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**IN THE DISTRICT COURT OF IOWA  
IN AND FOR SCOTT COUNTY**

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CAMELLIA POHL,

Plaintiff,

vs.

CITY OF DAVENPORT, IOWA

Defendant.

NO. LACE128300

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**DEFENDANT'S ADDITIONAL JURY  
INSTRUCTIONS**

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**COMES NOW** the Defendant, City of Davenport, Iowa by and through its attorneys, Betty, Neuman & McMahon, P.L.C., and hereby submits its Additional Jury Instructions to be included with the Jointly Stipulated Jury Instructions submitted by the parties.

BETTY, NEUMAN & McMAHON, P.L.C.

By: /s/ Martha L. Shaff  
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**ATTORNEYS FOR DEFENDANT, CITY OF  
DAVENPORT, IOWA**

**CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS**

I hereby certify that on May 21, 2018, I electronically filed the foregoing document with the Iowa District Court for Scott County by using the EDMS system. I certify that the following parties or their counsel of record are registered as EDMS filers and that they will be served by the EDMS system.

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**ATTORNEYS FOR PLAINTIFF**

/s/ Martha L. Shaff

INSTRUCTION NO. \_\_\_\_\_

Members of the Jury:

In this case Plaintiff, Camellia Pohl, claims Defendant, City of Davenport, wrongfully terminated her employment in retaliation against her because she pursued a workers' compensation claim against the City of Davenport. Plaintiff further claims she sustained damages as a result of the wrongful termination.

Defendant, City of Davenport, denies that it wrongfully terminated Plaintiff's employment and that it was the cause of her damages.

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 to you.

**Authority:**

ICJI 100.1 (modified)

INSTRUCTION NO. \_\_\_\_\_

The fact that Defendant City of Davenport is a municipality should not affect your decision. All persons are equal before the law, and municipalities are entitled to the same fair and conscientious consideration by you as any other person.

**Authority:**

ICJI 100.20 (modified)

INSTRUCTION NO. \_\_\_\_\_

Defendant City of Davenport can lawfully terminate Plaintiff Camellia Pohl's employment on the ground that she is prevented from performing one of the requirements of her historic job description.

You may not return a verdict for Plaintiff Camellia Pohl just because you might disagree with Defendant City of Davenport's decision to terminate her or if you believe the decision to be harsh or unreasonable.

**Authority:**

8<sup>th</sup> Cir. Model Jury Instruction 5.02; *Walker v. AT&T Technologies*, 995 F.2d 846 (8<sup>th</sup> Cir.1993) (citing *Blake v. J.C. Penney Co.*, 894 F.2d 274 (8<sup>th</sup> Cir. 1990) (affirming jury instruction stating "An employer is entitled to make its own subjective personnel decision and can discharge an employee for any reason that is not discriminatory." correctly stated the applicable law)); *Davenport v. City of Des Moines*, 430 N.W.2d 405 (Iowa 1988) (holding liability for retaliatory discharge claim was precluded when evidence established the basis for employee's termination was "the loss of his driver's license, a circumstance which prevented him from performing one of the requirements of his historic job description.").

INSTRUCTION NO. \_\_\_\_\_

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.

**Authority:**

8<sup>th</sup> Cir. Model Jury Instruction 5.70

INSTRUCTION NO. \_\_\_\_\_

Pohl seeks damages for emotional distress. Emotional distress may include anxiety, humiliation, loss of self-esteem and loss of enjoyment of life. The amount you assess for emotional distress damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties.

**Authority:**

Instruction No. 4 given by Hon. Judge John A. Jarvey in *Bagley v. Quad Cities Telephone Answering Service*, Case No. 3:07-cv-0057-JAJ (S.D. Iowa 11/14/2008).

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**VERDICT FORM**

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

**Question No. 1:** Did Plaintiff Camellia Pohl prove by a preponderance of the evidence that the determining factor in Defendant City of Davenport's decision to terminate her employment was retaliation for her pursuit of a workers' compensation claim against it?

Answer "yes" or "no"

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions.]

**Question No. 2:** If you have answered "yes" to Question No. 1, above, state the amount of damages sustained by Plaintiff Camellia Pohl proximately caused by Defendant City of Davenport's fault.

1. Emotional Distress \$ \_\_\_\_\_

2. Back Pay \$ \_\_\_\_\_

TOTAL: (add the separate items of damages) \$ \_\_\_\_\_

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FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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

**Authority:**

ICJI 300.4 (modified)