

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRANDY ADCOCK,)	
)	
Plaintiff,)	
)	
v.)	No. 05 C 0960
)	
B.D.'S MONGOLIAN BARBEQUE,)	Magistrate Judge Morton Denlow
)	
Defendant.)	

JURY INSTRUCTIONS

FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

ALL LITIGANTS EQUAL BEFORE THE LAW

In this case, the defendant, B.D.'s Mongolian Barbeque, is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

WHAT IS NOT EVIDENCE

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. The purpose of these is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

NOTE-TAKING

Any notes you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not your notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

**CONSIDERATION OF ALL EVIDENCE
REGARDLESS OF WHO PRODUCED IT**

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

LIMITED PURPOSE OF EVIDENCE

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

AGENT OR EMPLOYEE

The Defendant is a corporation and can act only through its agents and employees. Any act or omission of an agent or employee within the scope of his employment is the same action or omission of the Defendant corporation.

WEIGHING THE EVIDENCE

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

PRIOR INCONSISTENT STATEMENTS OR ACTS

You may consider statements given by a Party or Witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial.

NUMBER OF WITNESSES

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

BURDEN OF PROOF

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

PLAINTIFF'S CLAIMS

In this case, Plaintiff has two claims against Defendant as follows:

First, that she has been discriminated against on the basis of her sex/pregnancy; and

Second, that she was retaliated against by the Defendant for complaining about sexual/pregnancy discrimination.

DEFINITION OF SEX

In a sexual discrimination claim, “sex” refers to the quality of being male or female, and also includes discrimination because of, or on the basis of pregnancy, childbirth, or related medical conditions.

SEX AND/OR PREGNANCY DISCRIMINATION CLAIM

Under Federal law, employers must treat women affected by pregnancy the same, for all employment-related purposes, as other persons not affected by pregnancy but similar in their ability or inability to work. The employer may take into account only the Plaintiff's ability to perform her job. Safety is a justification only when pregnancy interferes with an employee's ability to perform her job.

Plaintiff claims that she was forced to take early maternity leave or was terminated by Defendant because of her sex or pregnancy. Defendant claims that Plaintiff was placed on maternity leave early because of safety concerns and her inability to perform her job and was later terminated because of performance and behavioral concerns.

To succeed on her claim, Plaintiff must prove by a preponderance of the evidence that she was forced to take early maternity leave or was terminated because of her sex or pregnancy. To determine that Plaintiff was forced to take an early maternity leave or was terminated because of her sex or pregnancy, you must decide that Defendant would not have forced Plaintiff to take an early maternity leave or have terminated Plaintiff if she had not been female or pregnant, but everything else remained the same.

If you find that Plaintiff has proved this by a preponderance of the evidence, then you must find for Plaintiff. However, if you find that Plaintiff did not prove this by a preponderance of the evidence, then you must find for Defendant.

RETALIATION CLAIM

Plaintiff claims that she was forced to take early maternity leave or was terminated by Defendant because she complained about Defendant's treatment of her after learning of her pregnancy. Defendant claims that Plaintiff was placed on maternity leave early because of safety concerns and her inability to perform her job and was later terminated because of performance and behavioral concerns.

To succeed on her claim, Plaintiff must prove by a preponderance of the evidence that Defendant forced her to take early maternity leave or terminated her employment because of the complaints. To determine that Plaintiff was forced to take early maternity leave or was terminated because of these complaints, you must decide that Defendant would not have forced Plaintiff to take early maternity leave or terminated her employment if she had not made these complaints. Termination from employment is an adverse employment action. You must decide if Plaintiff's claimed forced early maternity leave constitutes an adverse employment action.

Plaintiff must also prove by a preponderance of the evidence that forcing her to take an early maternity leave and/or terminating her employment was an adverse employment action. An adverse employment action is defined as an act or action that is harmful to the point it would deter or dissuade a reasonable worker from making a complaint about discrimination if he or she knew a forced early maternity leave and/or termination would follow.

If you find that Plaintiff has proved this by a preponderance of the evidence, then you must find for Plaintiff on her claim of Retaliation. However, if you find that Plaintiff did not prove this by a preponderance of the evidence, then you must find for Defendant on this claim.

**CAUTIONARY INSTRUCTION ON REASONABLENESS
OF DEFENDANT'S ACTIONS**

In deciding Plaintiff's claim, you should not concern yourselves with whether Defendant's actions were wise, reasonable, or fair. Rather, your concern is only whether Plaintiff has proven that Plaintiff suffered discrimination because of her sex/pregnancy and/or was retaliated against for complaining about discrimination.

DAMAGES: GENERAL

If you find that Plaintiff has proved any of her claims against Defendant, then the Court will determine the amount of her lost wages and benefits. However, if you find for Plaintiff on her sex/pregnancy discrimination claim and/or retaliation claim, please consider the issue of compensatory and punitive damages in the next instructions. Plaintiff must prove her damages by a preponderance of the evidence.

If you decide for Defendant, B.D.'s Mongolian Barbeque, on the question of liability on both counts, you should not consider the question of damages.

DAMAGES: COMPENSATORY

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that she received by suffering embarrassment, humiliation, and emotional distress. These are called “compensatory damages”.

Plaintiff must prove her damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

The mental/emotional pain and suffering that Plaintiff has experienced. No evidence of the dollar value of mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of mental/emotional pain and suffering. You are to determine an amount that will fairly compensate the Plaintiff for the injury she has sustained.

DAMAGES: PUNITIVE

If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against Defendant. You may assess punitive damages only if you find that Defendant's conduct was in reckless disregard of Plaintiff's rights. An action is in reckless disregard of Plaintiff's rights if taken with knowledge that it may violate the law.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Defendant's conduct;
- the impact of Defendant's conduct on Plaintiff;
- the relationship between Plaintiff and Defendant; and
- the likelihood that Defendant would repeat the conduct if an award of punitive damages is not made.

EFFECT OF INSTRUCTION AS TO DAMAGES

The fact that the court has instructed you as to the proper measure of damages should not be considered as intimating any view of the Court as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case, in accordance with the other instructions.

VERDICT - UNANIMOUS - DUTY TO DELIBERATE

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

SELECTION OF A FOREPERSON

Upon retiring to the jury room, you will first select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

You are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has a chance to say what they want to say.

VERDICT FORMS

Verdict forms have been prepared for your convenience. You will take verdict forms to the jury room, and when you have reached unanimous agreement as to your verdict, you will all sign and date the form which sets forth the verdict upon which you unanimously agree, and then return with your verdict to the courtroom.

VERDICT FORMS - JURY'S RESPONSIBILITY

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form and return it to the court. Your verdict must be signed by each of you.

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for you convenience is meant to suggest or convey in any way or manner any intimation as to what verdict the Court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

CONDUCTING THE DELIBERATIONS

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I encourage you at all times to keep an open mind if you ever disagree or come to different conclusions on facts from any of your fellow jurors. Thinking about the other juror's point of view may help you understand their position better or give you a better way to explain why you think your position is correct.

COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the bailiff, signed by your foreperson or by one or more of the members of the jury, but you should understand that you, as the jury, must decide the facts. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case.

You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

Bear in mind that you are never to reveal to any person - not even to the Court - how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

**VERDICTS AND SPECIAL
INTERROGATORIES FOR THE JURY**

Your deliberations will be confined to giving specific answers to the following particular questions. In determining your answers to these questions, you will be guided by the instructions I have given in this case. The questions are as follows:

SEX/PREGNANCY DISCRIMINATION CLAIM

Do you find by a preponderance of the evidence:

1. That Plaintiff was forced to go on leave early by Defendant because of her sex/pregnancy?

Answer: Yes _____ No _____

Do you find by a preponderance of the evidence:

2. That Plaintiff was terminated because of her sex/pregnancy?

Answer: Yes _____ No _____

RETALIATION CLAIM

Do you find by a preponderance of the evidence:

3. That Plaintiff was sent on maternity leave early as retaliation for complaining about Defendant's treatment of her after learning of her pregnancy and being sent on maternity leave early constitutes an adverse employment action?

Answer: Yes _____ No _____

Do you find by a preponderance of the evidence:

4. That Plaintiff was terminated as retaliation for complaining about Defendant's treatment of her after learning of her pregnancy?

Answer: Yes _____ No _____

If you answered yes to any of the four preceding questions, you must assess damages guided by Instructions 23 - 25. If you answered no to all four questions, no damages are to be awarded.

DAMAGES

(a) Plaintiff is awarded \$_____ in compensatory damages against Defendant.

(b) Plaintiff is awarded \$_____ in punitive damages against Defendant.

Dated: _____