

SUPERIOR COURT OF WASHINGTON
FOR BENTON COUNTY

JULIE M. ATWOOD,

Plaintiff,

vs.

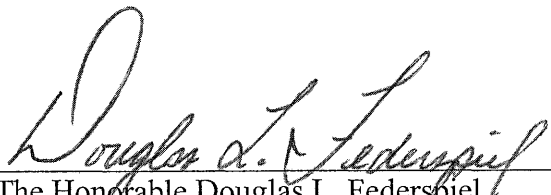
MISSION SUPPORT ALLIANCE, LLC, and
STEVE YOUNG, an individual,

Defendants.

Case No.: 15-2-01914-4

**COURT'S INSTRUCTIONS
TO THE JURY**

Dated this 9th day of October, 2017.


The Honorable Douglas L. Federspiel

INSTRUCTION NO. /

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. 2

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of testimony and exhibits presented by, or relating to, Sandra Fowler regarding her own complaints against MSA. This evidence may be considered by you only to the extent you find it relevant to issues of MSA's motive or intent. It may not be considered by you for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

INSTRUCTION NO. 3

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. 4

Defendant Mission Support Alliance (MSA) is a limited liability company. A limited liability company can act only through its officers and employees. Any act or omission of an officer or employee is the act or omission of the limited liability company.

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

For the purposes of this lawsuit, corporation and limited liability company are the same.

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 his information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 6

Plaintiff was an “at-will” employee who could be lawfully discharged at any time without good cause, or for bad cause, or for no cause at all, unless otherwise prohibited by law.

INSTRUCTION NO. 7

Under the Washington Law Against Discrimination (“WLAD”), discrimination in employment on the basis of gender is prohibited.

To establish her discrimination claim, the plaintiff has the burden of proving each of the following propositions:

(1) That Ms. Atwood resigned in lieu of termination; and

(2) That Ms. Atwood’s gender was a substantial factor in MSA’s decision to terminate her.

If you find from your consideration of all the evidence that each of the propositions stated above has been proved, your verdict should be for the plaintiff. On the other hand, if either of the propositions has not been proved, your verdict should be for the defendant.

INSTRUCTION NO. 8

“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. 9

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 gender, or providing information to or participating in a proceeding to determine whether discrimination or retaliation occurred.

To establish a claim of unlawful retaliation by MSA, Ms. Atwood has the burden of proving each of the following propositions:

(1) That Ms. Atwood was opposing what she reasonably believed to be discrimination on the basis of gender, or was providing information to or participating in a proceeding to determine whether discrimination or retaliation had occurred; and

(2) That a substantial factor in the decision to terminate Ms. Atwood was her opposition to what she reasonably believed to be discrimination or retaliation on the basis of gender.

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 Ms. Atwood on this claim. On the other hand, if ~~any~~one of these propositions has not been proved, your verdict should be for MSA on this claim.

Ms. Atwood does not have to prove that her opposition was the only factor or the main factor in MSA's decision, nor does Ms. Atwood have to prove that she would not have been terminated but for her opposition or participation.

INSTRUCTION NO. 10

“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. //

It is unlawful for any person to aid, abet, encourage, or incite the commission of discrimination or retaliation on the basis of gender.

If you find that MSA engaged in discriminatory or retaliatory conduct against Ms. Atwood, then Ms. Atwood has the burden of proving by a preponderance of the evidence that Steve Young participated or engaged in some conduct that aided, abetted, encouraged or incited MSA's discriminatory or retaliatory conduct against Ms. Atwood.

Mere knowledge by Mr. Young that discrimination or retaliation occurred is insufficient to meet Ms. Atwood's burden on this claim. Rather, Ms. Atwood has the burden of proving by a preponderance of the evidence that Mr. Young actually participated in the discriminatory or retaliatory conduct for the purpose of discriminating or retaliating against her.

If you find that Steve Young engaged in conduct that aided, abetted, encouraged, or incited the commission of discrimination or retaliation by MSA owing to gender, or acted to attempt to obstruct or prevent any other person from complying with Washington Law as it relates to gender discrimination or retaliation, you should find for Ms. Atwood and against Steve Young holding him liable for aiding and abetting.

INSTRUCTION NO. 12

The plaintiff asserts she was discharged in violation of public policy. The public policy at issue here is the False Claims Act, which imposes liability on any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement material to a false claim to be paid by the government. The False Claims Act asserts a policy against the misuse of federal government resources for private benefit.

To establish her claim of wrongful discharge in violation of public policy against MSA, plaintiff has the burden of proving each of the following elements:

- (1) that plaintiff engaged in conduct directly related to that public policy or was necessary for the effective enforcement of that public policy; and
- (2) that plaintiff's public policy-linked conduct was a substantial factor in employer's decision to terminate her.

The Plaintiff does not have to prove an actual violation of the False Claims Act.

INSTRUCTION NO. 13

“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. 14

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 defendant.

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, pain and suffering, personal indignity, embarrassment, fear, anxiety, 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. 15

You may not award damages to Ms. Atwood for any emotional distress, loss of enjoyment of life, humiliation, embarrassment, fear, anxiety, and/or anguish proximately caused by litigation stress.

INSTRUCTION NO. 16

The term "proximate cause" means a cause when in a direct sequence unbroken by any superseding cause, produces the injury complained of and without which such injury would not have happened.

INSTRUCTION NO. 17

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 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, pain and suffering, personal indignity, embarrassment, fear, anxiety, 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. 18

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

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

- (1) There were openings in comparable positions available for Ms. Atwood elsewhere after MSA terminated her;
- (2) Ms. Atwood failed to use reasonable care and diligence in seeking those openings; and
- (3) The amount by which damages would have been reduced if Ms. Atwood had used reasonable care and diligence in seeking those openings.

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

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

INSTRUCTION NO. 19

Whether or not a party has insurance, or any other source of recovery available, has no bearing on any issue that you must decide. You must not speculate about whether a party has insurance or other coverage or sources of available funds. You are not to make or decline to make any award, or increase or decrease any award, because you believe that a party may have medical insurance, liability insurance, workers' compensation, or some other form of compensation available. Even if there is insurance or other funding available to a party, the question of who pays or who reimburses whom would be decided in a different proceeding. Therefore, in your deliberations, do not discuss any matters such as insurance coverage or other possible sources of funding for any party. You are to consider only those questions that are given to you to decide in this case.

INSTRUCTION NO. 20

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 claims has been proved, you must consider all of the evidence that I have admitted that relates to that claims. 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 the witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. 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.

As to the comments of the lawyers during this trial, they 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, and may have a duty to do so. 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, bias, 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.

As was discussed in jury selection, growing scientific research indicates we may have “implicit biases,” or hidden feelings, perceptions, fears and stereotypes in our subconscious. These hidden thoughts may impact how we remember what we see and hear, and how we make important decisions. While it is difficult to control one’s subconscious thoughts, being aware of these hidden biases can help counteract them. As a result, I ask you to recognize that we may be affected by implicit biases in the decisions that we make. Because you are making very important decisions in this case, I strongly encourage you to critically evaluate the evidence and resist any urge to reach a verdict influenced by stereotypes, generalizations, or implicit biases.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally 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. 21

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, these instructions, and verdict forms for recording 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.

~~(Appropriate directions for use of the particular verdict forms may be inserted here. See Note on Use.)~~ (DLA)

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. For this purpose, use the form provided in the jury room. 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 reach a verdict *TEN* of you must agree. When *TEN* of you have agreed, then the presiding juror will fill in the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with it. The presiding juror will then inform the bailiff that you have reached a verdict. The bailiff will conduct you back into this courtroom where the verdict will be announced.