

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

LINDA ROBB,

Plaintiff,

vs.

BENTON COUNTY, a State
public body, and FRANKLIN
COUNTY, a State public body,

Defendants.

No. 16-2-00406-8

COURT'S INSTRUCTIONS TO THE JURY



JOHN W. LOHRMANN, JUDGE

DATED: JAN 30 2019

COPY

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness, and of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious, including bias based on religion, ethnicity, race, sexual orientation, gender or disability.

In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while

testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

The comments of the lawyers during this trial are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial

consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

INSTRUCTION NO. 2

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 3

Benton and Franklin Counties are government entities. Government entities can act only through their officers and employees. Any act or omission of an officer or employee is the act or omission of the government entity.

The law treats all parties equally whether they are government entities or individuals. This means that government entities and individuals are to be treated in the same fair and unprejudiced manner.

INSTRUCTION NUMBER 4

You are instructed that Benton and Franklin Counties are one party for the purpose of this lawsuit.

INSTRUCTION NO. 5

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 6

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

INSTRUCTION NO. 7

The plaintiff claims that the defendants wrongfully discharged her: (1) in violation of public policy, and (2) for retaliation for making a complaint of sexual harassment. The plaintiff further claims that she sustained both economic and non-economic damages as a result of the claimed wrongful discharge. The defendants deny these claims.

In addition, the defendants claim as affirmative defenses that they properly terminated the plaintiff as an at-will employee, or alternatively, that they had a legitimate, overriding reason for their action. The plaintiff denies these claims.

The defendants further deny the nature and extent of the claimed injuries and damage.

INSTRUCTION NO. 8

The foregoing is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed; and you are to consider only those matters that are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

INSTRUCTION NO. 1

In general, an employment relationship that is indefinite as to duration is terminable at will by either the employer or employee. An employer has the right to discharge an employee, with or without a reason, in the absence of a contract for a specified period of time, or unless otherwise prohibited by law.

INSTRUCTION NO. 10

A statute provides that it is the policy of this State that government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions of local government officials and employees.

“Improper governmental action” is defined in the statute as “any action by a government officer or employee that: ... is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.”

INSTRUCTION NO. 11

It is unlawful to terminate an employee in retaliation for reporting improper government action as defined in the previous instruction.

INSTRUCTION NO. 12

To recover on the claim of wrongful termination in violation of public policy, the plaintiff has the burden of proving that a substantial factor motivating the employer to terminate her employment was her reporting improper government action as previously defined.

If you find from your consideration of all of the evidence that the Plaintiff has not met this burden, then you must find for the Defendants on this claim.

If you find from your consideration of all of the evidence that the Plaintiff has met this burden, then you must find for the Plaintiff on this claim.

If you find from your consideration of all of the evidence that the Plaintiff has met this burden, then you must determine whether the Defendants have met their burden of proving that they had a legitimate, overriding consideration for terminating the Plaintiff. If you find that the Defendants have met their burden of proving they had an overriding consideration for their actions, then you must find for the Defendants. If the Defendants have not met this burden, then you must find for the Plaintiff on this claim.

INSTRUCTION NO. 13

It is unlawful for an employer to retaliate against a person for opposing what the person reasonably believed to be discrimination on the basis of sexual harassment, providing information to, or participating in a proceeding to determine whether discrimination or retaliation occurred.

To establish a claim of unlawful retaliation by Benton and/or Franklin Counties, the plaintiff has the burden of proving each of the following propositions:

(1) That the plaintiff was opposing what she reasonably believed to be discrimination on the basis of sexual harassment, or participated in a proceeding to determine whether discrimination or retaliation had occurred; and

(2) That a substantial factor in the decision to discipline, layoff, or terminate, or other adverse employment action, was the plaintiff's opposition to what she reasonably believed to be discrimination on the basis of sexual harassment.

If you find from your consideration of all of the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff on her retaliation claims. On the other hand, if any one of these propositions has not been proved, your verdict should be for Benton and Franklin Counties on this claim.

INSTRUCTION NO. 14

“Substantial factor” means a significant motivating factor in bringing about the employer's decision. “Substantial factor” does not mean the only factor or the main factor in the challenged act or decision.

INSTRUCTION NO. 15

The term “adverse” means unfavorable or disadvantageous. An employment action is adverse if it is harmful to the point that it would dissuade a reasonable employee from making a complaint of discrimination on the basis of sexual harassment. Whether a particular action is adverse is judged from the perspective of a reasonable person in the plaintiff’s position.

INSTRUCTION NO. 16

A cause of an injury is a proximate cause if it is related to the injury in two ways:

(1) the cause produced the injury in a direct sequence, and (2) the injury would not have happened in the absence of the cause.

INSTRUCTION NO. 17

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the acts of the defendants, Benton and/or Franklin Counties.

If you find for the plaintiff, you should consider the following elements:

- (1) The reasonable value of lost past earnings and fringe benefits, from the date of the wrongful conduct to the date of trial;
- (2) The reasonable value of lost future earnings and fringe benefits; and
- (3) The emotional harm to the plaintiff caused by the defendant's wrongful conduct, including emotional distress, loss of enjoyment of life, humiliation, and/or anguish experienced and with reasonable probability to be experienced by the plaintiff in the future.

The burden of proving damages rests with the party claiming them, and it is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Any award of damages must be based upon evidence and not upon speculation, guess, or conjecture. The law has not furnished us with any fixed standards by which to measure emotional distress, loss of enjoyment of life, humiliation, pain and suffering, personal indignity, embarrassment, fear, anxiety, and/or anguish. With reference to these matters, you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION NO. 18

In calculating damages for future wage loss you should determine the present cash value of salary, pension, and other fringe benefits from today until the time the plaintiff may reasonably be expected to retire or fully recover from the continuing effects of the discrimination and/or retaliation, decreased by any projected future earnings from another employer.

Noneconomic damages such as emotional distress, loss of enjoyment of life, humiliation and/or anguish are not reduced to present cash value.

“Present cash value” means the sum of money needed now which, if invested at a reasonable rate of return, would equal the amount of loss at the time in the future when the earnings and/or benefits would have been received.

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality.

In determining present cash value, you may also consider decreases in value of money that may be caused by future inflation.

INSTRUCTION NO. 19

The Plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

To establish a failure to mitigate, the Defendants have the burden of proving:

(1) There were openings in comparable positions available for the Plaintiff elsewhere after the Defendants terminated her;

(2) Plaintiff failed to use reasonable care and diligence in seeking those openings; and

(3) The amount by which damages would have been reduced if the Plaintiff had used reasonable care and diligence in seeking those openings.

You should take into account the characteristics of the Plaintiff and the job market in evaluating the reasonableness of the Plaintiff's efforts to mitigate damages.

If you find that the Defendants have proved all of the above, you should reduce your award of damages for wage loss accordingly.

INSTRUCTION NO. 20

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given the exhibits admitted in evidence and these instructions. You will also be given a special verdict form that consists of several questions for you to answer. You must answer the questions in the order in which they are written, and according to the directions on the form. It is important that you read all the questions before you begin answering, and that you follow the directions exactly. Your answer to some questions will determine whether you are to answer all, some, or none of the remaining questions.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to answer any question on the special verdict form, ten jurors must agree upon the answer. It is not necessary that the jurors who agree on the answer be the same jurors who agreed on the answer to any other question, so long as ten jurors agree to each answer.

When you have finished answering the questions according to the directions on the special verdict form, the presiding juror will sign the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with the verdict. The presiding juror will then tell the bailiff that you have reached a verdict. The bailiff will bring you back into court where your verdict will be announced.