FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA
APR 11 2019
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD L. RING,

Plaintiff,

v.

LANOHA NURSERIES, INC.,

Defendant.

**8:17CV235**

**JURY INSTRUCTIONS**

## INSTRUCTION NO. 1
## A. INTRODUCTION

Members of the jury, I am now going to give you some instructions about this case and about your duties as jurors. At the end of the trial I will give you more instructions. I may also give you instructions during the trial. All instructions—those I give you now and those I give you later whether they are in writing or given to you orally—are equally important and you must follow them all.

## B. SERVING AS A JUROR ON A CIVIL CASE

This is a civil case brought by the plaintiff Ronald L. Ring against the defendant Lanoha Nurseries, Inc. Mr. Ring alleges that as an employee of Lanoha Nurseries, Inc., he was discriminated against on the basis of a disability in violation of the Americans with Disabilities Act and the Nebraska Fair Employment Practices Act when Lanoha Nurseries, Inc. terminated his employment and his employer-provided health insurance during a period of medical leave and that such action was taken discriminatorily and/or in retaliation for his taking medical leave. Mr. Ring also alleges Lanoha Nurseries, Inc. discriminated against him on the basis of a disability when it did not reinstate his employer-provided health insurance after its cancelation. Mr. Ring alleges that as a result of these alleged actions by Lanoha Nurseries, Inc. he sustained damages, financial and otherwise.

Lanoha Nurseries, Inc. denies that Mr. Ring qualified for protection under the Americans with Disabilities Act and the Nebraska Fair Employment Practices Act and alleges that Mr. Ring voluntarily resigned his employment. Lanoha Nurseries, Inc. also alleges that the cancelation of Mr. Ring's employer-provided health insurance was a "clerical" error, that it was not motivated by any alleged disability of Mr. Ring, that Mr. Ring failed to comply with Lanoha Nurseries, Inc.'s usual and customary notice requirements, and that Mr. Ring failed to give Lanoha Nurseries, Inc. a reasonable chance to fix the health-insurance issue prior to his resignation by failing to abide by specific direction given to him to resolve the issue. Finally, Lanoha Nurseries, Inc. denies that Mr. Ring sustained damages as he has alleged.

Additionally, Mr. Ring alleges that Lanoha Nurseries, Inc. violated the Family Medical Leave Act when it canceled his employer-provided health insurance and thereafter did not reinstate such insurance. Mr. Ring alleges that because of such action and Lanoha Nurseries, Inc.'s refusal to reinstate his health insurance, he had no alternative but to resign his employment with Lanoha Nurseries, Inc. and that as a result he has suffered damages, financial and otherwise.

Lanoha Nurseries, Inc. denies that Mr. Ring was entitled to protection under the Family Medical Leave Act and alleges that it did not refuse to reinstate Mr. Ring's health insurance but rather Mr. Ring failed to provide Lanoha Nurseries, Inc. with proper notice through its usual and customary notice requirements for leave and that Mr. Ring failed to give Lanoha Nurseries, Inc. a reasonable chance to fix the health-insurance issue prior to his resignation by failing to abide by specific direction given to him to resolve the issue. Lanoha Nurseries, Inc. also denies that Mr. Ring sustained damages as he has alleged.

It will be your duty to decide from the evidence whether Mr. Ring is entitled to a verdict against Lanoha Nurseries, Inc.

## C. TESTIMONY AND EVIDENCE

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any reasons they might have to testify a certain way, how they act while testifying, whether they said something different at another time, whether their testimony is generally reasonable, and how consistent their testimony is with other evidence that you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

## D. WHAT IS EVIDENCE?

When I use the word "evidence," I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers' statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right—and sometimes a duty—to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer's objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only

certain purposes, because you might not have that instruction in writing later in the jury room.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

## E. BENCH CONFERENCES AND RECESSES

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

## F. NO TRANSCRIPT IS AVAILABLE, BUT YOU MAY TAKE NOTES

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence.

And do not let taking notes distract you from paying close attention to the evidence as it is presented. The Courtroom Deputy will provide each of you with a pad of paper and a pen or pencil.

At each recess, leave your notes in the jury room. When you leave at night, they will be secured and will not be read by anyone.

## G. QUESTIONS BY JURORS

I do not allow jurors to ask or present in writing questions to any witnesses. In other words, I do not allow jurors to question witnesses either direct or indirectly.

## H. CONDUCT OF THE JURY

Jurors, to make sure this trial is fair to both parties, you must follow these rules:

*First*, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to consider your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended, and you have been discharged as jurors. You must leave your cell phone, smart phone, tablet computer, and any other wireless communication devices in the jury room during the trial and may only use them during breaks. You will have to turn those devices "off" in the jury room during your deliberations.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and I have accepted your verdict and discharged you as jurors. If someone tries to talk to you about the case during the trial, please report it to my Courtroom Deputy.

*Fourth*, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case—not even to pass the time of day. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is just about the weather—that might raise a suspicion about your fairness. So, when the lawyers, parties, and witnesses do not speak to you in the halls, on the elevator or the like, you should understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

*Fifth*, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information about the parties, witnesses, participants, claims, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it could look as if you have already decided the case or that you might be influenced by their opinions in your verdict. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case. For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, computer, or computer-like device. Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on a chat room, blog, or other websites such as Facebook, Instagram, Snapchat, YouTube, or Twitter. In other words, do not communicate with anyone about this case—except for the other jurors during deliberations—until I accept your verdict.

*Sixth*, do not do any research—on the Internet, in libraries, newspapers, or otherwise—and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet, Google Maps, or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the Court.

*Seventh*, do not read any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports or

digital streaming about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals or visiting any news sites at all and avoid listening to any television or radio newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so.

*Eighth*, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

## I. OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the plaintiff's lawyer may make an opening statement. Next, the defendant's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the plaintiff will then present evidence. The defendant's lawyer will have a chance to cross-examine the plaintiff's witnesses. After the plaintiff

has finished presenting his case, the defendant may present evidence, and the plaintiff's lawyer will have a chance to cross-examine its witnesses.

After you have seen and heard all of the evidence from both sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

## INSTRUCTION NO. 2

Members of the jury, the instructions I gave you at the beginning of trial and during trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions—the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of and during the trial.

The instructions I am about to give you now as well as those I gave you at the beginning of the trial are in writing and will be available to you in the jury room. Other instructions I may have given will not be in writing and will not be available. This does not mean some instructions are more important than others. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

## INSTRUCTION NO. 3

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

## INSTRUCTION NO. 4

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than "more likely true than not true." It applies in criminal cases, but not in this civil case; so put it out of your mind.

## INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

## INSTRUCTION NO. 6

All of the parties to a lawsuit are entitled to the same fair and impartial consideration, whether they are corporations or individuals.

## INSTRUCTION NO. 7

The plaintiff and the defendant have stipulated—that is, they have agreed—that the following facts are true. You must, therefore, treat those facts as having been proved.

1. Ronald Ring ("Ring") first worked for Lanoha Nurseries, Inc. ("Lanoha Nurseries") in or around 2007.

2. In or around 2009, Ring voluntarily left his employment with Lanoha Nurseries due to issues related to Hepatitis C and Cirrhosis.

3. In 2011, Ring was recruited back to Omaha from Arizona to work for Lanoha Nurseries by Chris Lanoha ("Lanoha"). At the time he recruited Ring to come back to work, Lanoha was aware that Ring had Hepatitis C and Cirrhosis.

4. During his second period of employment, Lanoha Nurseries permitted Ring to not work on Saturdays and provided him with additional time off.

5. In or around October 2015, Ring spoke with Lanoha and asked him for time off relating to a treatment for Hepatitis C.

6. Ring did not perform any work for Lanoha Nurseries from September 28, 2015, through November 9, 2015.

7. Ring's employer-provided health insurance was terminated as of October 1, 2015.

8. Ring received notice of the termination of his employer-provided health insurance on or about November 10, 2015.

9. Ring's employment ended with Lanoha Nurseries on November 24, 2015.

10. Ring's position with Lanoha Nurseries during both of his periods of employment was as a mechanic.

11. At the time of his separation from employment, Ring's wage rate was $20 per hour.

## INSTRUCTION NO. 8

The plaintiff alleges that the defendant took the following adverse employment actions against him:

1. Terminated his employment, and/or

2. Terminated and refused to reinstate his employer-provided health-insurance benefits.

With respect to these alleged adverse employment actions, the defendant contends that the plaintiff failed to comply with the defendant's usual and customary notice requirements for his leave, that the plaintiff refused to comply with specific instructions related to his health-insurance benefits, and that the plaintiff voluntarily quit his employment.

**INSTRUCTION NO. 9**

Consider this instruction only if you determine that the defendant took an adverse employment action against the plaintiff.

Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. if all of the following elements have been proved:

*First*, the plaintiff had Hepatitis C and/or Cirrhosis; and

*Second*, such Hepatitis C and/or Cirrhosis substantially limited the plaintiff's ability to perform manual tasks, stand, lift, concentrate, or think; and

*Third*, the defendant took one or more adverse employment actions against the plaintiff; and

*Fourth*, the plaintiff could have performed the essential functions of a mechanic at the time the defendant took that adverse employment action; and

*Fifth*, the defendant knew of the plaintiff's Hepatitis C and/or Cirrhosis and the plaintiff's Hepatitis C and/or Cirrhosis were a motivating factor in the defendant's decision to take that adverse employment action against the plaintiff.

If any of the above elements has not been proved, then your verdict must be for the defendant. You may find that the plaintiff's Hepatitis C and/or Cirrhosis were a motivating factor in the defendant's decision to take one or more adverse employment actions against the plaintiff if it has been proved that the defendant's stated reasons for its adverse employment action are a pretext to hide discrimination.

## INSTRUCTION NO. 10

The plaintiff alleges that the defendant terminated his employment. The defendant contends that it did not terminate the plaintiff's employment, but rather the plaintiff voluntarily quit.

Consider this instruction only if you find that the defendant did *not* terminate the plaintiff's employment.

If you determine that the defendant did not terminate the plaintiff's employment, you must determine whether the defendant constructively discharged the plaintiff or forced the plaintiff to resign. Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. if all of the following elements have been proved:

*First*, the plaintiff has Hepatitis C and/or Cirrhosis; and

*Second*, the plaintiff's Hepatitis C and/or Cirrhosis substantially limited the plaintiff's ability to perform manual tasks, stand, lift, concentrate, or think; and

*Third,* the defendant made the plaintiff's working conditions intolerable; and

*Fourth*, the plaintiff's Hepatitis C and/or Cirrhosis were a motivating factor in the defendant's actions; and

*Fifth*, the defendant acted with the intent of forcing the plaintiff to quit or the plaintiff's resignation was a reasonably foreseeable result of the defendant's actions; and

*Sixth*, the plaintiff gave the defendant a reasonable chance to fix the problem.

If any of the above elements has not been proved, then your verdict must be for the defendant.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

**INSTRUCTION NO. 11**

If you find in favor of the plaintiff under Instruction No. 9 or Instruction No. 10, then you must answer the following question in the verdict form: Has it been proved that the defendant would have taken an adverse employment action against the plaintiff regardless of the plaintiff's Hepatitis C and/or Cirrhosis?

**INSTRUCTION NO. 12**

Consider this instruction only if you determine that the defendant took an adverse employment action against the plaintiff.

Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. if all of the following elements have been proved:

*First*, the plaintiff requested a reasonable accommodation or complained about the defendant terminating or refusing to reinstate his health-insurance benefits; and

*Second*, the plaintiff reasonably believed that he was being discriminated against on the basis of his alleged disability; and

*Third*, the defendant took one or more adverse employment actions against the plaintiff; and

*Fourth*, that adverse employment action against the plaintiff might well dissuade a reasonable worker in the same or similar circumstances from requesting a reasonable accommodation or making or supporting a charge of discrimination; and

*Fifth*, the defendant would not have taken that adverse employment action against the plaintiff but-for the plaintiff's request for a reasonable accommodation or complaint about the defendant terminating or refusing to reinstate his health-insurance benefits.

If any of the above elements has not been proved, then your verdict must be for the defendant.

"But-for" does not require that the plaintiff's request or complaint was the only reason for the defendant's adverse employment action. You may find the defendant would not have taken an adverse employment action against the plaintiff "but-for" the plaintiff's

request or complaint if it has been proved that the defendant's stated reasons for its adverse employment action are a pretext to hide retaliation.

## INSTRUCTION NO. 13

The plaintiff alleges that the defendant terminated his employment. The defendant contends that it did not terminate the plaintiff's employment, but rather the plaintiff voluntarily quit.

Consider this instruction only if you find that the defendant did *not* terminate the plaintiff's employment.

If you determine that the defendant did not terminate the plaintiff's employment, you must determine whether the defendant constructively discharged the plaintiff or forced the plaintiff to resign. Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. if all of the following elements have been proved:

*First*, the defendant made the plaintiff's working conditions intolerable; and

*Second*, the defendant would not have engaged in its actions but-for the plaintiff's request for a reasonable accommodation or complaint about the defendant terminating or refusing to reinstate his health-insurance benefits; and

*Third*, the defendant acted with the intent of forcing the plaintiff to quit or the plaintiff's resignation was a reasonably foreseeable result of the defendant's actions; and

*Fourth*, the plaintiff gave the defendant a reasonable chance to fix the problem.

If any of the above elements has not been proved, then your verdict must be for the defendant.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

"But-for" does not require that the plaintiff's request or complaint was the only reason for the defendant's adverse employment action. You may find the defendant would

not have taken an adverse employment action against the plaintiff "but-for" the plaintiff's request or complaint if it has been proved that the defendant's stated reasons for its adverse employment action are a pretext to hide retaliation.

## INSTRUCTION NO. 14

If you find in favor of the plaintiff under Instruction No. 12 or Instruction No. 13, then you must answer the following question in the verdict form: Has it been proved that the defendant would have taken an adverse employment action against the plaintiff regardless of the plaintiff's request for a reasonable accommodation or complaint about the defendant terminating or refusing to reinstate his health-insurance benefits?

## INSTRUCTION NO. 15

In determining whether the plaintiff's impairment substantially limits the plaintiff's ability to perform manual tasks, stand, lift, concentrate, or think, you should compare the plaintiff's ability to do those activities with that of the average person. In doing so, you may consider the conditions under which the plaintiff does those activities, the manner in which the plaintiff does those activities, and the length of time it takes the plaintiff to do those activities. Temporary impairments with little or no long-term impact are not sufficient.

It is not the name of the impairment or condition that matters, but rather the effect of an impairment or condition on the life of a particular person.

## INSTRUCTION NO. 16

As used in these instructions, the term "motivating factor" means a reason, alone or with other reasons, on which the defendant relied when it took one or more adverse employment actions against the plaintiff.

## INSTRUCTION NO. 17

In determining whether a job function is essential, you should consider the following factors:

1. the employer's judgment as to which functions of the job are essential;

2. written job descriptions;

3. the amount of time spent on the job performing the function in question;

4. consequences of not requiring the person to perform the function;

5. the work experience of persons who have held the job;

6. the current work experience of persons in similar jobs;

7. whether the reason the position exists is to perform the function;

8. whether there are a limited number of employees available among whom the performance of the function can be distributed;

9. whether the function is highly specialized and the individual in the position was hired for his expertise or ability to perform the function; and

10. the employer's past conduct and statements pertaining to the function.

No one factor is necessarily controlling. You should consider all of the evidence in deciding whether a job function is essential.

The term "essential functions" means the fundamental job duties of the employment position the plaintiff held. The term "essential functions" does not include the marginal functions of the position.

**INSTRUCTION NO. 18**

You may not return a verdict for the plaintiff just because you might disagree with the defendant's actions or believe them to be harsh or unreasonable.

**INSTRUCTION NO. 19**

You must determine the amount of damages owed to the plaintiff in the following circumstances:

1. If you find in favor of the plaintiff in Instruction No. 9 or Instruction No. 10, and if you answer "no" in response to Instruction No. 11; or

2. If you find in favor of the plaintiff under Instruction No. 12 or Instruction No. 13, and if you answer "no" in response to Instruction No. 14.

You must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a direct result of one or more of the defendant's adverse employment actions. The plaintiff's claim for damages includes distinct types of damages and you must consider them separately.

*First*, you must determine the amount of any wages and benefits the plaintiff would have earned in his employment with the defendant if he had not been discharged on November 24, 2015, through the date of your verdict, minus the amount of earnings and benefits the plaintiff received from other employment during that time. When considering benefits the plaintiff would have earned in his employment with the defendant if he had not been terminated, you must determine the plaintiff's health-insurance replacement costs.

*Second*, you must determine the amount of any other damages sustained by the plaintiff, such as future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. You must enter separate amounts for each type of damages in the verdict and must not include the same items in more than one category.

If you find that the plaintiff's damages do not have a monetary value, then you must return a verdict for the plaintiff in the nominal amount of One Dollar ($1.00).

You are instructed that the plaintiff has a duty under the law to "mitigate" his damages—that is, to exercise reasonable diligence under the circumstances to minimize

his damages. Therefore, if it has been proved that the plaintiff failed to seek out other employment or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this instruction by way of punishment or through sympathy.

**INSTRUCTION NO. 20**

Consider this instruction only if you determine the defendant terminated the plaintiff's employment.

Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. on the plaintiff's claim that he was terminated because of his FMLA leave if all of the following elements have been proved:

*First*, the plaintiff had a serious health condition; and

*Second*, the plaintiff was on leave from work because of that serious health condition; and

*Third*, the plaintiff gave the defendant proper notice of his leave; and

*Fourth*, the plaintiff gave the defendant sufficient information so the defendant knew or should have known the leave was for a serious health condition; and

*Fifth*, the defendant terminated the plaintiff's employment; and

*Sixth*, the plaintiff's leave was a motivating factor in the defendant's decision to terminate the plaintiff.

If any of the above elements has not been proved, then your verdict must be for the defendant.

You may find that the plaintiff's leave was a motivating factor in the defendant's decision if it has been proved that the defendant's stated reasons for its actions are a pretext to hide discrimination.

## INSTRUCTION NO. 21

The plaintiff alleges that the defendant terminated his employment. The defendant contends that it did not terminate the plaintiff's employment, but rather the plaintiff voluntarily quit.

Consider this instruction only if you find that the defendant did *not* terminate the plaintiff's employment.

If you determine that the defendant did not terminate the plaintiff's employment, you must determine whether the defendant constructively discharged the plaintiff or forced the plaintiff to resign. Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. if all of the following elements have been proved:

*First*, the defendant made the plaintiff's working conditions intolerable; and

*Second*, the plaintiff's FMLA leave was a motivating factor in the defendant's actions; and

*Third*, the defendant acted with the intent of forcing the plaintiff to quit or the plaintiff's resignation was a reasonably foreseeable result of the defendant's actions; and

*Fourth*, the plaintiff gave the defendant a reasonable chance to fix the problem.

If any of the above elements has not been proved, then your verdict must be for the defendant.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

**INSTRUCTION NO. 22**

If you find in favor of the plaintiff under Instruction No. 20 or Instruction No. 21, then you must answer the following question in the verdict form: Has it been proved that the defendant would have terminated or constructively discharged the plaintiff regardless of the plaintiff's leave?

**INSTRUCTION NO. 23**

Your verdict must be for plaintiff Ronald L. Ring and against defendant Lanoha Nurseries, Inc. on the plaintiff's claim that the defendant interfered with his rights under the Family and Medical Leave Act by terminating or failing to reinstate his health-insurance benefits if all of the following elements have been proved:

*First*, the plaintiff had a serious health condition; and

*Second*, the plaintiff attempted to take leave because of that serious health condition; and

*Third*, the plaintiff gave the defendant proper notice of his leave; and

*Fourth*, the plaintiff gave sufficient information to the defendant so that the defendant knew or should have known that the absence was for a serious health condition; and

*Fifth*, the defendant interfered with the plaintiff taking that leave by terminating or failing to reinstate the plaintiff's health-insurance benefits; and

*Sixth*, the plaintiff was not able to take the leave entitled because of the defendant's interference with taking the leave.

If any of the above elements has not been proved, then your verdict must be for the defendant.

## INSTRUCTION NO. 24

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either (1) inpatient care in a hospital, hospice, or residential-medical-care facility, or (2) continuing treatment by a health-care provider.

## INSTRUCTION NO. 25

As used in these instructions, the phrase "health-care provider" includes doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or clinical social worker, so long as the provider is authorized to practice in the State and is performing within the scope of his or her practice.

## INSTRUCTION NO. 26

An "equivalent position" means a position that is virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties or responsibilities, that entail substantially equivalent skill, effort, responsibility, and authority.

**INSTRUCTION NO. 27**

Absent unusual circumstances, to give proper notice, the plaintiff must comply with the defendant's usual and customary notice requirements for requesting leave. The plaintiff may be required by the defendant's policy to contact a specific individual.

## INSTRUCTION NO. 28

You must determine the amount of damages owed to the plaintiff in the following circumstances:

1. If you find in favor of the plaintiff under Instruction No. 20 or Instruction No. 21, and if you answer "no" in response to Instruction No. 22; or

2. If you find in favor of the plaintiff under Instruction No. 23.

You must award the plaintiff the amount of any wages, salary, employment benefits, and other compensation the plaintiff would have earned in his employment with the defendant if he had not been discharged on November 24, 2015, through the date of your verdict, minus the amount of earnings and benefits from other employment received by the plaintiff during that time. When considering benefits the plaintiff would have earned in his employment with the defendant if he had not been terminated, you must determine the plaintiff's health-insurance replacement.

You are also instructed that the plaintiff has a duty under the law to "mitigate" his damages—that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if it has been proved that the plaintiff failed to seek out other employment or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture, and you must not award damages under this instruction by way of punishment or sympathy.

## INSTRUCTION NO. 29

In the absence of an employment contract for a fixed term, an employment relationship is generally terminable at-will. This means that the employer or the employee may terminate the employment relationship at any time, with or without reason, and without notice, without incurring liability.

Even if the defendant took one or more adverse employment actions against the plaintiff or forced the plaintiff to resign, you cannot find for the plaintiff unless you find that the defendant's actions were unlawful under the instructions I have given you.

## INSTRUCTION NO. 30

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

*First*, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the Courtroom Deputy and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

*Fourth*, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

*Finally*, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdict, your foreperson will

fill in the form, sign and date it, and tell the Courtroom Deputy that you are ready to return to the courtroom.

4:14