

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INSTRUCTION NO. ____

(PROPOSED) INSTRUCTION NO. 13

You may find that a plaintiff's age and/or race was a substantial factor in the defendant's decision to suspend, terminate, place on administrative leave, or threaten that plaintiff with suspension or termination if it has been proved that the defendants' stated reasons for either of the decisions are not the real reasons, but are a pretext to hide age and/or race discrimination.

8th Circuit's Model Jury Instruction 5.20.

http://juryinstructions.ca8.uscourts.gov/civil_instructions.htm; Townsend v. Lumbermens Mut. Cas. Co., 294 F.3d 1232, 1241 (10th Cir. 2002) (“hold[ing] that in cases such as this, a trial court must instruct jurors that if they disbelieve an employer’s proffered explanation they may—but need not—infer that the employer's true motive was discriminatory”; and that the refusal to give an instruction identical to the 8th Circuit Court of Appeals’ Model Instruction was not harmless error); *discussing with approval* Smith v. Borough of Wilkinsburg, 147 F.3d 272, 280 (3rd Cir. 1998) (“It is difficult to understand what end is served by reversing the grant of summary judgment for the employer on the ground that the jury is entitled to infer discrimination from pretext ... if the jurors are never informed that they may do so.”) *and* Cabrera v. Jakobovitz, 24 F.3d 372, 382 (2nd Cir.), *cert. denied*, 513 U.S. 876, 115 S.Ct. 205, 130 L.Ed.2d 135 (1994). The Supreme Court of Iowa has likewise held that “[i]f a plaintiff ... presents evidence of pretext, failure to provide a pretext instruction will result in prejudice.” Deboom v. Raining Rose, Inc., 772 N.W.2d 1, 11 (Iowa 2009).