

**13-2307D. Failure to accommodate.<sup>1</sup>**

\_\_\_\_\_ (*The plaintiff*) says \_\_\_\_\_ (*the defendant*) failed to reasonably accommodate \_\_\_\_\_ (*the plaintiff*)'s [serious medical condition] [physical or mental handicap]. To establish that \_\_\_\_\_ (*the defendant*) discriminated against \_\_\_\_\_ (*the plaintiff*), \_\_\_\_\_ (*the plaintiff*) must prove the following:

- (1) \_\_\_\_\_ (*the defendant*) knew of \_\_\_\_\_ (*the plaintiff*)'s [serious medical condition] [physical or mental handicap];
- (2) \_\_\_\_\_ (*the plaintiff*) requested an accommodation;<sup>2</sup>
- (3) A reasonable accommodation existed that would have allowed \_\_\_\_\_ (*the plaintiff*) to perform the essential functions of the job;
- (4) \_\_\_\_\_ (*the defendant*) failed to provide a reasonable accommodation.

**USE NOTES**

1. In addition to this instruction, the jury should also be given UJI 13-2307F or 13-2307G NMRA, under Section 28-1-7(J) NMSA 1978.

2. Unless a disability is "open, obvious, and apparent to the employer . . . the initial burden rests primarily upon the employee, or his health-care provider, to specifically identify the disability and resulting limitations, and to suggest reasonable accommodations." *Trujillo v. Northern Rio Arriba Electric Coop.*, 2002-NMSC-004, ¶ 16, 131 N.M. 607, 41 P.3d 333 (quoting with approval *Taylor v. Principal Fin. Group, Inc.*, 93 F.3d 155, 165 (5th Cir. 1996)).

[Approved by Supreme Court Order No. 10-8300-024, effective September 27, 2010.]