

PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS – CIVIL

PROPOSAL 2024-016

March 13, 2024

The Uniform Jury Instructions – Civil Committee has recommended amendments to Uniform Jury Instruction 13-2307C NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 12, 2024, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

13-2307C. Discrimination based on serious medical condition or physical or mental handicap.

To establish that _____ (*the defendant*) discriminated against _____ (*the plaintiff*) based on [a serious medical condition] [physical or mental handicap], _____ (*the plaintiff*) has the burden of proving each of the following elements:

(1) that _____ (*identify impairment*) qualifies as a [serious medical condition] [physical or mental handicap];¹

(2) that [he] [she] suffers from _____ (*identify impairment*);

(3) ~~that _____ (*the plaintiff*) [is] [was] "otherwise qualified," [meaning [he] [she] [is] [was] able to meet all of [his] [her] job's requirements in spite of [his] [her] _____ (*identify impairment*)] as defined in these instructions;~~¹

(4) that _____ (*the defendant*) [knew of] [~~regarded as~~] [or] [had a record of] _____ (*the plaintiff*)'s [impairment] [condition] [or] [regarded _____ (*identify impairment*) as a [physical or mental handicap] [serious medical condition]; and

(5) that [~~_____ (*the defendant*) intentionally discriminated against _____ (*the plaintiff*) because of his disability by _____ (*insert adverse action i.e. terminating his employment, refusing to accommodate*)~~] _____ (*the plaintiff*)'s _____ [physical or mental handicap] [serious medical condition]

was a motivating factor in _____ (the defendant)'s
(insert adverse action, i.e., refusing to hire, firing, failing to promote, demoting, or discriminating
in matters of compensation terms, conditions, or privileges of employment against
_____) (the plaintiff).²

If you find that _____ (the plaintiff) has not established each of these
elements, you must find for _____ (the defendant) on _____ (the
plaintiff)'s discrimination claim based on [serious medical condition] [physical or mental
handicap].

[If you find that _____ (the plaintiff) has established each of these elements,
you must then determine whether _____ (the defendant) has stated a bona fide
occupational qualification.³]⁴³

USE NOTES

~~[1. See UJIs 13-2307F and 13-2307G NMRA regarding serious medical condition or
physical or mental handicap.]~~

~~1. [2.] See UJI 13-2307J NMRA for a definition of the term "otherwise qualified."~~

~~2. Only instructions on elements in dispute should be provided.~~

~~[3. See UJI 13-2307B NMRA regarding "bona fide occupational qualification."]~~

~~3. [4.] This paragraph should only be used when the defense of bona fide occupational
qualification has been raised.~~

~~[Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010; as amended
by Supreme Court Order No. _____, effective for all cases pending or filed on or after
_____.]~~

Committee commentary. — ~~This instruction has been modified to remove reference to
intent. See *Nava v. City of Santa Fe*, 2004-NMSC-039, ¶¶ 8-9, 136 N.M. 647, 103 P.3d 571
(approving of mixed- motives jury instruction and holding “the Legislature did not intend for an
employer to be relieved from an otherwise valid hostile work environment claim simply because
other factors aside from sex contributed to making the employee’s work environment hostile and
abusive”); see also *Loggins v. City of Albuquerque*, No. A-1-CA-38901, ¶¶ 17-19, 2022 N.M. App.
Unpub. LEXIS 442 (Ct. App. Dec. 5, 2022) (“*Nava* holds that the intent required for discrimination
under the Human Rights Act is that the plaintiff’s membership in a protected class ‘was a
motivating factor’ in the conduct alleged to be discriminatory.”).~~

~~The court must determine which of the elements stated in this instruction are to be
submitted to the jury. No New Mexico case has decided whether the qualification of an impairment
as a serious medical condition is a question of law or fact. See *Goodman v. OS Rest. Servs., LLC*,
2020-NMCA-019, ¶ 35, 461 P.3d 906 (“Additionally, although no New Mexico case has decided
whether the determination of an impairment as a serious medical condition is a question of law or
fact, the Tenth Circuit has decided that “[w]hether the plaintiff has an impairment within the
meaning of the ADA” and “[w]hether the conduct affected is a major life activity for purposes of
the Act is also a legal question for the court.”) (citing *Doebele v. Sprint/United Mgmt. Co.*, 342
F.3d 1117, 1129 (10th Cir. 2003). [The Tenth Circuit has decided that “[w]hether the plaintiff has
an impairment within the meaning of the ADA and whether the conduct affected is a major life
activity for purposes of the ADA are questions of law for [the] court to decide.” See *Holt v. Grand
Lack Mental Health Center*, 443 F.3d 762, 765 n.1 (10th Cir. 2006) (citing *Doebele v.*~~

Sprint/United Mgmt. Co., 342 F.3d 1117, 1129 (10th Cir. 2003).] Because this instruction provides a broad overview of the elements of a New Mexico Human Rights Act claim, the parties should take care when drafting an instruction under UJI 13-302 NMRA not to repeat the information contained in this instruction.

The New Mexico Human Rights Act was amended, effective June 16, 2023, in part to substitute “handicap” with “disability” throughout the section. See NMSA 1978, § 28-1-7 (amended 2023). Given that statutory amendment, the trial court has the discretion to substitute “handicap” with “disability” in giving this jury instruction.

[Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]