

12.2 ADA Employment Actions—Record of Disability—Elements

The plaintiff [name] claims that [his] [her] [other pronoun] record of disability was the reason for the defendant [name]’s decision to [[discharge] [not hire] [not promote] [demote] [state other adverse action]] [[him] [her] [other pronoun]]. To succeed on this claim, the plaintiff [name] has the burden of proving each of the following four elements by a preponderance of the evidence:

First, the plaintiff [name] has a record of a physical or mental impairment;

Second, such physical or mental impairment substantially limited one or more major life activities;

Third, the plaintiff [name] was a qualified individual as that term is later defined in these instructions; and

Fourth, the plaintiff [name] was [discharged] [not hired] [not promoted] [demoted] [state other adverse action] because of [his] [her] [other pronoun] record of a physical or mental impairment].

If you find that the plaintiff [name] has proved each of these elements, your verdict should be for the plaintiff [name]. If, on the other hand, the plaintiff [name] has failed to prove any of these elements, your verdict should be for the defendant [name].

Comment

See Comment to Instruction 12.1 (ADA Employment Action—Actual Disability—Elements).

“[A]lthough the ‘duration of an impairment’ remains ‘one factor that is relevant in determining whether the impairment substantially limits a major life activity,’” *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1225 (9th Cir. 2022) (citation omitted), a plaintiff need not establish permanent or long-term effects, *id.* at 1224.

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