

12.10 ADA—Defenses—Undue Hardship

The defendant [name] has asserted the affirmative defense of “undue hardship.” A defendant is not required to provide an accommodation that will impose an undue hardship on the operation of the defendant [name]’s business. If the defendant [name] proves by a preponderance of the evidence that providing an accommodation will impose an undue hardship on the operation of the defendant [name]’s business, the defendant [name] is not liable under the ADA for failure to provide that accommodation.

The term “undue hardship” means an action requiring significant difficulty or expense. It considers the financial realities of the particular defendant and refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

The factors you should consider in deciding whether an accommodation would cause undue hardship include:

(1) [the nature and net cost of the accommodation, accounting for tax credits or deductions and other outside funding][;]

(2) [the overall financial resources of the defendant [name]’s facility involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility][;]

(3) [the overall financial resources of the defendant [name]’s facility, the overall size of the business of a defendant’s facility with respect to the number of its employees, the number, type, and location of its facilities][;]

(4) [the number of persons employed by the defendant [name] and the effect of accommodation][;]

(5) [the type of operations the defendant [name] is involved in and the composition, structure, and functions of the work force][;]

(6) [the geographic separateness and administrative or fiscal relationship of the facility in question to the defendant [name]][;] [and]

(7) [the overall impact of the proposed accommodation on the operation of the defendant [name]’s facilities, including the impact on other employees and the ability to conduct business].

Comment

A defendant has the burden of proving the defense of undue hardship. *See* 42 U.S.C. § 12112(b)(5)(A) (noting that disability discrimination includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, *unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity*”) (emphasis added); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 402 (2002) (“Once the plaintiff has made this showing [that an accommodation seems reasonable on its face], the defendant/employer then must show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances.”).

The factors in this instruction are derived from 42 U.S.C. § 12111(10) and 29 C.F.R. § 1630.2(p), App. 1630.2(p).

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