

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

TAMERA EDWARDS,

Plaintiff,

v.

DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT a/k/a
DES MOINES PUBLIC SCHOOLS,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

Civil No. LACL139450

**PLAINTIFF'S REQUESTED
JURY INSTRUCTIONS
& VERDICT FORM**

COMES NOW the Plaintiff, Tamera Edwards, by and through her attorney, LeGrant Law Firm, P.C., and hereby submits her Requested Jury Instructions and Verdict Form for use at trial of this matter.

Respectfully Submitted,

LEGRANT LAW FIRM, P.C.

By /s/ Andrew L. LeGrant
Andrew L. LeGrant AT0008908
2900 100th Street, Suite 304
Urbandale, Iowa 50322
Telephone: (515) 331-6500
Facsimile: (855) 331-6509
Email: alegant@legrantlaw.com

ATTORNEY FOR PLAINTIFF

Original filed; electronic copy to:

Frances M. Haas
Ethan S. Olson
Nyemaster Goode, P.C.
625 First Street, SE, Suite 400
Cedar Rapids, Iowa 52401

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on July 15, 2019.

By: ☐ U.S. Mail ☐ Facsimile
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☒ Other: Electronic Filing

Signature /s/Andrew L. LeGrant

TABLE OF CONTENTS

<u>Requested Jury Instructions</u>	<u>Page</u>
1. Statement of The Case	1
2. Use of Electronic Devices.....	2
3. Duties Of Judge And Jury, Instructions As Whole	3
4. Burden Of Proof, Preponderance Of Evidence.....	4
5. Evidence	5
6. Interrogatories.....	6
7. Deposition Testimony	7
8. Credibility Of Witnesses.....	8
9. Contradictory Statements, Non-Party, Witness Under Oath	9
10. Tortious Discharge Against Public Policy - Essentials For Recovery	10
11. Tortious Discharge Against Public Policy - Employee At Will.....	11
12. Tortious Discharge Against Public Policy - Determining Factor	12
13. Pretext	13
14. Damages Generally	14
15. Edwards' Damages Claim – Back Pay	15
16. Edwards' Damages Claim – Emotional Distress.....	16
17. General Instruction To Jury	17
18. Cautionary Instruction - Juror's Notes	18
19. Forms Of Verdict	19
 <u>Verdict Form</u>	
1. Verdict Form	20

2.	Juror Signature Page	21
----	-----------------------------------	----

Final Instruction No. _

Statement Of The Case.

Members of the Jury: In this case plaintiff Tamera Edwards claims that her former employer Des Moines Public Schools wrongfully discharged her by terminating her employment in retaliation for filing a complaint with the Iowa Occupational Health and Safety Administration.

Defendant Des Moines Public Schools denies Edwards' claim.

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.

Iowa Model Jury Instruction 100.1 (June 2018)

Final Instruction No. _

Use of Electronic Devices.

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.

Iowa Model Jury Instruction 100.23 (June 2018)

Final Instruction No. _

Duties Of Judge And Jury, Instructions As Whole.

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.

Iowa Model Jury Instruction 100.2 (June 2018)

Final Instruction No. _

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.

Iowa Model Jury Instruction 100.3 (June 2018)

Final Instruction No. _

Evidence.

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.

Iowa Model Jury Instruction 100.4 (June 2018)

Final Instruction No. _

Interrogatories.

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.

Iowa Model Jury Instruction 100.6 (June 2018)

Instruction No. _

Deposition Testimony.

At this point of the trial, testimony from a deposition will be presented to you. A deposition is testimony taken under oath before the trial and preserved in writing and, in some instances, by way of video. Consider such testimony as if the witness had given it in your presence live in court.

Modified – based on Iowa Model Jury Instruction 100.5 (June 2018)

Final Instruction No. _

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.

Iowa Model Jury Instruction 100.9 (June 2018)

Final Instruction No. _

Contradictory Statements, Non-Party, Witness Under Oath.

You have heard evidence claiming certain witnesses 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 witnesses. 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.

Iowa Model Jury Instruction 100.14 (June 2018)

Final Instruction No. __

Tortious Discharge Against Public Policy - Essentials For Recovery.

Edwards must prove all of the following propositions:

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

If Edwards has failed to prove any of these propositions, she is not entitled to damages. If Edwards has proved all of these propositions, she is entitled to damages in some amount.

Iowa Model Jury Instruction 3100.1 (June 2018)

Final Instruction No. _

Tortious Discharge Against Public Policy - Employee At Will.

There is evidence that Edwards 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.

Iowa Model Jury Instruction 3100.2 (June 2018)

Final Instruction No. _

Tortious Discharge Against Public Policy - Determining Factor.

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.

Iowa Model Jury Instruction 3100.3 (June 2018)

Final Instruction No. _

Pretext.

You may find that Edwards' complaint to the Iowa Occupational Safety and Health Administration was a determining factor in Des Moines Public Schools' decision to discharge her if it has been proved that the Des Moines Public Schools' stated reason for its decision is not the real reason, but is a pretext to hide retaliation.

Eight Circuit Model Civil Instruction 5.20 (2013); see *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 10 (Iowa 2009) ("Thus, we hold a pretext instruction 'is required where, as here, a rational finder of fact could reasonably find the defendant's explanation false and could 'infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.'")

Final Instruction No. _

Damages Generally.

The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to whether any party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance in the event that you should find that Edwards is entitled to damages in accord with the other instructions.

If you find that Edwards has met her burden on her wrongful discharge claim, then you must award her such sum as you find by the greater weight of the evidence will fairly and justly compensate her for any damages that you find were proximately caused to her by the conduct of Des Moines Public Schools. An act is a “proximate cause” of damage if the act was a substantial factor in producing the damage and the damage would not have happened except for the act. “Substantial” means that the act had such an effect in producing damage as to lead a reasonable person to regard it as a cause of the damage.

Remember that, throughout your deliberations, you must not engage in any speculation, guess, or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. You must award the full amount of damages, if any, that Edwards proved by the preponderance of the evidence. However, the amount you assess for damages must not exceed the amount proximately caused by the wrongful conduct of Des Moines Public Schools as proved by the evidence. Also, do not allow any amount awarded for one item of damages on a particular claim to be included in any amount awarded for any other item of damages on that claim, because Edwards is not entitled to recover duplicate damages.

Attached to these Instructions is a Verdict Form, which you must fill out. In the “Damages” sections of the Verdict Form, you should only award those damages, if any, that Edwards has proved by the preponderance of the evidence were proximately caused by Des Moines Public Schools’ wrongful conduct toward her.

Based on Jury Instruction No. 7 given in *Raymond v. U.S.A. Healthcare Center*, N.D. Iowa Civil No. 05-3074 (2007, Mark W. Bennett) and on Final Jury Instruction No. 6 given in *Davidson v. Kinseth Hospitality Corp. et al*, N.D. Iowa Civil No. 05-3037 (2006, Mark W. Bennett)

Final Instruction No. _

Edwards's Damages Claim – Back Pay.

Edwards seeks damages for back pay. “Back pay” is defined as the amount of any wages and fringe benefits that Edwards would have earned from the date her employment with Des Moines Public Schools ended until the date of your verdict, minus the wages and fringe benefits, if any, that she actually did earn during that time from other employment after her job with Des Moines Public Schools ended.

Based on Jury Instruction No. 8 given in *Raymond v. U.S.A. Healthcare Center*, N.D. Iowa Civil No. 05-3074 (2007, Mark W. Bennett) and on Final Jury Instruction No. 7 given in *Davidson v. Kinseth Hospitality Corp. et al*, N.D. Iowa Civil No. 05-3037 (2006, Mark W. Bennett). *See also Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 769-770 (Iowa 2009) (discussing damages available in wrongful discharge cases, including for lost wages).

Final Instruction No. _

Edwards' Damages Claim – Emotional Distress.

Damages for “emotional distress” are the amount of damages that will reasonably compensate 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 defendant. The amount, if any, that you assess for damages for emotional distress cannot be measured by an exact or mathematical standard, and Edwards is not required to introduce evidence of the monetary value of such damages. Even so, 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 Edwards for any emotional distress proximately caused by the wrongful conduct that she suffered from the time of the wrongful conduct until the time that you give your verdict.

You may also award emotional distress damages for future emotional distress, but only if you find that Edwards has proved by the greater weight of the evidence that her emotional distress proximately caused by Des Moines Public Schools’ wrongful conduct is reasonably certain to extend into the future.

Based on Jury Instruction No. 8 given in *Raymond v. U.S.A. Healthcare Center*, N.D. Iowa Civil No. 05-3074 (2007, Mark W. Bennett) and on Final Jury Instruction No. 7 given in *Davidson v. Kinseth Hospitality Corp. et al*, N.D. Iowa Civil No. 05-3037 (2006, Mark W. Bennett).

Final Instruction No. _

General Instruction To Jury.

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.

Iowa Model Jury Instruction 100.18 (June 2018)

Final Instruction No. _

Cautionary Instruction – 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.

Iowa Model Jury Instruction 100.21 (June 2018)

Final Instruction No. _

Forms Of Verdict.

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.

Iowa Model Jury Instruction 300.1 (June 2018)

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

TAMERA EDWARDS,

Plaintiff,

v.

DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT a/k/a
DES MOINES PUBLIC SCHOOLS,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

Civil No. LACL139450

VERDICT FORM

We, the Jury, find the following verdict on the questions submitted to us:

QUESTION NO. 1

Did Tamera Edwards prove her wrongful discharge claim by the preponderance of the evidence?

ANSWER: _____ Yes _____ No

If you answered "Yes" to Question No. 1, proceed to Question No. 2. If you answered "No," proceed to the signature section below and notify the Court's officer that you have reached your verdict.

QUESTION NO. 2

What amount of back pay damages do you award Tamera Edwards?

Back pay: \$ _____

Proceed to Question No. 3.

QUESTION NO. 3

What amount of emotional distress damages do you award Tamera Edwards?

Emotional distress (past): \$ _____

Emotional distress (future): \$ _____

Proceed to the signature section below and notify the Court's officer that you have reached your verdict.

FOREPERSON*

*To be signed only if verdict is unanimous

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

**To be signed by the jurors agreeing thereto after six (6) hours or more of deliberation.