

IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

RICHARD YOUNG,

Plaintiff,

v.

**OMAHA STANDARD, LLC d/b/a
OMAHA STANDARD PALFINGER,**

Defendant.

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Civil No. LACV114588

**PLAINTIFF'S REQUESTED
JURY INSTRUCTIONS**

COMES NOW the Plaintiff, Richard Young, by and through his attorney, LeGrant Law Firm, P.C., and hereby submits his Requested Jury Instructions & Verdict Form for use at trial in this matter.

Respectfully Submitted,

LEGRANT LAW FIRM, P.C.

By /s/ Andrew L. LeGrant
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 28, 2017.

By: ☐ U.S. Mail ☐ Facsimile
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☒ Other: Electronic Filing

Signature /s/Andrew L. LeGrant

TABLE OF CONTENTS

Requested Jury Instructions **Page**

Preliminary Instructions

1. **Statement of the Case**1
2. **Use of Electronic Devices**.....2

Final Instructions

3. **Duties Of Judge And Jury, Instructions As Whole**3
4. **Burden Of Proof, Preponderance Of Evidence**.....4
5. **Evidence**5
6. **Interrogatories**.....6
7. **Credibility Of Witnesses**.....7
8. **Opinion Evidence, Expert Witness**.....8
9. **Contradictory Statements, Non-Party, Witness Under Oath**9
10. **Impeachment, Public Offense**10
11. **Burden Of Proof On Young’s Claim**.....11
12. **Testing Optional**.....12
13. **Workplace Drug Testing – When Permissible**13
14. **Definition – Reasonable Suspicion Drug or Alcohol Testing**.....15
15. **Damages Generally**16
16. **Young’s Damages Claim – Back Pay**17
17. **Burden Of Proof – Affirmative Defense - Failure To Mitigate Damages**18
18. **Affirmative Defense - Failure To Mitigate Damages - Defined**19
19. **General Instruction To Jury**20

20. Cautionary Instruction - Juror's Notes.....	21
21. Forms Of Verdict	22

Verdict Form

1. Verdict Form	23
2. Juror Signature Page	25

Preliminary Instruction No. _

Statement Of The Case.

Members of the Jury: In this case plaintiff Richard Young claims that his former employer Omaha Standard, LLC violated Iowa's workplace drug testing law by requiring him to undergo a drug test not authorized under the law.

Defendant Omaha Standard, LLC denies Young's claim.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Iowa Model Jury Instruction 100.1 (June 2017)

Preliminary Instruction No. _

Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during this trial.

Iowa Model Jury Instruction 100.23 (June 2017)

Final Instruction No. _

Duties Of Judge And Jury, Instructions As Whole.

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Iowa Model Jury Instruction 100.2 (June 2017)

Final Instruction No. _

Burden Of Proof, Preponderance Of Evidence.

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Iowa Model Jury Instruction 100.3 (June 2017)

Final Instruction No. _

Evidence.

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Iowa Model Jury Instruction 100.4 (June 2017)

Final Instruction No. _

Interrogatories.

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Iowa Model Jury Instruction 100.6 (June 2017)

Final Instruction No. _

Credibility Of Witnesses.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Iowa Model Jury Instruction 100.9 (June 2017)

Final Instruction No. _

Opinion Evidence, Expert Witness.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Iowa Model Jury Instruction 100.12 (June 2017)

Final Instruction No. _

Contradictory Statements, Non-Party, Witness Under Oath.

You have heard evidence claiming certain witnesses made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witnesses. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Iowa Model Jury Instruction 100.14 (June 2017)

Final Instruction No. _

Impeachment, Public Offense.

Richard Young has admitted he was convicted of a crime.

You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

Iowa Model Jury Instruction 100.17 (June 2017)

Final Instruction No. _

Burden Of Proof On Young's Claim.

Omaha Standard, LLC has the burden of proving by the preponderance of the evidence that it met the requirements under Iowa law in requiring Young to submit to workplace drug testing.

Iowa Code § 730.5(15)(b)

Final Instruction No. _

Testing Optional.

Iowa law does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of Iowa's workplace drug testing law are not meant to encourage, discourage, restrict, limit, prohibit, or require such testing.

Iowa Code § 730.5(3)

Final Instruction No. _

Workplace Drug Testing – When Permissible.

Employers may conduct drug or alcohol testing as follows:

- a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:
 - (1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.
 - (2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.
 - (3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.
- b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.
- c. Employers may conduct reasonable suspicion drug or alcohol testing.
- d. Employers may conduct drug or alcohol testing of prospective employees.
- e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.
- f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for

which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

Iowa Code § 730.5(8).

Final Instruction No. _

Definition – Reasonable Suspicion Drug or Alcohol Testing.

“Reasonable suspicion drug or alcohol testing” means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
- (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- (3) A report of alcohol or other drug use provided by a reliable and credible source.
- (4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.
- (5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.
- (6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

Iowa Code § 730.5(15)(b)

Final Instruction No. _

Damages Generally.

The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to whether any party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance in the event that you should find that Young is entitled to damages in accord with the other instructions.

If you find that Omaha Standard, LLC did not meet its burden of proving it had a legal basis for requiring Young to submit to workplace drug testing, then you must award him such sum as you find by the greater weight of the evidence will fairly and justly compensate him for any damages that you find were proximately caused to him by the conduct of Omaha Standard, LLC. An act is a “proximate cause” of damage if the act was a substantial factor in producing the damage and the damage would not have happened except for the act. “Substantial” means that the act had such an effect in producing damage as to lead a reasonable person to regard it as a cause of the damage.

Remember that, throughout your deliberations, you must not engage in any speculation, guess, or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. You must award the full amount of damages, if any, that Plaintiff proved by the preponderance of the evidence. However, the amount you assess for damages must not exceed the amount proximately caused by the wrongful conduct of the Defendant as proved by the evidence. Also, do not allow any amount awarded for one item of damages on a particular claim to be included in any amount awarded for any other item of damages on that claim, because the Plaintiff is not entitled to recover duplicate damages.

Attached to these Instructions is a Verdict Form, which you must fill out. In the “Damages” sections of the Verdict Form, you should only award those damages, if any, that Young has proved by the preponderance of the evidence were proximately caused by Omaha Standard, LLC’s wrongful conduct toward him.

Based on Jury Instruction No. 7 given in *Raymond v. U.S.A. Healthcare Center*, N.D. Iowa Civil No. 05-3074 (2007, Mark W. Bennett) and on Final Jury Instruction No. 6 given in *Davidson v. Kinseth Hospitality Corp. et al*, N.D. Iowa Civil No. 05-3037 (2006, Mark W. Bennett)

Final Instruction No. _

Young's Damages Claim – Back Pay.

Young seeks damages for back pay. “Back pay” is defined as the amount of any wages and fringe benefits that Young would have earned from the date his employment with Omaha Standard, LLC ended until the date of your verdict, minus the wages and fringe benefits, if any, that he actually did earn during that time from other employment after his job with Omaha Standard, LLC ended.

Based on Jury Instruction No. 8 given in *Raymond v. U.S.A. Healthcare Center*, N.D. Iowa Civil No. 05-3074 (2007, Mark W. Bennett) and on Final Jury Instruction No. 7 given in *Davidson v. Kinseth Hospitality Corp. et al*, N.D. Iowa Civil No. 05-3037 (2006, Mark W. Bennett). *See also* *Tow v. Truck Country of Iowa, Inc.*, 695 N.W.2d 36, 39-40 (Iowa 2005) (discussing method of computing back pay in workplace drug testing case).

Final Instruction No. _

Burden Of Proof – Affirmative Defense - Failure To Mitigate Damages.

As defined by Jury Instruction __, Omaha Standard, LLC claims the affirmative defense that Young failed to mitigate his damages. Omaha Standard, LLC has the burden of proving this affirmative defense by the preponderance of the evidence.

Tow v. Truck Country of Iowa, Inc., 695 N.W.2d 36, 40 (Iowa 2005), citing *Lannom Mfg. Co. v. Strauss Co.*, 235 Iowa 97, 105-06, 15 N.W.2d 899, 903 (1944)

Final Instruction No. _

Affirmative Defense - Failure To Mitigate Damages - Defined.

Young 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 Omaha Standard, LLC proved that Young failed to seek out 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 an opportunity.

Excerpt from Eighth Circuit Model Jury Instruction 9.70 (Damages – Actual) (2013)

Final Instruction No. _

General Instruction To Jury.

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Iowa Model Jury Instruction 100.18 (June 2017)

Final Instruction No. _

Cautionary Instruction - Juror's Notes.

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Iowa Model Jury Instruction 100.21 (June 2017)

Final Instruction No. _

Forms Of Verdict.

I am giving you a verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock ____m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

Iowa Model Jury Instruction 300.1 (June 2017)

IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

RICHARD YOUNG,

Plaintiff,

V.

**OMAHA STANDARD, LLC d/b/a
OMAHA STANDARD PALFINGER,**

Defendant.

Civil No. LACV114588

VERDICT FORM

We, the Jury, find the following verdict on the questions submitted to us:

QUESTION NO. 1

Did Omaha Standard, LLC prove by the preponderance of the evidence that it had a basis under Iowa law to require Richard Young to submit to workplace drug testing?

ANSWER: _____Yes _____No

If you answered “No” to Question No. 1, proceed to Question No. 2. If you answered “Yes,” proceed to the signature section below and notify the Court’s officer that you have reached your verdict.

QUESTION NO. 2

What amount of back pay damages do you award Richard Young?

Back Pay: \$_____

Proceed to Question No. 3.

QUESTION NO. 3

Did Omaha Standard, LLC prove by the preponderance of the evidence that Richard Young failed to mitigate his damages?

ANSWER: Yes No

(If you answered “Yes” to Question No. 3, proceed to Question No. 4. If you answered “No,” proceed to the signature section below and notify the Court’s officer that you have reached your verdict.)

QUESTION NO. 4:

By what amount do you reduce Richard Young’s back pay damages?

ANSWER: \$ _____

Proceed to the signature section below and notify the Court’s officer that you have reached your verdict.

FOREPERSON*

*To be signed only if verdict is unanimous

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

**To be signed by the jurors agreeing thereto after six (6) hours or more of deliberation.