

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) _____ (*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*);²
- (4) that _____ (*the defendant*) [knew] [regarded as] [or] [had a record of] _____ (*the plaintiff*)'s [impairment] [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*).

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]⁴

USE NOTES

1. See UJIs 13-2307F and 13-2307G NMRA regarding serious medical condition or physical or mental handicap.
2. See UJI 13-2307J NMRA for a definition of the term "otherwise qualified."
3. See UJI 13-2307B NMRA regarding "bona fide occupational qualification."
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.]