

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION 3:99CV-324-H

KIN GIBSON

PLAINTIFF

V.

CITY OF LOUISVILLE

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions on the law you are to apply to this case.

It is your duty as jurors to follow the law as stated in these instructions, and to apply that law to the facts you find from the evidence. Do not single out one instruction alone as stating the law, but rather consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

In this case it is the plaintiff's responsibility to persuade you that his claim is more likely true than not. If the plaintiff fails to persuade you of his claim, then you should find for the defendant.

INSTRUCTION ONE

The Family and Medical Leave Act (“FMLA”) provides that eligible employees are entitled to take up to 12 weeks of unpaid leave during any 12 month period “because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.” In addition, the FMLA makes it “unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided by” this statute. Kin Gibson was an “eligible employee” covered by the Family and Medical Leave Act. Therefore, it would have been unlawful for the City of Louisville to terminate him in retaliation for exercising or attempting to exercise his rights under the statute.

You must answer the following question: do you find from the evidence that the City of Louisville terminated Kin Gibson from his job because he requested FMLA leave?

While deliberating, you should keep in mind a few important points. The City of Louisville has stated that it fired Mr. Gibson because he was insubordinate, left his work station without permission, and was absent without authorization for three days. If true, these are clearly valid justifications for dismissing an employee in Mr. Gibson’s position. It is not enough for you to believe that the City made the wrong decision. In order to return a verdict in favor of Mr. Gibson, you must believe from evidence that those stated reasons were not the City’s actual reasons for discharging Mr. Gibson. You must find from the evidence that the City of Louisville terminated Kin Gibson from his job because he requested FMLA leave.

If you decide that it did and, therefore, answer the question in paragraph two “yes,” you must enter a verdict for the plaintiff. Do so by placing a checkmark beside “Yes” on the Verdict Form. If you decide that the answer to this question is “no,” you must enter a verdict for the

defendant. Do so by placing a checkmark beside “No” on the Verdict Form. You need not make any further inquiries.

If you answer “yes” and enter a verdict for the plaintiff, you need not deliberate further. In cases such as this, the judge may decide that it best for him to determine the appropriate remedy or damages, if the jury finds for the plaintiff. I have decided to determine the damages, if any are necessary, in this case. Therefore you should disregard all testimony regarding damages, such as the testimony of Ms. Layne and the tax return evidence. I will decide all issues related to damages, if necessary.

Your 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 reach 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 reexamine 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 the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

Do you find from the evidence that the City of Louisville terminated Kin Gibson from his job because he requested FMLA leave?

Yes: _____

No: _____

FOREPERSON

Date: _____