

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

KELLIE NORRIS, Plaintiff, v. PARTY CITY CORPORATION Defendant.	Law No: LACV127195 Defendant's Proposed Jury Instructions and Verdict Form
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Defendant, Party City Corporation, by and through undersigned counsel, submit the following proposed jury instructions:

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CERTIFICATE OF SERVICE

I, Erin R. Nathan, an attorney, hereby certify that on October 8, 2018, I caused to be served a copy of the foregoing **Defendant's Proposed Jury Instructions and Verdict Form**, in the above-captioned matter to be filed with the Clerk of the District Court and served on the parties of record listed below, by operation of the Court's CM/ECF electronic filing system, addressed to:

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/s/ Erin R. Nathan

Proposed Unmodified Model Jury Instructions

Iowa Civil Jury Inst. § 100.2 - Duties Of Judge And Jury, Instructions As Whole.

Iowa Civil Jury Inst. § 100.3 - Burden Of Proof, Preponderance Of Evidence.

Iowa Civil Jury Inst. § 100.4 – Evidence.

Iowa Civil Jury Inst. § 100.5 - Deposition Testimony.

Iowa Civil Jury Inst. § 100.6 - Interrogatories.

Iowa Civil Jury Inst. § 100.7 – Request for Admissions.

Iowa Civil Jury Inst. § 100.9 - Credibility Of Witnesses.

Iowa Civil Jury Inst. § 100.12 - Opinion Evidence, Expert Witness.

Iowa Civil Jury Inst. § 100.15 - Statements By A Party Opponent.

Iowa Civil Jury Inst. § 100.16 - Impeachment, Character And Reputation.

Iowa Civil Jury Inst. § 100.18 - General Instruction To Jury.

Iowa Civil Jury Inst. § 100.20 - Corporate Party.

Iowa Civil Jury Inst. § 100.21 - Cautionary Instruction - Juror's Notes.

Iowa Civil Jury Inst. § 100.23 - Use of Electronic Devices.

INSTRUCTION NO. 1

[Statement of the Case]

Ladies and Gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a civil case brought by Kellie Norris against Party City Corporation. Ms. Norris began working for Factory Card & Party Outlet. Factory Card & Party Outlet was later purchased by Party City. The attorneys and witnesses may refer to the Defendant as Factory Card & Party Outlet or Party City.

Ms. Norris alleges that Party City terminated her because of her pregnancy. Party City denies that Ms. Norris was terminated because of her pregnancy and instead alleges that it terminated Ms. Norris for a legitimate non-discriminatory reason -- her repeated violation of the Store Security Policy and failure to improve her job performance after repeated warnings and counseling sessions. Party City denies that Plaintiff's pregnancy played a role in the decision to terminate Plaintiff's employment.

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

Authority:

Iowa Civil Jury Inst. 100.1- Statement Of The Case

INSTRUCTION NO.2

[Elements of the Claim]

Your verdict must be for Plaintiff Kellie Norris and against Defendant Party City Corporation on plaintiff's pregnancy discrimination claim if all the following elements have been proved:

First, the defendant discharged the plaintiff; and

Second, the plaintiff's pregnancy was a motivating factor in the defendant's decision.

If either 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.

Authority:

8th Circuit Model Jury Instructions 5.40 (2018) – Elements of the Claim.

INSTRUCTION NO. 3

[Motivating Factor]

As used in these instructions, the plaintiff's pregnancy was a "motivating factor," if the plaintiff's pregnancy played a role in the defendant's decision to terminate the 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.

Authority:

8th Circuit Model Jury Instructions 5.21 (2018) – Definition "Motivating Factor"

INSTRUCTION NO. 4

[Same Decision]

If you find in favor of the Plaintiff under Instruction 2 then you must answer the following question in the verdict form:

Question No.1: Has it been proved that the Defendant would have discharged the Plaintiff regardless of her pregnancy?

Authority:

8th Cir. Civil Jury Instr. § 5.01 (2018) – Explanatory: “Same Decision”; Committee Comments “Same Decision”

INSTRUCTION NO. 5

[Business Judgment]

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.

Authority:

8th Cir. Civil Jury Instr. § 5.02 (2018) – Explanatory: Business Judgment; Committee Comments to Instr. § 5.02 (citing *Walker v. AT&T Technologies*, 995 F.2d 846 (8th Cir. 1993)). *Rose-Maston v. NME Hosps., Inc.*, 133 F.3d 1104, 1109 (8th Cir. 1998); *Valline v. Murken*, 2003 WL 21361344, *5 (Iowa Ct. App. June 13, 2003) (applying business judgment rule and citing federal cases for support); *Snyder v. PRC, LCC*, 2013 WL 796632 (Iowa Dist. Ct. Feb. 21, 2013) (J. Staskal) (“[C]ourts may not, in the guise of administering cases involving discrimination claims, act as ‘super personnel’ departments, second guessing an employer’s judgment in personnel matters.” ; *Obrecht v. City of Council Bluffs*, 2008 WL 4103119 (Iowa Dist. Ct. May 22, 2008) (J. Larson) (citing federal case in support of proposition that courts are not supposed to sit as a super-personnel department to second-guess the employer’s business decision).

INSTRUCTION NO. 6

[Pretext]

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.

Authority:

8th Cir. Civil Jury Instr. § 5.20 (2018) (modified) – Definition: Pretext; §3.04 (2018) – Burden of Proof

INSTRUCTION NO. 7

[Mitigation]

The Defendants contend that Plaintiff failed to mitigate her damages, if any. Plaintiff has duty to mitigate damaged by using reasonable care and diligence in seeking and accepting other substantially equivalent to the one that was lost. A 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 abandon's 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 his duty to mitigate damages. The burden remains on the employer to show that the plaintiff failed to mitigate his damages.

Authority

Hartley v. Dillards's, 310 F.3d 1054, 1061-62 (8th Cir. 2002)
West v. Nabors Drilling USA, Inc., 330 F.3d 379, 393-94 (5th Cir. 2003)
Denesha v. Framers Ins. Exch., 161 F.3d 491, 501-02 (8th Cir. 1998)
Greenway v. Buffalo Hilton Hotel, 143 F.3d 47, 53-55 (2d Cir. 1998)
Brady v. Thurston Motor Lines, Inc. 753 F.2d 1269, 1277 (4th Cir. 1985)
Johnson v. Spencer Press of Me., Inc., 249 F. Supp. 2d 5, 7 (D. Me. 2003)
Shick v. III. Dep't of Human Servs., 307 F.3d 605, 614-15 (7th Cir. 2002)

INSTRUCTION NO. 8

[Damages]

If you find in favor of Plaintiff under Instruction 2 and if you answer “no” in response to Instruction 4 and Instruction 7, then you must award Plaintiff such sum as you find will fairly and justly compensate Plaintiff for any damages you find the Plaintiff sustained as a direct result of Defendant’s actions. Plaintiff’s claim for damages includes three distinct types of damages and you must consider them separately:

First, you must determine the amount of any wages and fringe benefits Plaintiff would have earned in her employment with the Defendant if her employment had not been terminated through the date of your verdict, *minus* the amount of earnings and benefits that the Plaintiff received from other employment during that time.

Second, you must determine the amount of any other damages sustained by the Plaintiff, such as emotional distress. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Damages for “emotional distress” are the amount of damages that will reasonably compensate the Plaintiff for the emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that were proximately caused by the Defendant’s wrongful conduct. The amount, if any, that you assess for damages for emotional distress cannot be measured by an exact or mathematical standard, and the Plaintiff is not required to introduce evidence of the monetary value of such damages. However, you must use your sound judgment based upon an impartial consideration of the evidence to determine the

amount of such damages. Damages for emotional distress must compensate the Plaintiff for any emotional distress that she suffered from the time of her termination until the time that you give your verdict. You may not award damages for any emotional distress you find was caused by Plaintiff's filing of the lawsuit in this case or the litigation of her claims.

You are also instructed that the Plaintiff has a duty under the law to "mitigate" her damages - that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find that the Plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

Authority:

8th Cir. Civil Jury Instr. § 5.70 (2018) – Damages: Actual

Bunda v. Potter, No. 03cv3102-MWB (N.D. Iowa 2005), available at <http://www.iand.uscourts.gov/web/instructions.nsf/7ba05e5eef9d95e58625660900704c9f/e70ea45e60713270862570bb0076fe06?OpenDocument> (emotional distress); *Dutcher v. Randall Foods*, 546 N.W.2d 889, 894 (Iowa 1996) (*citing* Iowa Code § 216.15(8)(a)(8) (1993) (emotional distress)).

INSTRUCTION NO. 9

[Nominal Damages]

If you find in favor of the Plaintiff under Instruction 2 and if you answer “no” in response to Instruction 4 and Instruction 7 but you find that the Plaintiff’s damages have no monetary value, then you must return a verdict for the Plaintiff in the nominal amount of One Dollar (\$1.00).

Authority:

8th Cir. Civil Jury Instr. § 5.71 (2018) – Damages: Nominal

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

<p>KELLIE NORRIS,</p> <p>Plaintiff,</p> <p>v.</p> <p>Party City Corporation,</p> <p>Defendant.</p>	<p>Law No: LACV127195</p> <p>Verdict Forms</p>
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Note: Complete the following by writing in the name required by your verdict.

Question 1: Pregnancy Discrimination

On the pregnancy discrimination claim of Plaintiff Kellie Norris as to Defendant Party City Corporation, as explained in Instruction 2, we find in favor of:

_____ Kellie Norris or _____ Party City Corporation

Note: Answer the next question only if the above finding is in favor of the Plaintiff. If the above finding is in favor of the Defendant, have your foreperson sign and date this form because you have completed your deliberations on this claim.

Question 2: Same Decision

Has it been proved that Plaintiff's employment would have been terminated regardless of her pregnancy?

_____Yes _____No
(Mark an "X" in the appropriate space)

Note: Answer the following questions only if you answered “no” to Question 2. If you answered “yes” to Question 2, have your foreperson sign and date this form because you have completed your deliberations on this claim.

Question 3: Damages Only answer Question ____, if you answered **No** to Question 2.

We find the Plaintiff’s lost wages and benefits through the date of this verdict to be:

\$_____ (stating the amount or, if none, write the word “none”).

We find the Plaintiff’s other damages, excluding lost wages and benefits, to be:

\$_____ (stating the amount or, if none, write the word “none”).

Dated: _____

Foreperson

Authority:

8th Cir. Civil Jury Instr. § 5.80 (2018) – General Verdict Form (modified)