

13-2307. Human Rights Act violation.

In this case you must [also] determine whether _____ (*name of employer*) violated a statute known as the New Mexico Human Rights Act.¹

[1] [An employer violates the Human Rights Act if it _____ (*insert the adverse action, i.e., refuses to hire, fires, fails to promote, demotes, or discriminates in matters of compensation terms, conditions, or privileges of employment against*) [a] [an] [otherwise qualified] person based on _____ (*insert the illegal consideration, i.e., race, age, religion, color, national origin, ancestry, sex, serious medical condition or physical or mental handicap, sexual orientation, gender identity, or spousal affiliation*²).] [An employer may _____ (*insert in this blank the adverse action described above*) a person, however, if the action is based on a bona fide occupational qualification.]

[2] [An employer violates the Human Rights Act if it refuses or fails to accommodate a person's mental or physical handicap or serious medical condition [unless the accommodation is unreasonable or an undue hardship to the employer].]

[3] [An employer violates the Human Rights Act if it engages in any form of [threat] [retaliation] [or] [discrimination] against any person who has [opposed any unlawful discriminatory practice³] [filed a complaint] [testified or participated in any proceeding under the Human Rights Act].]

USE NOTES

1. This instruction is divided into three bracketed paragraphs that address the following areas of law covered by the Human Rights Act, Section 28-1-7(A) through (J) NMSA 1978: (1) basic discrimination; (2) reasonable accommodation; and (3) retaliation.

2. For claims involving discrimination based on sexual orientation, gender identification, or spousal affiliation, see Section 28-1-7(A) NMSA 1978, which sets forth limitations on these claims. See also Section 28-1-2(P) and (Q) NMSA 1978, which define "sexual orientation" and "gender identity."

3. For the purpose of a retaliation claim, the unlawful discriminatory practices are those listed in Section 28-1-7(A) through (J) NMSA 1978.

This instruction can serve as a basic instruction on the substantive law in cases involving violations of Section 28-1-7 of the Human Rights Act. It should be given, with the appropriate bracketed language included, when a violation of the Human Rights Act is alleged. If the case involves issues of employment at will, this instruction should immediately follow UJI 13-2301 NMRA or UJI 13-2302 NMRA, UJI 13-2303 NMRA or UJI 13-2304 NMRA, if given. The first bracketed paragraph is for claims of discrimination under Section 28-1-7(A). The second bracketed paragraph is for claims of failure to accommodate a physical or mental handicap under Section 28-1-7(J). The third bracketed paragraph is for statutory claims of retaliation under Section 28-1-7(I).

The bracketed portion relating to bona fide occupational qualification should only be included if the employer has submitted evidence supporting the affirmative defense of a bona fide occupational qualification justifying any discrimination. Similarly, the

bracketed language relating to whether an accommodation would be unreasonable or would cause an undue hardship should be given only when appropriate in light of the contentions of the parties and the evidence presented. The words "otherwise qualified" may be omitted where the plaintiff's qualifications are not at issue.

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