

IN THE IOWA DISTRICT COURT IN AND FOR DELAWARE COUNTY

DEBORAH FERGUSON, Plaintiff, vs. EXIDE TECHNOLOGIES, INC., FRED GILBERT, and BRENDA SAUNDERS, Defendants.	Case No. LACV008271 DEFENDANTS' PROPOSED JURY INSTRUCTIONS AND VERDICT FORM
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Defendants Exide Technologies, Fred Gilbert and Brenda Saunders hereby submit
their proposed Jury Instructions and Verdict Form.

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. § 100.9 - Credibility Of Witnesses.
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. _____

Members of the Jury: In this case Plaintiff Deborah Ferguson claims that she was terminated for refusing to submit to an unlawful drug and alcohol test by Defendants, Exide Technologies, Fred Gilbert and Brenda Saunders, and that she was terminated in violation of public policy.

The court has already determined that Defendants did not have a legal basis for requiring Plaintiff to undergo a drug and alcohol test, and for terminating her for refusing to do so.

Your job in this case is to determine the amount of damages, if any, that Plaintiff has sustained.

Authority:

Iowa Civil Jury Instruction 100.1 – Statement of the Case

INSTRUCTION NO. _____

An employer is liable for the wrongful acts of an employee if the acts are done in the scope of the employment. For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

Authority:

Iowa Civil Model Jury Instruction 730.1 – Liability of Employer

Iowa Civil Model Jury Instruction 730.1 – Scope of Employment

INSTRUCTION NO. ____

Liability for wrongful discharge in violation of public policy may extend to individual employees of a corporation who authorize or direct the employer's discharge of another in violation of public policy.

Authority:

Jasper v. H. Nizam, Inc., 764 n.W.2d 751, 777 (Iowa 2009)

INSTRUCTION NO. ____

Tortious Discharge Against Public Policy – Essentials for Recovery. Plaintiff must prove all of the following propositions:

1. Plaintiff was an employee of Exide.
2. Defendant discharged Plaintiff from employment.
3. Plaintiff's refusal to submit to a drug test requested by Defendant when there was no legal basis for requesting the test was the determining factor in defendant's decision to discharge plaintiff.
4. The discharge was a cause of damage to Plaintiff.
5. The nature and extent of the damage.

Authority:

Iowa Civil Jury Instr. 3100.1

INSTRUCTION NO. ____

In Iowa, an employer is entitled to require an employee to undergo a drug and alcohol test in various circumstances. The circumstance at issue here is if an employee was involved in an accident that resulted in an injury for which a record or report could be required the Iowa Occupational Safety and Health Act. The court has ruled that Plaintiff was not been involved in an accident which would have justified a drug and alcohol test.

Authority:

Iowa Code section 730.5(8)(f)

INSTRUCTION NO. ____

In 2012, the Iowa Court of Appeals decided that a repetitive motion, or cumulative trauma, injury may not serve as the basis for requiring that an employee undergo a drug and alcohol test because it does not involve a specific “accident.”

Authority:

Skipton v. S&J Tube, Inc., 822 N.W.2d 122 (Iowa App. 2012)

INSTRUCTION NO. _____

Defendants contend that their termination of Plaintiff, which was based on Plaintiff's refusal to take a drug and alcohol test, was not the cause of damages to Plaintiff because she was unable to continue working at Exide Technologies due to her physical inability to perform the job. If you find Plaintiff would no longer be working at Exide after a certain date, then you should not award damages after that date.

Authority:

8th Cir. Civil Jury Instr. § 5.01 (2017) – Explanatory: “Same Decision” (Modified)

INSTRUCTION NO. _____

[Damages]

On Plaintiff's claim for wrongful discharge, 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 defendants' 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 she had not been discharged 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 wrongful conduct of the Defendants at issue in the claim in question. 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 the wrongful conduct in question until the time that you give your verdict.

The amount of emotional distress damages, if any, that you award for each claim may be the same or different, but the damages awarded must reflect the amount of emotional distress, if any, caused to the Plaintiff by the wrongful conduct at issue in each particular claim.

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 (2013) – Damages: Actual

Bunda v. Potter, No. 03cv3102-MWB (N.D. Iowa 2005) (emotional distress)

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Question 1: Wrongful Discharge in Violation of Public Policy

On the claim for wrongful discharge in violation of public policy, we find Plaintiff's damages to be:

Lost wages and benefits: \$_____

Compensatory Damages: \$_____

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CERTIFICATE OF SERVICE	
The undersigned certifies that on <u>2/28</u> , 2018, this document was electronically filed with the Clerk of Court using EDMS which will send notification of such filing to the following:	
Amy Beck Fiedler & Timmer, P.L.L.C. 8831 Windsor Parkway Johnston, IA 50131 ATTORNEYS FOR PLAINTIFF amy@employmentlawiowa.com	
SIGNED /s/ Thomas D. Wolle	