

Kellie Norris, Plaintiff, hereby submits and requests that the jury be instructed as set forth in these Proposed Instructions.

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**COUNSEL FOR KELLIE NORRIS,
PLAINTIFF**

Certificate of Service

I hereby certify that on October 8, 2018 I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of the foregoing document to the following:

Erin R. Nathan
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ATTORNEYS FOR THE DEFENDANT

/s/ Glenn Johnson

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 1

Introductory Instruction

Members of the Jury:

This is a civil case brought by Plaintiff Kellie Norris against Defendant Party City. Plaintiff alleges she was discriminated against by Defendant when it failed to accommodate her pregnancy related conditions 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 it. Defendant denies the allegations made by Plaintiff and further 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.

Authority

Iowa Civil Jury Instruction 100.18

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 2

Duties of Judge and Jury, Instructions as Whole

My duty is to tell you what the law is.

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear evidence, decide what the facts are and then apply those facts to the law which I will give you in these preliminary instructions, any instructions given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judge of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I will give it to you.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. In other words, the parties stand equal before the law, and are entitled to the same fair consideration by you.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority

Iowa Civil Jury Instruction 100.2

Tysdale and Middleton v. Security Savings Bank, No. C 96-3015-MWB, Preliminary Inst. No. 3 [Modified] (N.D. Iowa 1998).

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 3

Burden of Proof, Preponderance of Evidence

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.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

Authority

Iowa Civil Jury Instruction 100.3

Comes, et al. v. Microsoft, Case No. CL 82311 (Iowa District Court for Polk County, Nov. 2006) (Relevant part of Preliminary Jury Inst. 16, as modified)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 4

What is Evidence?

Your job will be to find what the facts are in this case by considering the evidence. As Judge, I will apply the rules and tell you what you can and cannot consider as evidence.

Evidence is:

- Testimony in person or by deposition.
- Exhibits received by the court such as documents or photographs.
- Stipulations which are agreements between the attorneys.
- Any other matter admitted by me into evidence such as interrogatories, and any matters of which judicial notice is taken.
- Facts I tell you that you must accept.

Evidence may be direct or circumstantial. Direct evidence is evidence from a witness who claims actual knowledge of a fact, or from a document containing a specific fact. Circumstantial evidence is evidence about a chain of facts from which you may draw inferences and conclusions. The law makes no distinction between direct and circumstantial evidence, and neither party is required to present direct evidence to establish a claim or defense. You should use reason and common sense to evaluate the evidence as the weight to be given any evidence is for you to decide.

The following are not evidence:

- Statements, arguments, questions and comments by the lawyers.
- Objections and rulings on objections.
- Testimony I tell you to disregard.
- Anything you see or hear about this case outside the courtroom.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Testimony received into evidence regarding these papers is available for your consideration. Only documents formally offered and received by the Court into evidence are available to you during your deliberations.

Authority

Iowa Civ. Jury Instruction Guide § 100.4 (modified);
Iowa Rule of Appellate Procedure 14(f)(16)
Beck v. Fleener, 376 N.W.2d 594, 597 (Iowa 1985)
Randol v. Roe Enterprises, Inc. 524 N.W. 2d 414 (Iowa 1994)
Iowa Uniform Criminal Jury Instruction 100.6
8th Circuit Model Jury Instructions, No. 1.04

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 5

Credibility of Witnesses

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.

Authority

Iowa Civil Jury Instruction 100.9

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 6

Deposition Testimony

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

Authority

Iowa Civil Jury Instruction 100.5

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 7

Requests For Admissions

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.

Authority

Iowa Civil Jury Instruction 100.7

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 8

Stipulated Testimony

The parties have agreed to a stipulation of particular facts. Consider these stipulated facts as evidence as if it had been given in court.

Authority

Iowa Civil Jury Instruction 100.8 (modified)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 9

Contradictory Statement, Non-party, Witness Not Under Oath

You have heard evidence claiming [name of 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.

Authority

Iowa Civil Jury Instruction 100.13

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 10

Contradictory Statements, Non-Party, Witness Under Oath

You have heard evidence claiming [name(s) of witness(es)] 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 if they were made at this trial. Decide whether to consider the earlier statements for any purpose and what weight to give them.

Authority

Iowa Jury Instruction 100.14

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 11

Interrogatories

During this trial, you may hear 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.

Authority

Iowa Model Civil Jury Instruction 100.6

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 12

Spoliation of Evidence

Plaintiff claims that Defendant has intentionally destroyed or otherwise failed to produce evidence consisting of financial performance records pertaining to the Waterloo store when supervised by Plaintiff; personnel files of other Party City personnel which would show (describe evidence). 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.

Authority

100.22 Iowa Civil Jury Instructions (modified)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 13

Opinion Evidence, Expert Witness

You have heard testimony from a person described as an expert. 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.

Authority

Iowa Model Civil Jury Instruction No. 100.12

Crouch v. National Livestock Remedy Co., 210 Iowa 849, 231 N.W. 323 (1930)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 14

Agency

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.

Authority

8th Circuit Model Jury Instructions No. 5.23

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 15

Pregnancy Discrimination – Discharge – Essential Elements

Plaintiff has asserted a wrongful discharge claim - that is, she claims that her pregnancy played a role in the Defendant's decision to discharge her from employment. Your verdict must be for the Plaintiff on this claim if all the following elements have been proved:

[1] Plaintiff was discharged from her employment with Defendant; and

[2] 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. You may find Plaintiff's pregnancy was a motivating factor in Defendant's decision to discharge her from employment if it has been proved that Defendant's stated reasons for its decision are a pretext.

Authority

8th Circuit Civil Jury Instruction No. 5.40
DeBoom v. Raining Rose, Inc., 772 N.W.2d 1, 7 (Iowa 2009)

PLAINTIFF’S PROPOSED JURY INSTRUCTION NO. 16

Motivating Factor

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 her employment. However, the Plaintiff’s pregnancy need not have been the only reason for the Defendant’s decision to terminate the employment of the Plaintiff.

Authority

8th Circuit Model Jury Instruction No. 5.21

DeBoom v. Raining Rose, Inc., 772 N.W.2d 1, 7 n.8 (Iowa 2009)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 17**Pretext**

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.

Authority

8th Circuit Model Civil Instruction No. 5.20 (2013)

MacDissi v. Valmont Indus., Inc., 856 F.2d 1054, 1059 (8th Cir. 1988) (“[A]n employer's submission of a **discredited** explanation for firing a member of a protected class is itself evidence which may persuade the finder of fact that such unlawful discrimination actually occurred.” [emphasis added]).

Lake v. Yellow Transp., Inc., 596 F.3d 871, 874 (8th Cir. 2010)

DeBoom v. Raining Rose, Inc., 772 N.W.2d 1, 7 (Iowa 2009)

Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143, 120 S.Ct. 2097, 2106, 147 L.Ed.2d 105, 117 (2000) (“the Plaintiff may attempt to establish that he was the victim of intentional discrimination by showing that the employer's proffered explanation is unworthy of credence”)

Ledbetter v. Alltel Corporate Servs., Inc., 437 F.3d 717, 722 (8th Cir.2006) (employer failed to follow its own policies);

Kobrin v. Univ. of Minn., 34 F.3d 698, 703–04 (8th Cir.1994) (employer shifted its explanation of the employment decision);

Stanback v. Best Diversified Prods., Inc., 180 F.3d 903, 909 (8th Cir.1999) (discriminatory enforcement of disciplinary policy may be considered in determination of pretext).

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 18

Failure to Accommodate Temporary Conditions

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 the following elements have been proved:

- [1] Defendant knew Plaintiff had temporary pregnancy-related conditions;
- [2] Plaintiff sought work-related accommodation regarding these conditions;
- [3] Defendant did not accommodate her, and
- [4] 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.

Authorities

McQuiston v. City of Clinton, 872 N.W.2d 817, 824 (2015)
Young v. United Parcel Service, Inc., 575 U.S. —, 135 S.Ct. 1338, 1354 (2015)
Vetter v. State of Iowa, 901 N.W.2d 839 (Iowa App 2017)
8th Circuit Civil Jury Instruction No. 9.42, Committee Comment, p. 222-23.
42 U.S.C. § 2000e(k)
IOWA CODE § 216.6(2)

161 IOWA ADMIN. CODE § 855(1), (2).

Barrett v. U.S. Air Inc., 535 U.S. 391, 397-98 (2002)

Goodpaster v. Schwan's Home Service, Inc., 849 N.W.2d 1, 17-18 (Iowa 2014)

Deenen v. Northwest Airlines, Inc., 132 F.3d 431, 435-46 (8th Cir. 1998)

Jensen v. Prime Time, Ltd., 728 N.W.2d 223, 2006 WL 3613688 at *3 (Iowa Ct. App.)

42 U.S.C. § 12111(8)

29 C.F.R. § 1630.2(o)(1)(ii)

42 U.S.C. § 12111(9)

42 U.S.C. § 12112(b)(5)(A)

29 C.F.R. § 1630.2(o)(3)

Fjellestad v. Pizza Hut of Am., Inc., 188 F.3d 944, 951 (8th Cir.1999)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 19

Interactive Process - Reasonable Accommodation

When an employer becomes aware that an employee has one or more pregnancy related conditions 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 condition and result in some limitation of the employee that could require an accommodation.

The employee is expected to participate and cooperate in this process with the employer. This process is meant to be flexible and interactive. Both the employer and the employee should communicate directly, listen to each other, and exchange essential information. The employee is likely to have greater information about his or her pregnancy related condition(s) and the employer is likely to be able to identify potential accommodations that the employee would have no way of knowing about.

Neither side is allowed to delay or obstruct the process. The process should identify the limitations caused by the employee's disability, as well as potential reasonable accommodations that could overcome those limitations.

The interactive process requires the employer to:

- [1] communicate directly with the employee to explore various possible accommodations;
- [2] give good faith consideration to any accommodations suggested by the employee;
- and

[3] offer one or more accommodations that are reasonable and effective. Preference should be given to the accommodation suggested by the employee.

If you find that Defendant failed to engage in good faith in the interactive process, you may infer that this failure constitutes a separate violation of Defendant's duty to accommodate as discussed in Instruction No. ____.

Authority

Vetter v. State of Iowa, 901 N.W.2d 839 (Iowa App 2017)

Casey's Gen. Stores, Inc. v. Blackford, 661 N.W.2d 515, 521 (Iowa 2003) (Act requires an interactive process)

Instruction No. 21, *Vetter v State of Iowa*, Case No. LACL 130693 (Iowa District Court for Polk County, August 7, 2015)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 20

Stereotypical Thinking

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 Defendants treated Plaintiff differently than it would have if he had not had a disability, even if the managers do not acknowledge or realize their own motives, you may find in favor of Plaintiff.

Authority

Vetter Jury Instruction No. 24, Case No. LACL130693 (Iowa District Court for Polk County, August 7, 2015)

Price Waterhouse v. Hopkins, 490 U.S. 228, 104 L. Ed. 2d 268, 109 S. Ct. 1775 (1989).

Stacks v. Southwestern Bell Yellow Pages, Inc., 27 F.3d 1316 (8th Cir. 1994)

Brooks v. Woodline Motor Freight, Inc., 852 F.2d 1061 (8th Cir. 1988).

EEOC v. W & O, Inc., 213 F.3d 600 (11th Cir. 2000) (noting that proof of “egregious misconduct” or “ill will” or “malice” is not even required for punitive damage award and that punitive damages can be awarded when employer denies knowing its actions are illegal)

Bray v. Marriott Hotels, Inc., 110 F.3d 986, 993 (3rd Cir. 1997) (Jury may find for Plaintiff and reject the testimony of a defense witness even if the witness testifies in good faith that he has chosen the best candidate, if the jury is persuaded that the witness’ bias prevents her from deeming that Plaintiff is the best candidate)

Oberg v. Allied Van lines, Inc., No. 91-C-6576, 1996 U.S. Dist. LEXIS 4717, *11 (N.D.Ill. April 11, 1996) (citing *Burley v. Eaton Corp.*, 860 F.2d 1063, 1066 (7th Cir. 1989) (“...age discrimination may simply arise from an unconscious application of stereotyped notions of ability rather than from a deliberate desire to remove older worker from the workforce”))

Brown v. M&M/Mars, 883 F.2d 505, 513-14 (7th Cir. 1989) (the ADEA liability requirement that age be a determining factor “does not require a finding as to the Defendant’s state of mind” because the law distinguishes between motive and intent)

Idaimaco v. Runyon, 190 F.3d 131, 167 (3rd Cir. 1999) (decisionmaker’s sincere belief that he selected the right person for the job is not an adequate defense to a biased hiring choice).

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 21

Damages - Actual

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.

In the determination of damages, you may award any past earnings Plaintiff has lost as a result of Defendant's wrongful conduct. 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 illegal actions. In deciding back pay, keep in mind that absolute precision in proving what an employee would have earned if not for the employer's wrongful conduct is not required. Any uncertainties in computing back pay should be resolved against the Defendant.

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 the time of the wrongdoing 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.

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

Authority

Iowa Civil Jury Instructions 200.6 and 200.7

8th Circuit Model Jury Instruction 5.70 (2013)

Lynch v. City of Des Moines, 454 N.W.2d 827 (Iowa 1990)

Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm'n, 453 N.W.2d 512 (Iowa 1990)

Franklin v. Gwinnett County Public Sch., 503 U.S. 60, 75-76 (1992)

Mennen v. Easter Stores, 951 F. Supp. 838, 859-61 (N.D. Iowa 1997)

Neufeld v. Searle Labs., 884 F.2d 335, 341 (8th Cir. 1989)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 22

Damages – Punitive

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages for a wrongful conduct.

If you find in favor of the Plaintiff on one or more of her claims, then you must decide whether the Defendant acted with malice or reckless indifference to the Plaintiff's right not to be discriminated against on the basis of her pregnancy and/or Defendant's failure to accommodate. The Defendant acted with malice or reckless indifference if it has been proved that Crystal Frietager knew that the discharge of Plaintiff from employment was in violation of the law prohibiting pregnancy discrimination, or either acted with reckless disregard of that law.

However, you may not award punitive damages if it has been proved that Crystal Frietager made a good-faith effort to comply with the law prohibiting pregnancy discrimination.

If you find that the Crystal Frietager acted with malice or reckless indifference to the Plaintiff's rights and did not make a good-faith effort to comply with the law, then, in addition to any other damages to which you find the Plaintiff entitled, you may, but are not required to, award the Plaintiff an additional amount as punitive damages for the purposes of punishing the Defendant for engaging in such misconduct and deterring the Defendant and others from engaging in such misconduct in the future.

You should presume that a Plaintiff has been made whole for her injuries. If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the Defendant's conduct was. In this regard, you may consider whether the harm suffered by the Plaintiff was physical, emotional and/or economic or any combination thereof; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the Defendant's conduct that harmed the Plaintiff also posed a risk of harm to others; whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the Plaintiff.

2. How much harm the Defendant's wrongful conduct caused the Plaintiff and could cause the Plaintiff in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the Defendant's financial condition, to punish the Defendant for its wrongful conduct toward the Plaintiff and to deter the Defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the Plaintiff.

Authority

8th Circuit Model Jury Instruction 5.72 (2013)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 23

Future Damages

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.

Authority

Instruction No. 27, *Vetter v State of Iowa*, Case No. LACL 130693 (Iowa District Court for Polk County, August 7, 2015)
Iowa Model Civil Jury Instruction 200.13B
Iowa Code section 624.18 (2), 668.3(b)
Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 24

Mortality Table

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

Authority

Iowa Civil Jury Instruction 200.37

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 25

Mitigation of Damages

Plaintiff has a duty to exercise ordinary care to reduce, minimize or limit her damages. However, Plaintiff has no duty to do something that is unreasonable under the circumstances. If Defendant proves by a preponderance of the evidence that

[1] there was some reasonable action Plaintiff could have taken to minimize her damages, and

[2] Plaintiff unreasonably failed to undertake this action, then you may reduce Plaintiff's wage-based damages (back pay and/or front pay) by an amount caused by her failure to take that action.

Authority

Instruction No. 27, *Vetter v State of Iowa*, Case No. LACL 130693 (Iowa District Court for Polk County, August 7, 2015)
Iowa Civil Jury Instruction 400.7
Greenwood v. Mitchell, 621 N.W.2d 200, 205-07 (Iowa 2001)

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 26

Juror's Notes

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.

Authority

Iowa Civil Jury Instruction 100.21

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 27

Deliberations

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.

Authority

Iowa Civil Jury Instruction 100.18

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 28

Verdict Forms

I am giving you a verdict form. 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 must be signed by your foreman or forewoman.

After deliberating for six hours from ____ o'clock ____m. on _____, excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answer to the questions. In that case, the verdict must be signed by all seven jurors who agree.

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

Authority

Iowa Civil Jury Instruction 300.1

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

KELLIE NORRIS, Plaintiff, vs. PARTY CITY CORPORATION, Defendant.	§	CASE NO. LACV127195 PLAINTIFF'S PROPOSED VERDICT FORM
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Question 1: Did Plaintiff Kellie Norris prove her claim of disability discrimination against Defendant Party City Corporation? *(Please mark an "X" in the appropriate spaces.)*

YES _____ NO _____

(Proceed to Question 2.)

Question 2: Did Plaintiff Kellie Norris prove her claim that Defendant Party City Corporation failed to provide her with an accommodation? *(Please mark an "X" in the appropriate spaces.)*

YES _____ NO _____

(If your answer to Questions 1 or 2 is "yes," then proceed to Question 3. If your answer to both Questions 1 and 2 is "no," then do not answer any more questions.)

Question 3: What amounts do you order Defendant Party City Corporation to pay for Plaintiff Kellie Norris' damages for each of the following items?

Back Pay	\$ _____
Future Pay	\$ _____
Emotional Distress in the past	\$ _____
Emotional Distress in the future	\$ _____
Punitive Damages	\$ _____

Question 4: Did Defendant Party City Corporation prove its failure to mitigate defense?

(Please mark an "X" in the appropriate spaces.)

YES _____ NO _____

(If your answer is "no", do not answer Question No. 5. If your answer is "yes", then proceed to Question No. 5)

Question 5: How much, if any, should the damages you awarded in Question No. 3 for back pay and/or future pay be reduced due to Plaintiff's failure to mitigate?

Back Pay	\$ _____
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