

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TAMERA EDWARDS, Plaintiff, v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT a/k/a DES MOINES PUBLIC SCHOOLS, Defendants.	LAW NO. LACL139450 DEFENDANT’S PROPOSED JURY INSTRUCTIONS
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Defendant Des Moines Independent Community School District a/k/a Des Moines Public Schools (“DMPS”) hereby submits the following proposed jury instructions:

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the EDMS system, which will send notification of such filing to the following EDMS system participants:

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STATEMENT OF THE CASE

Members of the Jury: In this case, the plaintiff, Tamera Edwards, was employed with Defendant Des Moines Independent Community School District a/k/a Des Moines Public Schools (“the District”) as a substitute teacher. Ms. Edwards contends that the District terminated her employment in retaliation for a complaint Ms. Edwards lodged with the Iowa Occupational Safety and Health Administration. Ms. Edwards seeks money damages for her claims.

The District denies Ms. Edwards’s allegations. The District contends that Ms. Edwards resigned, and that even if she had not resigned, the District did not want to use her substitute teacher services because of two complaints it received about Ms. Edwards from principals at different elementary schools.

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 Instructions 100.1

PRELIMINARY INSTRUCTION NO. 1

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

Authority

Eighth Circuit Model Civil Instruction 1.05: Bench Conferences and Recesses.

PRELIMINARY INSTRUCTION NO. 2

During the trial, you will be allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these notes are 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 100.2: Cautionary Instruction – Juror's Notes

PRELIMINARY INSTRUCTION NO. 3

You may not communicate 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.

It is important that we have your full and undivided attention during this trial.

Authority

Iowa Civil Jury Instruction 100.23: Use of Electronic Devices

PRELIMINARY INSTRUCTION NO. 4

The trial will proceed in the following manner:

First, the plaintiff's lawyer may make an opening statement. Next, the defendant's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the plaintiff will then present evidence. The defendant's lawyer will have a chance to cross-examine the plaintiff's witnesses. After the plaintiff has finished presenting her case, the defendants may present evidence, and the plaintiff's lawyer will have a chance to cross-examine their witnesses.

During the trial, the parties may make objections. Lawyers have the right—and sometimes a duty—to object when they believe something should not be a part of the trial. You should not hold it against the parties when they do this. Do not be influenced one way or the other by objections. If I sustain an objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been. Also, when I rule or comment on an objection or motion, you should not think I have any opinions about the case, favoring one side or the other.

After you have seen and heard all of the evidence from all sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

Authority

Eighth Circuit Model Civil Instruction 1.09: Outline of Trial (paragraphs 1, 2 and 4)

Eighth Circuit Model Civil Instruction 1.04: Evidence; Limitations (paragraph 3)

**INSTRUCTION TO BE GIVEN BEFORE PLAYING DEPOSITION TESTIMONY OF
ANNE SULLIVAN**

Testimony will now be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was electronically videotaped and the recording will now be played for you.

The witness whose deposition is now being offered is Dr. Anne Sullivan, the former Chief Human Resources Officer for Des Moines Public Schools, who is deceased and thus cannot attend the trial. Plaintiff's attorney obtained the deposition, and both parties have agreed that the deposition will be presented to you now.

You should consider Dr. Sullivan's deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person.

Authority

Eighth Circuit Model Jury Instruction 2.14: Deposition Evidence at Trial (modified)

FINAL 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.

Do not be influenced by any personal likes or dislikes, 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.

Authority

Iowa Civil Jury Instruction 100.2: Duties of Judge and Jury, Instructions as a whole

FINAL 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.

Authority

Iowa Civil Jury Instruction 100.3: Burden Of Proof, Preponderance of the Evidence

FINAL 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.

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.

Authority

Iowa Civil Jury Instruction 100.4: Evidence

FINAL 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.

Authority

Iowa Civil Jury Instruction 100.9 (unmodified): Credibility Of Witnesses

FINAL INSTRUCTION NO. 5

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 statement had been made under oath during the trial.

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

Authority

Iowa Civil Jury Instruction 100.15: Statements By A Party Opponent

FINAL INSTRUCTION NO. 6

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 the only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with the testimony given at trial. You may disregard all or 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: Contradictory Statement, Non-party, Witness Not Under Oath

FINAL INSTRUCTION NO. 7

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

You may also use this statement to decide if you believe the witness. You may disregard all or part of the testimony if you find the statement was made and was 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.

Authority

Iowa Civil Jury Instruction 100.14: Contradictory Statements, Non-Party, Witness Under Oath

FINAL INSTRUCTION NO. 8

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.

Authority

Iowa Civil Jury Instruction 100.6: Interrogatories

FINAL INSTRUCTION NO. 9

Certain testimony has been submitted into evidence from a video deposition. As I stated before the video deposition was played, deposition is testimony taken under oath before the trial and preserved in writing or in video. Consider that testimony as if it had been given in court.

Authority

Iowa Civil Jury Instruction 100.5: Deposition Testimony (modified)

FINAL INSTRUCTION NO. 10

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.

Authority

Iowa Civil Jury Instruction 100.12: Opinion Evidence, Expert Witness

FINAL INSTRUCTION NO. 11

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Authority

Iowa Civil Jury Instruction 100.11: Hypothetical Question, Expert Testimony

FINAL INSTRUCTION NO. 12

The fact that Des Moines Public Schools is a school district should not affect your decision. All person are equal before the law, and corporations and organizations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Authority

Iowa Civil Jury Instruction 100.2: Corporate Party (modified)

FINAL INSTRUCTION NO. 13

You may not return a verdict for the plaintiff just because you might disagree with the conduct of Des Moines Public Schools or believe it to be harsh or unreasonable.

Authority

Eighth Circuit Model Instruction 5.11: Business Judgment

FINAL INSTRUCTION NO. 14

In order to prevail on her claim against Des Moines Public Schools, Plaintiff must prove all of the following propositions:

1. Plaintiff was an employee of Des Moines Public Schools.
2. Des Moines Public Schools discharged Plaintiff from employment.
3. Plaintiff's filing of complaint with the Iowa Occupational Safety and Health Administration was the determining factor in Des Moines Public Schools's decision to discharge Plaintiff.
4. The discharge was a cause of damage to Plaintiff.
5. The nature and extent of the damage.

A determining factor need not be the main reason behind the decision. It need only be the reason which tips the scales decisively one way or the other. If, due to other factors, DMPS would have made the decision to discharge Edwards even if she had not filed a complaint with the Iowa Occupational Safety and Health Administration, then the filing of such complaint was not the determining factor in the decision to terminate the employee's employment.

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages from Des Moines Public Schools. If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages from Des Moines Public Schools in some amount.

The parties have stipulated, or agreed, that Plaintiff was an employee of Des Moines Public Schools.

Authority

Iowa Civil Jury Instructions 3100.1: Tortious Discharge against Public Policy - Essentials for Recovery (modified to incorporate Plaintiff's stated protected conduct)

Iowa Civil Jury Instructions 3100.3: Tortious Discharge against Public Policy - Determining Factor (modified to reflect holding in *Rivera v. Woodward Resource Ctr.*, 865 N.W.2d 887, 890-91 & 904 (Iowa 2015) related to "other factors" that motivated termination).

Iowa Civil Jury Instruction 700.3: Cause – Defined

This instruction has been modified to include a stipulation between the parties that Plaintiff was an employee of Defendant DMPS.

FINAL INSTRUCTION NO. 15

There is evidence that Plaintiff was an employee at will. An employee at will may be terminated at any time for any reason, except if it is contrary to the public policy of this state. It is against the public policy of the state to discharge an employee for making a complaint to the Iowa Occupational Safety and Health Administration.

Authority

Iowa Civil Jury Instructions 3100.2: Tortious Discharge Against Public Policy - Employee at Will
George v. D.W. Zinser Co., 762 N.W.2d 865, 871 (Iowa 2009).

FINAL INSTRUCTION NO. 16

If you find Plaintiff is entitled to recover damages under Instruction No. 14, you shall consider the following items:

1. Mental Pain and Suffering – Past.
2. Mental Pain and Suffering – Future.

The amount you assess for mental pain and suffering in the past and/or future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damages to be included in any amount awarded under another item of damage.

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

You may not award Plaintiff damages for any mental or emotional distress she claims she sustained because of the allegedly unsafe working conditions she encountered while working for Des Moines Public Schools. Whether there was an unsafe work environment at Des Moines Public Schools is not at issue in this case, and your damages must solely relate to lost wages and emotional distress as a result of Edwards's alleged termination.

Authority

Iowa Civil Jury Instruction 200.1

This instruction was modified to refer to instruction number 14, insert the applicable elements of damages, and clarify that the jury is not permitted to award damages based on any mental or emotional stress that Plaintiff claims she experienced as a result of the incident underlying her complaint to IOSHA, or the allegedly unsafe working environments in DMPS schools.

FINAL INSTRUCTION NO. 17

Mental Pain and Suffering – Past.

Mental pain and suffering from the date of the end of Plaintiff’s employment to the present time.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Authority

Iowa Civil Right Instruction 200.12

- Modified language “from the date of injury to the present time” to “from the date of the end of Plaintiff’s employment to the present time.” Iowa law requires any recoverable damages to be caused the discharge—not the protected conduct. *See Jasper v. H. Nizam, Inc.*, 746 N.W.2d 751, 769-770 (Iowa 2009).
- Also removed all references to “physical” pain and suffering.

FINAL INSTRUCTION NO. 18

Mental Pain and Suffering –Future.

The present value of future mental pain and suffering.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Authority

Iowa Civil Right Instruction 200.13B

- Insertion of the definition of mental pain and suffering from Iowa Civil Jury Instruction 200.12—Physical and Mental Pain and Suffering -- Past.
- Also removed all references to “physical” pain and suffering.

FINAL INSTRUCTION NO. 19

Future damages must be reduced to present value. “Present value” is a 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

Iowa Civil Jury Instructions 200.35B: Definition of Present Value

FINAL INSTRUCTION NO. 20

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

Authority

Iowa Civil Jury Instructions 200.38: Quotient Verdict

FINAL INSTRUCTION NO. 21

If you find in favor of Plaintiff under Instruction __, 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. § 5.70 (2014) – Damages: Nominal

FINAL INSTRUCTION NO. 22

Upon retiring you shall select a foreperson. 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 (unmodified): General Instruction to Jury

FINAL INSTRUCTION NO. 23

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 recollections or impressions of the evidence as viewed by the person taking them, and they may be inaccurate or incomplete. Upon reaching your verdicts, leave the notes in the jury room and they will be destroyed.

Authority

Iowa Civil Jury Instruction 100.21: Cautionary Instruction – Juror’s Notes

FINAL INSTRUCTION NO. 24

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., 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 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: Return of Verdict – Form of Verdict

Dated this ____ day of _____, 2019.

JUDGE, ____ JUDICIAL DISTRICT OF IOWA

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TAMERA EDWARDS, Plaintiff, v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT a/k/a DES MOINES PUBLIC SCHOOLS, Defendants.	LAW NO. LACL139450 DEFENDANTS' PROPOSED VERDICT FORM
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Your verdict in this case will be determined by your answers to the following questions. Make sure that you read the questions and notes carefully because they explain the order in which the questions should be answered and which questions may be skipped.

Question No. 1: On Tamera Edwards's claim for tortious discharge in violation of public policy claim against Des Moines Independent School District a/k/a Des Moines Public Schools, as submitted in Instruction No. ____, we find in favor of:

(Plaintiff Tamera Edwards) or (Defendant Des Moines Public Schools)

NOTE: If you found in favor of Tamera Edwards in your answer to Question No. 1, please proceed to Question No. 2. If you found in favor of Des Moines Public Schools in your answer to Question No. 1, do not answer Question No. 2. Instead, sign this verdict form and return it to the courtroom deputy.

Question No. 2: As submitted in Instruction No. ____, state the amount of money damages, if any, sustained by Tamera Edwards that was caused by Des Moines Public Schools's conduct. If the plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Des Moines Public Schools's conduct, enter "none" for that item.

Lost wages and benefits: \$ _____ (stating the amount or, if none, write the word “none”)

Past emotional distress: \$ _____ (stating the amount or, if none, write the word “none”)

Future emotional distress: \$ _____ (stating the amount or, if none, write the word “none”)

FOREPERSON

Dated this ____ day of _____, 2019.