

13-2300. Introduction.

The instructions in this chapter are to be used in cases involving claims of wrongful or retaliatory discharge, including cases brought under the Whistleblower Protection Act (“WPA”), NMSA 1978, §§ 10-16C-1 to -6 (2010), as well as [and] in cases brought under the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 through 28-1-14 (2007).

The first series of instructions (UJIs 13-2301 through 13-2303 NMRA) are to be used in cases in which a plaintiff claims that his or her employer violated an implied contract of employment. Although the term "wrongful discharge" is used in these instructions, they can be modified to refer to any other adverse employment action which the plaintiff contends violated an implied contract of employment.

The second series of instructions (UJIs 13-2307 through 13-2307L NMRA) are to be used in cases in which a plaintiff claims a violation of the New Mexico Human Rights Act. Section 28-1-7 of the Human Rights Act lists several different unlawful discriminatory practices. The instructions in this chapter are intended to be used primarily for claims under Section 28-1-7(A), which generally prohibits an employer from discriminating on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

In outlawing certain discriminatory employment practices, the Human Rights Act has the same general purposes as some federal statutes, including Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e - 2000e-4), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-81), and the Age Discrimination in Employment Act of 1967 (29 U.S.C § 633a(a)). Consequently, the New Mexico Supreme Court has stated that when considering claims under the New Mexico Human Rights Act, courts may look at federal civil rights adjudication for guidance. *See, e.g.,*

1 *Ocana v. American Furniture Co.*, 2004-NMSC-018, ¶ 23, 135 N.M. 539, 91 P.3d
2 58 (citing *Gonzales v. N.M. Dep't of Health*, 2000-NMSC-029, ¶ 20, 129 N.M. 586, 11 P.3d 550).
3 For this reason, practitioners and trial courts may consider relying on federal case law for the
4 purpose of drafting jury instructions, especially on issues not expressly ruled on by New Mexico
5 courts. However, the New Mexico Supreme Court has also stated that "our reliance on the
6 methodology developed in the federal courts . . . should not be interpreted as an indication that we
7 have adopted federal law as our own." *Ocana*, 2004-NMSC-018, ¶ 13 (citing *Smith v. FDC*
8 *Corp.*, 109 N.M. 514, 517, 787 P.2d 433, 436 (1990)). The provisions in the New Mexico Human
9 Rights Act are similar, but not identical, to the federal statutes. For that reason, practitioners and
10 trial courts should exercise caution in relying on federal authority for the purpose of drafting
11 instructions.

12 The third series of instructions (UJIs 13-2310 through 13-2313 NMRA) are damages
13 instructions. These instructions are to be used in cases in which a plaintiff claims his or her
14 employer violated an implied contract of employment and may be modified for use in cases
15 involving claims for violations of the New Mexico Human Rights Act.

16 The fourth series of instructions (UJIs 13-2321 through 13-2327 NMRA) are to be used in
17 every case alleging violation of the WPA, NMSA 1978, §§ 10-16C-1 to -6.

18 [Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010; as amended
19 by Supreme Court Order No. 22-8300-030, effective for all cases pending or filed on or after
20 December 31, 2022.]