

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

_____	)	
MOIRA TEIXEIRA,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 14-150M
	)	
TOWN OF COVENTRY, by and through	)	
its Treasurer, THEODORE PRZYBYLA	)	
And PATRICIA SHURTLEFF,	)	
Defendants.	)	
_____	)	

**JURY INSTRUCTIONS**

***I. GENERAL INSTRUCTIONS***

**A. PROVINCE OF THE COURT AND JURY**

It is your duty as jurors to follow the law as I state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts, that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All

parties are entitled to the same fair trial at your hands. All parties stand equal before the law, and are to be dealt with as equals in a court of justice.

**B. EVIDENCE IN THE CASE**

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that the court admits is properly before you for your consideration; evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict. Admitted evidence will be available to you in the jury room during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

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, may 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 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.

**C. CREDIBILITY OF WITNESSES**

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. 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 that witness testified about;
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
6. the reasonableness of the witness' testimony in light of all the evidence.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying. You may find that the testimony of a small number of witnesses is more credible than the testimony of a larger number of witnesses.

**D. EVIDENCE – DIRECT AND CIRCUMSTANTIAL**

There are two types of evidence. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

Let me give you an example of a reasonable inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the mail, but from the facts that the mailbox was empty this morning and it is filled tonight, you can properly infer that the letter carrier came by in the interim and delivered the mail. That is all that we mean by an inference.

**E. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE**

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of her claims by a preponderance of the evidence. If the proof should fail to establish any essential element of Ms. Teixeira's claim by a preponderance of the evidence, then you should find for the Defendants on that claim. The Defendants do not have any obligation to disprove that which Ms. Teixeira asserts or claims.

To establish by "a preponderance of the evidence" means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the plaintiff's evidence would have to make one end of the scale tip to its side.

When I say in these instructions that a party has the burden of proof on any proposition, I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even to a near certainty.

## ***II. CASE-SPECIFIC INSTRUCTIONS***

### **A. NATURE OF THE PLAINTIFF'S CLAIMS**

In this case, Ms. Teixeira brings four claims in this lawsuit:

- 1. Disability Discrimination:** Ms. Teixeira asserts that she was discriminated against based on her disability;
- 2. Family Medical Leave Act Retaliation:** Ms. Teixeira asserts that she was retaliated against because she took an approved medical leave;
- 3. Failure to Provide a Reasonable Accommodation:** Ms. Teixeira asserts that she was not provided with a reasonable accommodation for her disability; and
- 4. Violation of the Rhode Island Whistleblowers' Protection Act:** Ms. Teixeira asserts that she was discharged for reporting a violation of state or federal law.

#### **1. DISABILITY DISCRIMINATION**

The Rhode Island Civil Rights Act of 1990 makes it illegal to discriminate against any employee on the basis of the employee's disability. In this case, Ms. Teixeira accuses the Defendants of disability discrimination. To succeed on this claim, Ms. Teixeira must first prove by a preponderance of the evidence all of the following:

First, that she was disabled within the meaning of the law;

Second, that with or without reasonable accommodation, she was able to perform the essential functions of her job; and

Third, that her employer's decision to discipline and/or discharge her was motivated, in whole or in part, because of her disability.

I will define some of these terms for you. A person is "disabled" if she: (1) has a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or (2) has a record of such a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or (3) is regarded as having a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

To be "substantially limiting," the impairment's impact must be profound enough, permanent, or long-term. "Major life activities" include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Factors to be considered in assessing whether an individual is "substantially limited in a major life activity" are: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent or long-term impact, or the expected permanent or long-term impact.

If you determine that Ms. Teixeira has demonstrated that she was disabled, was otherwise qualified, and that she was disciplined and/or discharged in whole or in part because of the disability, you must then consider the defense raised by the Defendants, which is that Ms. Teixeira was disciplined and/or discharged for a legitimate, non-discriminatory justification unrelated to her disability.

In this case, the Defendants have offered a non-discriminatory justification for disciplining and/or discharging Ms. Teixeira – that is, that she was disciplined and/or discharged for poor work performance. In presenting this non-discriminatory justification, Defendants do not need to prove or persuade you that it was actually motivated by this proffered reason. It is enough if Defendants present a legitimate non-discriminatory reason. The burden is thus on Ms. Teixeira to demonstrate to you that the reason offered by Defendants is not the real reason for disciplining and/or discharging her but was merely pretext for discrimination based on her disability.

If you find that Defendants have presented evidence of a legitimate non-discriminatory reason for disciplining and/or discharging Ms. Teixeira’s employment, Ms. Teixeira must then show that the reason offered by Defendants was not the real reason for disciplining and/or discharging her but was merely pretext for discrimination based on her disability. In addressing this element, you must remember that Ms. Teixeira bears the burden of demonstrating that discriminatory motive was the true motivating factor behind the employment decisions. Thus, to maintain this disability discrimination claim, Ms. Teixeira must do more than simply cast doubt upon the employer’s justification. Rather, she must prove that the employer’s proffered justification was a pretext for discrimination.

Now I will move to Ms. Teixeira’s next claim.

**2. RETALIATION – FAMILY MEDICAL LEAVE ACT**

Ms. Teixeira’s second claim is made under the Family Medical Leave Act. The FMLA grants employees the right to a leave of absence from a position if certain medical conditions are met. Defendants granted Ms. Teixeira such leaves of absence from her job. She alleges that the

Town and Ms. Shurtleff retaliated against her in the form of discipline and/or discharge for taking those medical leaves. Ms. Teixeira must prove by a preponderance of the evidence:

1. That she engaged in protected conduct – that is, that she took FMLA leave;
2. That she suffered an adverse employment action;
3. There is a causal relationship between her taking FMLA leave and her being disciplined and/or discharged. Specifically, Ms. Teixeira must show that she would not have suffered the adverse employment actions, but for her exercise of a protected right.

If you find that Ms. Teixeira proved these three elements by a preponderance of the evidence, then the Defendants must articulate a non-discriminatory reason for the justification unrelated to her use of FMLA leave.

In this case, the Defendants have offered a non-discriminatory justification for disciplining and/or discharging Ms. Teixeira – that is, that she was disciplined and/or discharged for poor work performance. In presenting this non-discriminatory justification, Defendants do not need to prove or persuade you that it was actually motivated by this proffered reason. It is enough if Defendants present a legitimate non-discriminatory reason. The burden is thus on Ms. Teixeira to demonstrate to you that the reason offered by Defendants is not the real reason for disciplining and/or discharging her but was merely pretext for retaliating against her for having taken protected FMLA leaves.

If you find that Defendants have presented evidence of a legitimate non-discriminatory reason for disciplining and/or discharging Ms. Teixeira's employment, Ms. Teixeira must then show that the Defendants' stated reason was in fact a pretext for retaliating against her for having taken a protected FMLA leave. Temporal proximity between Ms. Teixeira FMLA leave and her



discipline and/or discharge on its own is insufficient to establish pretext, but it is relevant evidence that, combined with other facts, may support such a finding. In addressing this element, you must remember that Ms. Teixeira bears the burden of demonstrating that her use of FMLA protected medical leave was the true motivating factor behind the employment decisions. Thus, to maintain this claim, Ms. Teixeira must do more than simply cast doubt upon the employer's justification. Rather, she must prove that the employer's proffered justification was a pretext for discrimination.

a. **BUSINESS JUDGMENT**

In determining if Ms. Teixeira has met her burden of demonstrating that the proffered reason for her discipline and/or discharge was a pretext, the focus of your deliberations must be on the Town and Ms. Shurtleff's motivation, not their business judgment. An employer may discharge, refuse to promote, or otherwise adversely affect the employment of an employee for any other reason, good or bad, fair or unfair. So even though you personally may not agree with the actions taken by the Defendants, and may have acted differently under the circumstances, you may not find in Ms. Teixeira's favor unless you find by a preponderance of the evidence that Defendants discriminated against her because of her disability. On the other hand, it is not necessary for Ms. Teixeira to prove that disability was the sole or exclusive reason for the Defendants' decision. It is sufficient if Ms. Teixeira proves that disability was a motivating factor in the Defendants' decision to discharge her.

3. **FAILURE TO PROVIDE A REASONABLE ACCOMMODATION**

Ms. Teixeira has also brought a claim against the Town and Ms. Shurtleff for their failure to accommodate her claimed disability. A reasonable accommodation is a modification or adjustment to the work environment or to the manner in which a job is performed.

To succeed on a claim that the Town and Ms. Shurtleff failed to provide a reasonable accommodation, Ms. Teixeira must prove: (1) that the proposed accommodation would enable her to perform the essential functions of the job and that the accommodation can be made at no major cost to the Defendants; and (2) that Ms. Teixeira made a request for the accommodation that was sufficiently direct and specific so as to put Defendants on notice of the need for an accommodation – in other words, Defendants must know of both the disability and Ms. Teixeira’s desire of an accommodation for that disability. If you find that Ms. Teixeira meets this burden, then Defendants must show that they offered a reasonable accommodation or that the reasonable accommodation requested would be an undue burden.

In order to determine whether an accommodation is reasonable, an employer may consider such factors as cost, inconvenience to other staff, and disruption of operations. A reasonable accommodation may include: job restructuring; part-time or modified work schedule; reassignment to a vacant position; or a modification to the employee’s work area. A reasonable accommodation does not include changing or eliminating any essential functions of a job, shifting any of the essential functions of the job to others, or creating a new position for the disabled employee.

4. **RHODE ISLAND WHISTLEBLOWERS’ PROTECTION ACT**

Ms. Teixeira’s final claim alleges that the Town violated her rights under the Rhode Island Whistleblowers Protection Act.

The Whistleblowers’ Protection Act provides that “an employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment . . . [b]ecause the employee reports verbally or in writing to the employer or to the employee’s supervisor a violation, which the

employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the laws of this state, a political subdivision of this state, or the United States . . . .” Ms. Teixeira alleges that the Town discriminated against her because she reported by a letter to the Town, complaining about the discriminatory treatment.

In order to recover on this claim, Ms. Teixeira must show that:

First, she reported to the Town, verbally or in writing, a violation of federal or state law that she knew or reasonably believed had occurred or was about to occur;

Second, she was threatened or otherwise discriminated against by the Town; and

Third, there was a causal connection between the report and the threat or discrimination.

**B. EMPLOYER LIABILITY**

Generally, one person is not legally responsible for the conduct of another except under certain circumstances. Only where a special relationship exists between the two, such as an employer-employee relationship, will one be responsible for the conduct of another. In this case, it is undisputed that Ms. Shurtleff was an employee of the Town of Coventry, acting within the scope of her employment. If you find that first, Ms. Teixeira has proven liability and has damages, then second, Ms. Teixeira’s damages were proximately caused by Ms. Shurtleff’s actions, then the Town is legally responsible for her actions.

**C. DAMAGES - COMPENSATORY**

I will now instruct you on the law of damages. The mere fact that I am charging you on the law of damages does not indicate in any respect that I feel you should find in favor of Ms. Teixeira. You must remember that before even deciding the question of damages, you must first decide whether Ms. Teixeira has sustained her burden of proof relative to all of the elements of

either, or both of, the offenses with which she has charged the Defendants. Only if you find that she has, should you proceed to consider damages.

Damages are an additional element of Ms. Teixeira's case. That means that she must prove her damages by a preponderance of the evidence. In order to recover compensatory damages, Ms. Teixeira must prove that the Defendants' conduct proximately caused her harm. If you find that the Defendants are liable for discriminating against Ms. Teixeira for a disability, retaliating against her for taking a medical leave, and/or taking action against her for reporting illegal conduct, the next question is whether that conduct caused Ms. Teixeira to suffer an injury. You must determine whether that conduct was the "proximate cause," meaning the direct cause of her injury. An injury or damage is proximately caused by conduct whenever it appears from the evidence that the conduct played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result of or a reasonably probable consequence of that conduct.

Damages are defined in law as that amount of money which will compensate an injured party for the harm or loss that she has sustained. The rationale behind compensatory damages is to restore a person to the position that she was in prior to the harm or loss. Compensatory damages, then, are the amount of money that will replace as near as possible the loss or harm caused to Ms. Teixeira.

You may not speculate in awarding damages. If you find in Ms. Teixeira's favor, then you should consider awarding her such a sum as you find by the preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of the Defendants' conduct. You may consider the value of her back pay and any other lost wages, salary, and employment benefits that she would have received if she had not been discriminated

against from June 14, 2013 through the date of the verdict, minus the amount of earnings and benefits from other employment Ms. Teixeira received during that time. You may also consider future wages that Ms. Teixeira would have earned if she had remained in the employ of the Town of Coventry.

You may also award Ms. Teixeira emotional damages for any pain and suffering she experienced as a result of the Defendants' conduct. Any amount you award for emotional damages should be based upon your consideration of the nature, extent, and duration of her pain and suffering. You may compensate Ms. Teixeira for mental suffering, which may include nervousness, anxiety, worry, shock, humiliation, embarrassment, or indignity. It is difficult to measure emotional damages in terms of money. Nevertheless, you may not speculate or guess as to what constitutes fair compensation for pain and suffering.

Any award you determine must be based on the evidence and what in your considered judgment constitutes fair, adequate, and just compensation for such injuries and pain and suffering as have been proved. The determination of that amount, if any, is solely for you, the jury, to make. Suggestions of the attorneys as to how that amount might be computed are not binding upon you. You may, however, consider them if you find them helpful.

**D. NOMINAL DAMAGES**

If you find that Ms. Teixeira is entitled to a verdict because she has proved all the elements of one or all of her claims that I explained above, but do not find that she has proved actual damages, you may return a verdict for Ms. Teixeira in some nominal sum such as one dollar (\$1.00). You may not award Ms. Teixeira both actual and nominal damages with respect to any one claim. You may award only one or the other. Nominal damages may be awarded

only if you find that Ms. Teixeira has suffered a violation, but has not proved that she is entitled to actual damages.

***III. FINAL PROCEDURAL INSTRUCTIONS***

Ladies and Gentleman, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, you must not allow prejudice, sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating juror #\_\_, as the Foreperson of this jury. \_\_\_\_\_, it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not

attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.