

Duty of Jury to Find Facts and Follow Law

Members of the jury, now that you have heard all the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. Also, you must not read into these instructions or into anything the court may have said or done as giving any suggestion as to what verdict you should return - that is a matter entirely up to you.

You should not worry about memorizing or writing down all of the instructions as I state them, because I will send into the jury room a written copy of my instructions. However, you must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

What Is Evidence

The evidence from which you are able to decide what the facts are consists of:

1. the sworn testimony of witnesses;
2. the exhibits which have been received into evidence; and
3. any facts to which the lawyers have agreed or stipulated or which I have instructed you to find.

What Is Not Evidence

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

Questions Asked by the Judge

Over the course of the trial, you have heard me ask questions of several of the witnesses called by both parties. As I mentioned during the trial, you must not assume that I asked these questions to support one side or the other or to advance the case of one side or the other. The witnesses' answers to my questions should not be given any more or less weight than any other evidence in this case. In sum, do not assume that because I asked questions I hold any opinion on the matters to which those questions related.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eye witness. Circumstantial evidence is proof of one or more facts from which you could find another fact.

You should consider both kinds of evidence. As a general rule, the law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Direct evidence can prove a material fact by itself. It does not require any other evidence. It does not require you to draw any inferences. A witness's testimony is direct evidence when the witness testifies to what he or she saw, heard, or felt. In other words, when a witness testifies about what is known from his or her own personal knowledge by virtue of his or her own senses, what he or she sees, touches, or hears—that is direct evidence. The only question is whether you believe the witness's testimony. A document or physical object may also be direct evidence when it can prove a material fact by itself, without any other evidence or inference. You may, of course, have to determine the genuineness of the document or object.

Circumstantial evidence is the opposite of direct evidence. It cannot prove a material fact by itself. Rather, it is evidence

that tends to prove a material fact when considered together with other evidence and by drawing inferences. There is a simple example of circumstantial evidence that I used at the beginning of this trial that you may recall.

Assume that when you got up this morning it was a nice, sunny day. But when you looked around you noticed that the streets and sidewalks were very wet. You had no direct evidence that it rained during the night. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to infer that it had rained during the night.

Not all circumstantial evidence presents such a clear compelling inference; the strength of the inferences arising from circumstantial evidence is for you to determine. It is for you to decide how much weight to give to any evidence.

Inferences from circumstantial evidence may be drawn on the basis of reason, experience, and common sense. Inferences may not, however, be drawn by guesswork, speculation, or conjecture.

The law does not require a party to introduce direct evidence. A party may prove a fact entirely on circumstantial evidence or upon a combination of direct and circumstantial evidence. Circumstantial evidence is not less valuable than direct evidence.

You are to consider all the evidence in the case, both direct and circumstantial, in determining what the facts are, and in arriving at your verdict.

Credibility of Witnesses

In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it at all. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony and/or whether the witness' own testimony was consistent; and
6. the reasonableness of the witness' testimony in light of all the evidence.

Witness - Impeachment - Prior Statements

In assessing the credibility of a witness, you may also consider whether, on some prior occasion, the witness made statements that contradict the testimony he or she gave at the time of trial. If you conclude that a witness did, at some prior time, make statements that were materially different from what the witness said during this trial, you may take this into account in assessing the credibility of such witness, or determining the weight that you will give to such witness's testimony.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness' testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of

witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Burden of Proof

In this case, like most, the law places the burden of proof on the plaintiff. All this means is that the law imposes upon the plaintiff the obligation or responsibility of proving his/her claim. The law requires that one who advances a proposition has the burden of sustaining its validity. Because the plaintiff is advancing the proposition that the defendant should be held responsible for some harm it caused to the plaintiff, it is the plaintiff who has the responsibility of producing evidence which leads you to believe that what the plaintiff claims is more likely true than not. The defendant, on the other hand, has no obligation to produce evidence concerning the plaintiff's claim. The defendant does not have to disprove what the plaintiff claims is true. The burden is on the plaintiff to prove each of the elements of her claim to you. Furthermore, the Plaintiff must prove the things she claims by what is called a fair preponderance of the evidence, which I will shortly define in more detail.

Burden of Proof - Fair Preponderance

As I have just told you, the burden of proof in this case is on the Plaintiff who is making the claim in this case, and in a few minutes I am going to describe in detail just what the Plaintiff must prove in order to prevail on her claim. I will also tell you what the Defendant must prove to succeed in asserting a particular defense.

The Plaintiff must prove her claim by what the law refers to as "a fair preponderance of the evidence" which is another way of saying that the party must prove them by "the greater weight of the evidence."

To put it another way, you must be satisfied that the evidence shows that what the party making a claim is claiming is "more probably true than not."

Do not confuse the burden of proving something by a fair preponderance of the evidence with the burden of proving something beyond a reasonable doubt. As most of you probably know or have heard, in a criminal case the prosecution must prove the defendant is guilty beyond a reasonable doubt. That is a very stringent standard of proof. However, this is not a criminal case. Therefore, in order to prevail, the Plaintiff need not prove her claim beyond a reasonable doubt; she need only prove it by a fair preponderance of the evidence.

Perhaps the best way to explain what is meant by a fair preponderance of the evidence is to ask you to visualize an old fashioned scale with two counter balancing arms and use it to mentally weigh the evidence with respect to the claim being made by the Plaintiff.

If, after you have heard all the evidence relevant to the claim, you determine that the scale tips in favor of the Plaintiff, no matter how slightly it may tip, then the Plaintiff has sustained her burden of proving that particular claim to you by a fair preponderance of the evidence because it has made the scale tip in her favor.

If, on the other hand, you determine that the scale tips in favor of the Defendant, or that the scale is so evenly balanced that you cannot say whether it tips one way or the other, then the Plaintiff has failed to prove her claim by a fair preponderance of the evidence because she has not made the scale tip in her favor.

Specific Claims

I am now going to instruct you on the specific law that applies to this case. The law will guide you as to the factual determinations you must make. You must accept the law that I give you, whether you agree with it or not.

This claim is brought under the Rhode Island Civil Rights Act. The Rhode Island Civil Rights Act protects persons against unlawful discrimination which alters the benefits, terms and conditions of the employment relationship. Defendants who discriminate in ways that violate the statute are liable under its terms.

In this case, the plaintiff has the burden of proving by a fair preponderance of the evidence the facts necessary to establish her claim that the defendant terminated her because of her gender.

The plaintiff need not show that gender discrimination was the only or predominant factor that motivated the defendant. In fact, you may decide that other factors were involved as well in the defendant's decision-making process. In that event, in order for you to find for the plaintiff, you must find that she has proven that, although there were other factors, she would not have been terminated without the gender discrimination. Put another way, the plaintiff's gender must have been a determinative factor in the defendant's decision to terminate her in order for you to find in

her favor. If you find that the plaintiff was discharged for reasons other than her gender you must find for the defendant.

Pretext

When a defendant has stated legitimate, nondiscriminatory reasons for its decision to terminate an employee such as the plaintiff, the plaintiff then has the burden of proving by a preponderance of the evidence that the legitimate reasons offered by the defendant were pretextual, or, in other words, were a cover-up for unlawful discriminatory intent on the part of the defendant.

A plaintiff must do more than simply cast doubt upon the employer's justification. The burden does not require, however, the plaintiff to come forward with evidence of the "smoking gun" variety. An employee can establish pretext either directly by demonstrating that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

At Will Employment/Business Judgment

The plaintiff was an at-will employee, which means that she and the defendant each retained the right to terminate the employment relationship at any time and for any reason, so long as that reason was not discriminatory.

In determining whether defendant's stated reason for its actions was a pretext, or cover-up, for discrimination, you may not question defendant's business judgment. You cannot find intentional discrimination simply because you disagree with the business judgment of the defendant or believe it is harsh or unreasonable. You are not to consider defendant's wisdom. However, you may consider whether defendant's reason is merely a cover-up for discrimination.

Subjectivity in Performance Evaluations

The defendant has presented evidence that several of the plaintiff's supervisors evaluated her negatively after assessing her performance in the field. The presence of subjectivity in the plaintiff's performance evaluations is not grounds by itself for challenging those evaluations as discriminatory.

Damages: Generally and Burden on Plaintiff

The fact that I instruct you on damages does not represent any view by me that you should or should not find the defendant liable. If, however, you do find that the defendant discriminated against the plaintiff based on her gender, then you must determine an amount that is fair compensation for the plaintiff's damages. The burden is on the plaintiff to prove by a fair preponderance of the evidence that she has suffered damages as a proximate result of defendant's allegedly discriminatory conduct. The burden is also on the plaintiff to prove by a preponderance of the evidence the extent or amount to which she has suffered loss. The plaintiff must prove by a fair preponderance of the evidence the particular element of damage that she suffered and the extent of such damage.

Compensatory Damages

If you find that the defendant discriminated against the plaintiff, you may award compensatory damages only for injuries that the plaintiff proves were caused by the defendant's allegedly wrongful conduct. The damages you award must be fair compensation - no more and no less.

You may award damages for any pain, suffering, or mental anguish that the plaintiff experienced as a consequence of the defendant's allegedly discriminatory termination of the plaintiff. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damage. However, any award you make should be fair in light of the evidence presented at trial.

In computing the plaintiff's compensatory damages, you must not include the plaintiff's expenditures in connection with this litigation, including any attorney's fees. Should you find in favor of the plaintiff, I will determine these amounts. Additionally, compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendants. Nor can you award damages for distress arising from this lawsuit.

In determining the amount of any damages that you decide to award, you should be guided by common sense. You must use sound judgment in fixing the award of damages, drawing reasonable

inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. The law does not require that the plaintiff prove her damages with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

Plaintiff's Duty to Mitigate

The plaintiff must make every reasonable effort to minimize or reduce her asserted damages for loss of compensation by seeking employment. This is referred to as "mitigation of damages." The defendant must prove by a preponderance of the evidence that the plaintiff failed to mitigate her asserted damages for loss of compensation.

If you determine that the plaintiff is entitled to lost compensation, you must reduce that loss by (1) what the plaintiff actually earned and (2) what the plaintiff could have earned by reasonable effort during the period from her discharge to the date of trial.

You must decide whether the plaintiff acted reasonably in not seeking or accepting another job. If you determine that the plaintiff did not make reasonable efforts to obtain another similar job, you must decide whether any damages resulted from the plaintiff's failure to do so. You must not compensate the plaintiff for any portion of her asserted loss of compensation resulting from her failure to make reasonable efforts to reduce her loss of compensation.

Selection of Foreman and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Verdict - Unanimity Required

In order to return a verdict in this case, all of you must agree as to what that verdict will be. You cannot return a verdict for either party unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Jury Recollection Controls - Rehearing Testimony

If any reference by the court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. Understand that, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Copy of Instructions

I have instructed you on the law that governs your deliberations. As I mentioned at the beginning, I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; and the written copy is merely a guide to assist you.