces** for persons with disabilities.

Do The Work, Get the Data... Easier



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