**12.1B ADA Employment Actions—**

**Record Of Disability—Elements**

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

1. the plaintiff has a record of a physical or mental impairment;

2. such physical or mental impairment substantially limited one or more major life activities;

3. the plaintiff was a qualified individual as that term is later defined in these instructions; and

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

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

**Comment**

*See* Comment to Instruction 12.1A (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.

*Revised June 2022*