

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

<p>RICHARD YOUNG,</p> <p>Plaintiff,</p> <p>vs.</p> <p>OMAHA STANDARD, LLC d/b/a OMAHA STANDARD PALFINGER,</p> <p>Defendant.</p>	<p>CASE NO. LACV114588</p> <p><u>DEFENDANT'S PROPOSED</u> <u>JURY INSTRUCTIONS</u> <u>AND VERDICT FORM</u></p>
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Defendant, Omaha Standard, LLC d/b/a Omaha Standard Palfinger, by and through its attorney of record, submits the attached proposed Jury Instructions.

Dated this 28th day of November, 2017.

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

By: /s/ Ruth A. Horvatic
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of November, 2017, a true and correct copy of the foregoing was filed with the clerk of the court which served notice to the following:

Andrew L. LeGrant
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alegrant@legrantlaw.com

/s/ Ruth A. Horvatic
Ruth A. Horvatic

INSTRUCTION NO. ____

Statement Of The Case

Members of the Jury: This is a case brought by Plaintiff, Richard Young, against the Defendant, Omaha Standard, LLC d/b/a Omaha Standard Palfinger. Plaintiff was employed at Omaha Standard in Council Bluffs, Iowa and held the position of Painter. On August 31, 2015, Defendant required Plaintiff to submit to workplace drug testing pursuant to its lawful drug testing policy. Plaintiff's drug test resulted in a confirmed positive for the drugs amphetamine and methamphetamine. As a result, Defendant terminated Plaintiff's employment. Plaintiff claims that Defendant's demand that he submit to workplace drug testing had no basis under, and was not authorized by, the Iowa statute which governs private-sector workplace drug testing.

Defendant Omaha Standard submits that it had reasonable suspicion as provided under the statute to require Plaintiff to submit to workplace drug testing on August 31, 2015. Defendant submits that it had such reasonable suspicion based upon Plaintiff's erratic attendance and the observations of two supervisors of Plaintiff's abnormal conduct and behavior and the deterioration of his work performance.

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.

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 jury 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.

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.

In this case, Defendant has the burden of proving that it had reasonable suspicion to require Plaintiff to submit to the drug test.

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.

INSTRUCTION NO. ____

Impeachment, Public Offense

Plaintiff has admitted he was convicted of a felony for possession of a controlled substance and sentenced to three years in prison.

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

IOWA CIVIL JURY INSTR. 100.17 (2017).

INSTRUCTION NO. ____

Corporate Party

The fact that Defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. ____

Definition: Reasonable Suspicion

Reasonable suspicion for purposes of requiring an employee to submit to an alcohol or drug test is 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. Facts and inferences may be based upon, but not limited to, any of the following:

1. Observable phenomena while at work such as 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.

You are not limited to the list above in determining what evidence may constitute reasonable suspicion.

If you find that the evidence shows that Defendant had reasonable suspicion to require Plaintiff to submit to a drug test, then your verdict must be for Defendant.

INSTRUCTION NO. ____

Adverse Effect to Employment

If you find that Defendant did not have reasonable suspicion to require Plaintiff to submit to a drug test as instruction in Instruction No. ____, you must determine whether Defendant acted in good faith in requiring Plaintiff to submit to a drug test.

Acting in good faith means behaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage.

IOWA CODE § 730.5(11).

Black's Law Dictionary, *acting in good faith* (10th ed. 2014).

INSTRUCTION NO. ____

Backpay Damages

If you find that Defendant did not have reasonable suspicion to require Plaintiff to submit to a drug test and that Defendant did not act in good faith in requiring Plaintiff to submit to a drug test, then you must determine whether Plaintiff is entitled to damages. You may award the Plaintiff such sum as you find will fairly and justly compensate the Plaintiff for damages, if any, you find the Plaintiff sustained as a direct result of Defendant's failure to have reasonable suspicion and failure to act in good faith in requiring Plaintiff to submit to a drug test.

You must determine the amount of any wages and fringe benefits the Plaintiff would have earned in his employment with the Defendant if he had not been discharged on September 10, 2016 through the date of your verdict, *minus* the amount of earnings and benefits that the Plaintiff received from other employment during that time.

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 you find that the plaintiff 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.

PROPOSED SPECIAL VERDICT FORM

1. Do you find that the Defendant had reasonable suspicion to require the Plaintiff to submit to a drug test?

Yes _____ No _____

If your answer to Question No. 1 is "Yes," do not answer any more Questions. If your answer to Question No. 1 is "No," answer Question No. 2.

2. Do you find that the Defendant acted in good faith in requiring the Plaintiff to submit to a drug test?

Yes _____ No _____

If your answer to Question No. 2 is "Yes," do not answer any more Questions. If your answer to Question No. 2 is "No," answer Question No. 3.

3. What amount of money, if any, will fairly compensate Plaintiff for backpay for being required to submit to the drug test?

Backpay \$ _____