**13-2307D. Failure to accommodate.1**

 \_\_\_\_\_\_\_\_\_\_\_\_\_ (*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;2

 (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.]