

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>ROBERT BAUMGARDNER,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>NO.: 99 C 5788</b>
	)	
<b>vs.</b>	)	<b>Magistrate Judge Morton Denlow</b>
	)	
<b>COUNTY OF COOK,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**JURY INSTRUCTIONS**

**General Instructions:**

Now that you have heard all of the evidence to be received in this trial and each of the arguments of counsel, it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case and which will guide you in your decisions.

All of the instructions of law given to you by the Court -- those given to you at the beginning of the trial, those given to you during the trial, if any, and these final instructions -- must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court, just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as juror for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the Plaintiff, and the denial of these allegations by the Defendant.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

When a government agency is involved, of course, it may act only through natural persons as its agents or employees. Even if an act is illegal or forbidden, it may be within the scope of the employment of the agents or employees of the government agency so as to make the government agency liable for those acts.

As stated earlier, it is your duty to determine the facts, and in so doing, you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses, sworn testimony read to you from depositions, the exhibits admitted in the record, and stipulated or admitted facts. A stipulation is a statement of fact agreed to between the parties, and you must regard stipulated facts as true.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your own experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received as evidence, regardless of who may have produced them; and all facts which may have been judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by the evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony, given the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy

of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

The burden is on the Plaintiff in a civil action such as this to prove every essential element of his claim by a preponderance of the evidence. However, Defendant may in some instances bear the burden to prove certain facts.

## **The Nature of the Claim**

This is an action brought under the Americans with Disabilities Act (“ADA”). The ADA makes it unlawful for an employer to intentionally discriminate against a qualified individual with a disability because of that person's disability. In this case, the Plaintiff, Robert Baumgardner, claims that the Defendant, County of Cook, intentionally discriminated against him because he had a disability or because Defendant perceived him as having a disability by failing to provide him with a reasonable accommodation and by removing him from his position and forcing him to accept a lower position. The Defendant denies this claim. It is your responsibility to decide whether the Plaintiff has proven his claim against the Defendant by a preponderance of the evidence as that term is defined in these instructions.

## **The Statute Defining the Claim**

The ADA states in relevant part that:

“No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

The parties have agreed that Defendant County of Cook is a “covered entity” as that term is used in the ADA.

## **Preponderance of the Evidence - Defined**

“A preponderance of the evidence” means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence means to prove that the claim is more likely so than not so. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof should fail to establish any essential element of the Plaintiff’s claim by a preponderance of the evidence, then the Plaintiff has failed to carry his burden of proof by a preponderance of the evidence and you must return a verdict for the Defendant.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression “if you find” or “if you decide,” I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

## **The Essential Elements of the Plaintiff's Claim**

In order for Plaintiff Robert Baumgardner to establish his claim of intentional discrimination by Defendant County of Cook, he has the burden of proving the following three essential elements by a preponderance of the evidence:

1. That he is a “qualified person with a disability,” as defined in these instructions;
2. That the Defendant intentionally discriminated against Plaintiff because of his disability; and
3. As a direct result of the Defendant’s intentional discrimination, the Plaintiff sustained damages.

### **FIRST ELEMENT - QUALIFIED INDIVIDUAL WITH A DISABILITY:**

In order to meet the first element of his claim, Plaintiff Robert Baumgardner must prove that he is a “qualified individual with a ‘disability.’” You should consider the following definitions in connection with the first element of Plaintiff’s claim.

#### **“Disability” - Defined**

The term “disability” as used in these instructions, means that the Plaintiff has a physical impairment, or is regarded as having such an impairment, that substantially limits one of the major activities of life. Major life activities are those basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, or lifting. In this case, the Plaintiff is required to show that he is substantially limited with respect to walking or that the Defendant regarded him as such.

Not every physical or mental impairment has a substantial enough effect on an individual’s major life activity to qualify for protection under the Americans with Disabilities Act. It is not enough to show minor inconveniences.

An impairment is substantially limiting if it significantly restricts the duration, manner, or condition under which an individual can perform a particular major life activity as compared to the average person.

Whether or not Plaintiff is disabled is determined at the time of the alleged discriminatory action.

#### **“Qualified Individual with a Disability” - Defined**

The term “qualified individual with a disability,” as used in these instructions, means an individual with a disability who, with or without reasonable accommodation, can perform the “essential functions of the employment position” which the Plaintiff held or to which he seeks to return.

**“Essential Functions of an Employment Position” - Defined**

The term “essential functions of an employment position,” as used in these instructions, means the fundamental job duties of the employment position which the Plaintiff holds. The term “essential functions” does not include the marginal functions of the position. The jury may, along with all the other evidence in the case, consider the following evidence in determining the essential functions of an employment position:

1. The employer’s judgment as to which functions of the job are essential;
2. Written job descriptions;
3. The amount of time spent on the job performing the function in question;
4. The consequences of not requiring the person to perform the function;
5. The work experience of persons who have held the job; and/or
6. The current work experience of persons in similar jobs.

No one factor should be given greater weight than another.

**SECOND ELEMENT - INTENTIONAL DISCRIMINATION BECAUSE OF DISABILITY:**

If you find that the Plaintiff has met his burden of proving that he was a qualified individual with a disability, then you should consider the second element of Plaintiff’s claim.

Plaintiff has the burden of proving by a preponderance of the evidence that he was “intentionally discriminated” against by the Defendant because of his disability.

The term “discrimination” includes, among other things, the following acts:

1. Limiting, segregating or classifying an employee in a way that adversely affects the opportunities or status of such employee because of the employee’s disability;
2. Not making “reasonable accommodations” to the known physical limitations of an otherwise qualified employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business; and
3. Denying employment opportunities to an employee who is an otherwise qualified individual with a disability, if such denial is based on the need of the employer to make reasonable accommodation to the physical impairments of the employee.

By use of the phrase “intentionally discriminated,” I mean to say that the Plaintiff has established, by a preponderance of the evidence, that he was not provided with a reasonable

accommodation and the Defendant removed him from his Laborer I position so that it would not have to provide him with a reasonable accommodation or because it believed him to be disabled.

**“Reasonable Accommodation”- Defined**

The term “reasonable accommodation” as used in these instructions means making modifications to the work environment which allow a person with a disability to perform the essential functions of the job.

“Reasonable accommodation” may include job restructuring, part-time or modified work schedules, reassignment to a vacant position and other similar accommodations for individuals with disabilities. The employer must be willing to consider making changes in its ordinary work rules, facilities, and/or terms and conditions in order to enable a disabled individual to work; however, the employer is not required to provide the particular accommodation that the employee requests.

An accommodation is some specific action required of the employer. There is no all-inclusive list of reasonable accommodations.

The term “reasonable accommodation” does not include efforts that would cause an “undue hardship” on the employer.

**Good Faith Efforts at Reasonable Accommodation**

The Defendant County of Cook in this case asserts that it has made a good faith effort to reasonably accommodate the alleged disability of the Plaintiff. Your verdict should be for the Defendant County of Cook if the Defendant has proven to you by a preponderance of the evidence that Plaintiff Robert Baumgardner has informed the Defendant that the reasonable accommodations, as defined in these instructions, were needed because of Plaintiff’s disability; and either:

1. Defendant County of Cook made a good faith effort, in consultation with Plaintiff, to identify and make a reasonable accommodation that would provide Plaintiff with an equally effective opportunity at the work place; or
2. The efforts at the reasonable accommodation would cause an undue hardship on the operation of the Defendant’s business.

**“Undue Hardship”-- Defined**

The term “undue hardship” as used in these instructions, means requiring Defendant to incur significant expense or undergo significant difficulty when considered in light of the following:

1. The nature and net cost of the accommodation;

2. The overall financial resources of the Defendant and the number of persons employed by the Defendant; and
3. The type of the Defendant's business, including the composition, structure and functions of the Defendant's workforce.

### **THIRD ELEMENT: DAMAGES**

If you find that Defendant intentionally discriminated against Plaintiff because of his disability, then you must determine an amount of money that is fair compensation for Plaintiff's damages. You may award compensatory damages only for injuries that the Plaintiff proves to you were caused by Defendant's allegedly wrongful conduct.

When I say Plaintiff must prove that his injuries were "caused" by Defendant's allegedly wrongful conduct, I do not mean that the Plaintiff must prove that this was the only cause of his injuries. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and in such a case, each may be a "cause." The Plaintiff need only show that Defendant's alleged wrongful conduct played a substantial part in bringing about or actually causing the injury or damage, even if there were other causes.

The damages that you award must be fair compensation, no more and no less. In calculating damages, you should not consider any back pay that the Plaintiff lost. The award of back pay, should you find Defendant liable, will be calculated and determined by the Court.

You may award compensatory damages, based on the evidence introduced at trial, for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that the Plaintiff experienced as a consequence of the Defendant's actions. No evidence of monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award you make should be fair in light of the evidence presented at trial.

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation or guess work. On the other hand, the law does not require that the Plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.



## **Verdict -- Unanimous -- Duty to Deliberate**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

## **Effect of Instruction as to Damages**

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

## **Selection of a Foreperson**

Upon retiring to the jury room, you will select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

## **Verdict Forms**

The following Verdict forms have been prepared for your convenience.

### **Form 1**

If you find in favor of Plaintiff Robert Baumgardner and against Defendant County of Cook, you should calculate damages using jury verdict form number 1 which reads as follows:

WE, THE JURY, FIND IN FAVOR OF PLAINTIFF ROBERT BAUMGARDNER AND AGAINST DEFENDANT COUNTY OF COOK FOR VIOLATION OF THE AMERICANS WITH DISABILITIES ACT. HAVING FOUND IN FAVOR OF PLAINTIFF ROBERT BAUMGARDNER AND AGAINST DEFENDANT COUNTY OF COOK, WE ASSESS COMPENSATORY DAMAGES IN THE FOLLOWING AMOUNT: \_\_\_\_\_

## **Form 2**

If you find in favor of Defendant County of Cook and against Plaintiff Robert Baumgardner, you should use jury verdict form number 2, which reads as follows:

WE, THE JURY, FIND THAT THE PLAINTIFF, ROBERT BAUMGARDNER, HAS NOT PROVEN THAT THE DEFENDANT, COUNTY OF COOK, VIOLATED THE AMERICANS WITH DISABILITIES ACT, AND THEREFORE, WE FIND FOR THE DEFENDANT, COUNTY OF COOK, AND AGAINST THE PLAINTIFF, ROBERT BAUMGARDNER

You will take the verdict forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in the forms, and each of you will date and sign the form which sets forth the verdict upon which you unanimously agree; You will then return to the courtroom with your verdict.

### **Verdict Forms -- Jury's Responsibility**

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

### **Communications Between Court and Jury During Deliberations**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiff that [s]he too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind that you are never to reveal to any person -- not even to the Court -- how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

**Jury Verdict Form 1**

WE, THE JURY, FIND IN FAVOR OF PLAINTIFF ROBERT BAUMGARDNER AND AGAINST DEFENDANT COUNTY OF COOK FOR VIOLATION OF THE AMERICANS WITH DISABILITIES ACT. HAVING FOUND IN FAVOR OF PLAINTIFF ROBERT BAUMGARDNER AND AGAINST DEFENDANT COUNTY OF COOK, WE ASSESS COMPENSATORY DAMAGES IN THE FOLLOWING AMOUNT:\$\_\_\_\_\_.

<u>DATE</u>	<u>FOREPERSON</u>

**Jury Verdict Form 2**

WE, THE JURY, FIND THAT THE PLAINTIFF, ROBERT BAUMGARDNER, HAS NOT PROVEN THAT THE DEFENDANT, COUNTY OF COOK, VIOLATED THE AMERICANS WITH DISABILITIES ACT, AND THEREFORE, WE FIND FOR THE DEFENDANT, COUNTY OF COOK AND AGAINST THE PLAINTIFF, ROBERT BAUMGARDNER.

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