



TEXAS PATTERN JURY CHARGES

BUSINESS, CONSUMER,
INSURANCE & EMPLOYMENT
2018 EDITION

Pretext Instruction

If you do not believe the reason *Don Davis* has given for [*failing or refusing to hire, discharge, or (describe other discriminatory action)*], you may, but are not required to, infer that *Don Davis* was motivated by *Paul Payne's* [*race, color, disability, religion, sex, national origin, or age*]

Motivating Factor

A “motivating factor” in an employment decision is a reason for making the decision at the time it was made. There may be more than one motivating factor for an employment decision.

The ADA Amendments

- A legislative response to court decisions
- Disability” Reconsidered
 - “The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures”
 - Includes medication, prosthetics, etc.
 - Does not include “ordinary eyeglasses or contact lenses.”

- Expanded principles of interpretation
 - “The definition of disability . . . shall be construed in favor of broad coverage of individuals”
 - “Substantially limits” will no longer be defined as “significantly restricted.”
 - Major life activities need not be central to daily life

- “Major life activities” expanded through two non-exhaustive lists
 - “include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.”
 - Also include “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.”

- Expansion of the “regarded as” concept
 - Proof of a perceived impairment can establish a claim “whether or not the impairment limits or is perceived to limit a major life activity.”
 - “Regarded as” claims will not apply to “impairments that are transitory and minor.”
- A “regarded as” disability will not support a failure-to-accommodate claim