**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.]