[100.1]

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

KELLIE NORRIS, Plaintiff, vs. PARTY CITY CORPORATION, Defendant.	]]]]]]]	CASE NO. LACV127195 JURY INSTRUCTIONS

Members of the Jury:

In this case plaintiff alleges she was discriminated against by defendant when defendant failed to accommodate her pregnancy-related disability or to engage in the interactive process required when an accommodation is sought by an employee. Plaintiff further alleges that her pregnancy was illegally considered by defendant in the decision to terminate her employment with defendant.

The defendant denies the allegations made by plaintiff and asserts its employment decisions were for legitimate, non-discriminatory reasons.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

[100.2]

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

[100.3]

INSTRUCTION NO. 2

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

[100.4]

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.

2. Exhibits received by the court.

3. Stipulations which are agreements between the attorneys.

4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes during a trial references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.

2. Objections and rulings on objections.

3. Any testimony I told you to disregard.

4. Anything you saw or heard about this case outside the courtroom.

[100.9]

INSTRUCTION NO. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;

2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,

3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

[100.5]

INSTRUCTION NO. 5

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

[100.6]

INSTRUCTION NO. 6

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

[100.7]

INSTRUCTION NO. 7

The plaintiff served on the defendant written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the defendant or which defendant failed to deny.

[100.12]

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

[100.13]

INSTRUCTION NO. 9

You have heard evidence claiming a witness made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

[100.14]

INSTRUCTION NO. 10

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

[100.15]

INSTRUCTION NO. 11

You have heard evidence claiming a party made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the testimony during the trial you may also use the statement as a basis for disregarding all or any part of the testimony during the trial but you are not required to do so. You should not disregard the testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

[100.20]

INSTRUCTION NO. 12

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 13

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation or within the scope of his or her duties as an employee of the corporation.

[100.22]

INSTRUCTION NO. 14

Plaintiff claims that defendant has intentionally destroyed or failed to produce evidence consisting of financial performance records pertaining to the Waterloo Card Factory store from 2005 to 2009 or corporate records which speak to the basis for disciplines regarding plaintiff or other matters relating to the termination of employment of plaintiff by defendant. You may, but are not required to, conclude that such evidence would be unfavorable to defendant.

Before you can reach this conclusion, plaintiff must prove all of the following:

1. The evidence exists or previously existed.

2. The evidence is or was within the possession or control of defendant.

3. Defendant's interests would call for production of the evidence if favorable to that party.

4. Defendant has intentionally destroyed or failed to produce the evidence without satisfactory explanation.

For you to reach this conclusion, more than the mere destruction or non-production of the evidence must be shown.

[3100.1]

INSTRUCTION NO. 15

Plaintiff must prove all of the following propositions:

1. Plaintiff was an employee of defendant.

2. Defendant discharged plaintiff from employment.

3. Plaintiff's pregnancy was a motivating factor in defendant's decision to discharge plaintiff.

If the plaintiff has failed to prove any of these propositions, your verdict shall be for the defendant and you need not proceed further in considering this claim. If the plaintiff has proved all of these propositions, then you will consider the "same decision" defense as explained in Instruction No. 17.

INSTRUCTION NO. 16

As used in these instructions, the plaintiff's pregnancy was a "motivating factor," if the plaintiff's pregnancy played a part in the defendant's decision to terminate plaintiff's employment. However, the plaintiff's pregnancy need not have been the only reason for the defendant's decision to terminate the plaintiff's employment.

INSTRUCTION NO. 17

If you find plaintiff has proved that her pregnancy was a motivating factor in her termination you must then determine if the defendant has proved that plaintiff would have been discharged regardless of her pregnancy.

INSTRUCTION NO. 18

You may not return a verdict for the plaintiff just because you might disagree with the defendant's decision or believe that decision to be harsh or unreasonable. An employer has the right to make subjective personnel decisions for any reason that is not discriminatory. An employer does not discriminate against an individual because of pregnancy when it takes adverse action against that individual based on poor job performance, erroneous evaluations or unsound business practices.

INSTRUCTION NO. 19

You may find that the plaintiff's pregnancy was a motivating factor in the defendant's decision if the plaintiff proves by greater weight of the evidence that the defendant's stated reasons for its decision is not the real reason, but is a pretext to hide pregnancy discrimination.

INSTRUCTION NO. 20

Defendant's stated explanation for its actions in failing to accommodate plaintiff or for discharging her from employment must be specifically stated and non-discriminatory. The reasonableness of defendant's explanation may be considered in determining whether it is a pretext or a cover for the alleged illegal conduct.

You may find that plaintiff's pregnancy was a motivating factor in defendant's decision to terminate her employment or regarding defendant's decision regarding the accommodation of plaintiff if it has been proved that the defendant's stated reasons for its decision are not the only or real reasons, but are a pretext to hide discrimination based upon plaintiff's pregnancy. Other examples of evidence that may show pretext include (1) whether a defendant failed to follow its own policies, (2) whether a defendant treated similarly-situated employees in a disparate manner, (3) whether a defendant shifted its explanation of the employment decision and/or (4) whether the timing of the defendant's decision to discharge is particularly suspicious.

INSTRUCTION NO. 21

Plaintiff has also asserted a failure to accommodate claim against defendant. Under the law, it is unlawful discrimination to treat temporary pregnancy-related conditions less favorably than other temporary medical conditions. Your verdict must be for the plaintiff on this claim if all of the following elements have been proved:

1. Plaintiff had a temporary disability due to her pregnancy.

2. Defendant knew plaintiff had temporary pregnancy-related conditions;

3. Plaintiff sought work-related accommodation regarding these conditions;

4. Defendant did not accommodate her; and

5. Defendant had accommodated others similar in their ability or inability to work as a result of temporary conditions.

The term "accommodate" or "accommodation" refers to some form of modification to the work place, duties, work schedule or manner in which the employee receiving the accommodation is able to work.

If any of the above elements has not been proved, your verdict must be for the defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 22

If an employer becomes aware that an employee has one or more pregnancy-related disabilities and may need an accommodation, the law requires the employer to initiate an informal, interactive process to determine appropriate accommodations. All that is required to trigger an employer's duty to engage in the interactive process is knowledge (including circumstantial) that the employee may have a pregnancy-related disability and result in some limitation of the employee that could require an accommodation.

INSTRUCTION NO. 23

The law recognizes that unlawful discrimination sometimes happens without the decision-maker having planned, thought out or even acknowledged to himself or herself that it is taking place. The law acknowledges the effects of society's stereotypes on employers in their decision-making, and that biased decision-making based upon those stereotypes can violate the law, even if the decision-maker is unaware of bias in his or her thinking. This is because the law's purpose is to eradicate discrimination in all forms, regardless of the personal character of the individuals making discriminatory decisions.

If you find from all the surrounding circumstances that defendant treated plaintiff differently than it would have if she had not been pregnant, even if the managers do not acknowledge or realize their own motives, you may find in favor of plaintiff.

INSTRUCTION NO. 24

The defendant contends that plaintiff failed to mitigate her damages, if any. Plaintiff has a duty to mitigate damages by using reasonable care and diligence in seeking and accepting other substantially equivalent work to the one that was lost. The plaintiff's efforts to mitigate need not be successful but must represent an honest effort to find substantially equivalent work. A plaintiff who makes no attempt or abandons efforts to obtain comparable employment, or embarks on a different career path, is not entitled to back pay. A plaintiff who abandons willingness to search for and return to substantially equivalent work and instead chooses to volunteer, care for children, or attend school generally does not meet her duty to mitigate damages. The burden remains on the employer to show that the plaintiff failed to mitigate her damages.

INSTRUCTION NO. 25

If you find in favor of the plaintiff on one or more of her claims, plaintiff is entitled to recover damages in some amount. You must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a result of defendant's discrimination. You should not award damages under this instruction to punish defendant or out of sympathy.

In the determination of damages, you may award any past earnings plaintiff has lost as a result of her termination from employment. Back pay is the amount of wages and benefits plaintiff would have earned from the date of harm to the present time if she had not been subjected to termination, less any earnings or benefits actually received by plaintiff from other employment during that time.

You must also determine the amount of any other damages for any emotional distress sustained by the plaintiff. Award plaintiff the amount that will fairly and justly compensate her for emotional distress damages you find she sustained as a result of the illegal actions. Damages for emotional distress include damages for emotional pain, suffering, mental anguish, humiliation, fear, apprehension, anxiety, inconvenience, loss of reputation and loss of enjoyment of life. Plaintiff was not required to introduce evidence of the monetary value of such damages. The amount you assess for these damages cannot be measured by any exact or mathematical standards. You must use your sound judgment based upon an impartial consideration of the evidence. When considering the amount of monetary damages to which plaintiff may be entitled, you should consider the nature, character and seriousness of the emotional pain she felt. You must also consider the extent or duration, as any award you make must cover the damages endured by plaintiff since her termination from employment to the present.

You should also award damages for future emotional distress to plaintiff on her claim of discrimination and/or failure to accommodate if her emotional distress and its consequences can reasonably be expected to continue in the future.

Past medical expenses incurred by plaintiff due to her loss of health insurance benefits brought about by her termination from employment.

The amounts, if any, you find for each of the above items of damages will be used to answer verdict questions.

INSTRUCTION NO. 26

If you find plaintiff entitled to future damages, these must be reduced to present value. "Present value" is the sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

[200.37]

INSTRUCTION NO. 27

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kellie Norris is 40.11 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Kellie Norris's health, habits, occupation, and lifestyle, when deciding issues of future damages.

[210.1]

INSTRUCTION NO. 28

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.

2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.

3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.

4. The existence and frequency of prior similar conduct. Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

[210.4]

INSTRUCTION NO. 29

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

[100.18]

INSTRUCTION NO. 30

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

[100.21]

INSTRUCTION NO. 31

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

[100.23]

INSTRUCTION NO. 32

You may not communicate with anyone except your fellow jurors about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

[300.1]

INSTRUCTION NO. 37

I am giving you one verdict form and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 4:44 o'clock P .m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all seven jurors who agree. 11-16-11 BH

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.

INSTRUCTION NO. 34

Based upon your answer to Question No. 7, you have determined that plaintiff may be entitled to punitive damages. You should review the evidence, instructions and arguments of counsel to determine the amount to be awarded to plaintiff.

You must answer both Question No. 8 and Question No. 9 regarding punitive damages. If your answer to Question No. 9 is "yes", plaintiff will not be awarded punitive damages. If your answer is unanimous, the verdict form should be signed by your foreperson and you should contact the court attendant.

After deliberating for six hours from 10:30 o'clock A .m. on November 19, 2018, excluding meals or recesses outside the jury room, then it is necessary that only seven of you agree upon the answer to the question. In that case the verdict and question must be signed all seven jurors who agree.