

1 **13-2307C. Discrimination based on serious medical condition or physical or mental**
2 **handicap.**

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

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

9 (2) that ~~[[he] [she]]~~ _____ (*the plaintiff*) suffers from _____
10 (*identify impairment*);

11 (3) that _____ (*the plaintiff*) [is] [was] “otherwise qualified,” ~~[[meaning~~
12 ~~[[he] [she] [is] [was] able to meet all of [his] [her] job’s requirements in spite of [his] [her]~~
13 ~~_____ (*identify impairment*);²]~~ as defined in these instructions;¹

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

18 (5) that ~~[[_____ (*the defendant*) intentionally discriminated~~
19 ~~against _____ (*the plaintiff*) because of his disability by _____ (*insert*~~
20 ~~*adverse action i.e. terminating his employment, refusing to accommodate*).~~] _____
21 (*the plaintiff*)’s _____ [physical or mental handicap] [serious medical condition]
22 was a motivating factor in _____ (*the defendant*)’s _____
23 (*insert adverse action, i.e., refusing to hire, firing, failing to promote, demoting, or discriminating*

1 in matters of compensation terms, conditions, or privileges of employment against
2 _____ (the plaintiff).²

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

7 [If you find that _____ (the plaintiff) has established each of these elements,
8 you must then determine whether _____ (the defendant) has stated a bona fide
9 occupational qualification.^{[3]4}]³

10 USE NOTES

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

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

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

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

16 [~~4.] 3. This paragraph should only be used when the defense of bona fide occupational~~
17 ~~qualification has been raised.~~

18 [Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010; as amended
19 by Supreme Court Order No. S-1-RCR-2024-00104, effective for all cases pending or filed on or
20 after December 31, 2024.]

21 **Committee commentary.** — This instruction has been modified to remove reference to
22 intent. See *Nava v. City of Santa Fe*, 2004-NMSC-039, ¶¶ 8-9, 136 N.M. 647, 103 P.3d 571
23 (approving of mixed-motives jury instruction and holding that "the Legislature did not intend for

1 an employer to be relieved from an otherwise valid hostile work environment claim simply because
2 other factors aside from sex contributed to making the employee’s work environment hostile and
3 abusive”); see also *Loggins v. City of Albuquerque*, A-1-CA-38901, mem. op. ¶¶ 17-19 (N.M. Ct.
4 App. Dec. 5, 2022) (nonprecedential) (“*Nava* holds that the intent required for discrimination
5 under the Human Rights Act is that the plaintiff’s membership in a protected class ‘was a
6 motivating factor’ in the conduct alleged to be discriminatory.”).

7 _____The court must determine which of the elements stated in this instruction are to be
8 submitted to the jury. No New Mexico case has decided whether the qualification of an impairment
9 as a serious medical condition is a question of law or fact. See *Goodman v. OS Rest. Servs., LLC*,
10 2020-NMCA-019, ¶ 35, 461 P.3d 906 (“Additionally, although no New Mexico case has decided
11 whether the determination of an impairment as a serious medical condition is a question of law or
12 fact, the Tenth Circuit has decided that ‘[w]hether the plaintiff has an impairment within the
13 meaning of the ADA’ and ‘[w]hether the conduct affected is a major life activity for purposes of
14 the Act is also a legal question for the court.’”) (quoting *Doebele v. Sprint/United Mgmt. Co.*, 342
15 F.3d 1117, 1129 (10th Cir. 2003). [~~The Tenth Circuit has decided that “[w]hether the plaintiff has~~
16 ~~an impairment within the meaning of the ADA and whether the conduct affected is a major life~~
17 ~~activity for purposes of the ADA are questions of law for [the] court to decide.” See *Holt v. Grand*~~
18 ~~*Lack Mental Health Center*, 443 F.3d 762, 765 n.1 (10th Cir. 2006) (citing *Doebele v.*~~
19 ~~*Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1129 (10th Cir. 2003).~~] Because this instruction provides
20 a broad overview of the elements of a New Mexico Human Rights Act claim, the parties should
21 take care when drafting an instruction under [~~UJI 13-302~~] UJIs 13-302A through 13-302F NMRA
22 not to repeat the information contained in this instruction.

1 The New Mexico Human Rights Act was amended, effective June 16, 2023, in part to
2 substitute “handicap” with “disability” throughout the section. See NMSA 1978, § 28-1-7 (2023,
3 amended 2024). Given that statutory amendment, the trial court has the discretion to substitute
4 “handicap” with “disability” in giving this jury instruction.
5 [Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010; as amended
6 by Supreme Court Order No. S-1-RCR-2024-00104, effective for all cases pending or filed on or
7 after December 31, 2024.]