

**Model Utah Civil Jury Instructions,
Second Edition**

Emotional Distress

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CV1501 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

To prove a claim for intentional infliction of emotional distress, [name of plaintiff] must prove each of the following elements:

1. Outrageous and intolerable conduct by [name of defendant]; and
2. [name of defendant] intended to cause emotional distress or acted with reckless disregard of the probability of causing emotional distress; and
3. [name of plaintiff] suffered severe or extreme emotional distress that was caused by [name of defendant]'s conduct.

These requirements will be explained in the following instructions.

References:

Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344 (1961)

White v. Blackburn, 787 P.2d 1315 (Utah Ct. App. 1990)

Nelson v. Target Corporation, 334 P.3d 1010 (Utah App. 2014)

Anderson Development Company v. Tobias, et al, 116 P.3d 323 (Utah 2005)

CV1502 OUTRAGEOUS CONDUCT.

“Outrageous and intolerable” conduct is conduct that offends generally accepted standards of decency and morality or, in other words, conduct that is so extreme as to exceed all bounds of what is usually tolerated in a civilized community. Conduct that is merely unreasonable, unkind, or unfair does not qualify as outrageous and intolerable conduct.

References:

Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344 (1961)

White v. Blackburn, 787 P.2d 1315 (Utah Ct. App. 1990)

Restatement (Second) of Torts § 46 comment d (1964)

Nelson v. Target Corporation, 334 P.3d 1010 (Utah App. 2014)

Anderson Development Company v. Tobias, et al, 116 P.3d 323 (Utah 2005)

CV1503 SEVERE OR EXTREME EMOTIONAL DISTRESS.

Emotional distress may include such things as mental suffering, mental anguish, mental or nervous shock, or highly unpleasant reactions, such as fright, horror, grief, or shame. However, you can award damages for emotional distress only when the distress is severe or extreme.

In determining the severity of distress, you may consider the intensity and duration of the distress, observable behavioral or physical symptoms, and the nature of [name of defendant]'s conduct. It is possible to have severe and extreme emotional distress without observable behavioral or physical symptoms.

References:

Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344 (1961)

Restatement (Second) of Torts § 46 comment j (1964)

See also, *Anderson Development Company v. Tobias, et al*, 116 P.3d 323 (Utah 2005)

CV1504 DEFINITION OF INTENT AND RECKLESS DISREGARD.

[Name of plaintiff] must show that [name of defendant] either (1) acted with the intent of inflicting emotional distress, or (2) with no intent to cause harm, intentionally performed an act so unreasonable and outrageous that [name of defendant] knew or should have known it was highly probable that harm would result.

References:

White v. Blackburn, 787 P.2d 1315 (Utah Ct. App. 1990)

CV1505 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.

In order to recover for negligent infliction of emotional distress, [name of plaintiff] must prove all of the following:

1. [name of defendant] was negligent;
2. [name of plaintiff] was in the "zone of danger";
3. [name of plaintiff] feared for [his/her] own safety and/or witnessed an injury to another; and
4. [name of plaintiff] suffered severe emotional distress as a result of [name of defendant]'s negligence.

References:

Johnson v. Rogers, 763 P.2d 771, 785 (Utah 1988) (Zimmerman, J., concurring in part, joined by Hall, C.J.; Howe, Associate C.J.; and Stewart, J.) (Adopting Restatement (Second) of Torts § 313 (1964) "as written.")

White v. Blackburn, 787 P.2d 1315 (Utah Ct. App. 1990)

Hanson v. Sea Ray Boats, Inc., 830 P.2d 236 (Utah 1992)

Harnicher v. University of Utah Medical Center, 962 P.2d 67 (Utah 1998)

Straub v. Fisher, 990 P.2d 384 (Utah 1999)

Committee Note

For a definition of negligence, please see CV202A “Negligence” defined.

This instruction covers both direct victim NIED claims and bystander NIED claims. The committee determined that although the circumstances giving rise to each claim differ depending on whether the claimant is the direct victim or a bystander, the elements of each are the same. *See, e.g., Lawson v. Salt Lake Trappers, Inc.*, 901 P.2d 1013 (Utah 1995) (bystander claim); *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988) (bystander claim); *Hanson v. Sea Ray Boats, Inc.*, 830 P.2d 236 (Utah 1992) (discussing the distinction between bystander and direct victim claims).

Restatement (Second) of Torts § 313(2) says that the general rule for negligent infliction of emotional distress where the plaintiff suffers emotional distress as a result of fear for his own safety does not apply to illness or bodily harm “caused by emotional distress arising solely from harm or peril to a third person, unless the negligence of the actor has otherwise created an unreasonable risk of bodily harm to the” plaintiff. This is the so-called zone-of-danger test. While the Restatement refers to harm or peril to a “third person,” the vast majority of cases where plaintiffs have sought recovery for negligent infliction of emotional distress have involved harm or peril to a member of the plaintiff’s immediate family. *See Lawson v. Salt Lake Trappers, Inc.*, 901 P.2d 1013 (Utah 1995) (daughter); *Boucher ex rel. Boucher v. Dixie Med. Ctry.*, 850 P.2d 1179 (Utah 1992) (son); *Hansen v. Sea Ray Boats, Inc.*, 830 P.2d 236 (Utah 1992) (son); *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988) (son); *White v. Blackburn*, 787 P.2d 1315 (Utah Ct. App. 1990) (son). But see *Straub v. Fisher & Paykel Health Care*, 1999 UT 102, 990 P.2d 384 (respiratory therapist’s patient). The Utah Supreme Court has not squarely addressed the issue, and the committee therefore expresses no opinion as to whether a plaintiff can recover where the third person is not a member of the plaintiff’s immediate family.

Whether mental illness alone, in the absence of any physical manifestation, is sufficient to support a NIED claim has not been resolved under Utah law. *See Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 983 (Utah 1993) (Zimmerman, J., concurring in part and concurring in the result, joined by Hall, C.J.; Howe, Associate C.J., and Stewart, J.). Cf. *id.* at 975 (“A plaintiff who can establish through appropriate expert testimony that he or she suffers from mental illness as a result of a defendant’s negligent conduct may maintain an action for NIED.”) (per Durham, J.). *But see Id.* at 974 (The requirement of resulting “illness or bodily harm” “provides a check on feigned disturbances, thereby ensuring the genuineness of claims.” “[E]motional disturbance that is not severe enough to result in illness or physical consequences is likely to be in the realm of the trivial.”) (per Durham, J.). In any event, the emotional distress suffered must be severe. It must be “such that ‘a reasonable [person,] normally constituted, would be unable to adequately cope with the mental stress

engendered by the circumstances of the case.’” *Id.* at 975 (per Durham, J.) (citation omitted), quoted with approval in *Harnicher v. University of Utah Med. Ctr.*, 962 P.2d 67, 70 (Utah 1998).

CV1506 DEFINITION OF “ZONE OF DANGER.”

To be within the “zone of danger,” [name of plaintiff] must be in such close proximity to a threat of harm created by [name of defendant]’s negligent conduct that [he/she] is placed in actual physical peril.

References:

Hansen v. Sea Ray Boats, Inc., 830 P. 2d 236, 239-240 (Utah 1992)

Straub v. Fisher, 990 P.2d 384, 387 (Utah 1999)

Boucher v. Dixie Medical Center, 850 P.2d 1179, 1181 (Utah 1992)