

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YASIN REEDER,

Plaintiff,

Case No. 15-cv-10177

v.

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

COUNTY OF WAYNE,

UNITED STATES MAGISTRATE JUDGE
DAVID R. GRAND

Defendant.

JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1: JURORS’ DUTIES.....	4
JURY INSTRUCTION NO. 2: EVIDENCE DEFINED.....	5
JURY INSTRUCTION NO. 3: DIRECT AND CIRCUMSTANTIAL EVIDENCE	6
JURY INSTRUCTION NO. 4: CONSIDERATION OF EVIDENCE	7
JURY INSTRUCTION NO. 5: INFERENCES	8
JURY INSTRUCTION NO. 6: CREDIBILITY OF WITNESSES.....	9
JURY INSTRUCTION NO. 7: IMPEACHMENT - INCONSISTENT STATEMENT OR CONDUCT	11
JURY INSTRUCTION NO. 8: NUMBER OF WITNESSES.....	12
JURY INSTRUCTION NO. 9: LAWYERS’ OBJECTIONS	13
JURY INSTRUCTION NO. 10: USE OF DEPOSITIONS AS EVIDENCE	14
JURY INSTRUCTION NO. 11: OUTSIDE COMMUNICATION.....	15
JURY INSTRUCTION NO. 12: TREATMENT OF CORPORATIONS.....	17
JURY INSTRUCTION NO. 13: BURDEN OF PROOF	18
JURY INSTRUCTION NO. 14: INTRODUCTORY INSTRUCTION – FMLA	19
JURY INSTRUCTION NO. 15: FMLA INTERFERENCE GENERALLY	20
JURY INSTRUCTION NO. 16: BURDEN OF PROOF—FMLA	

INTERFERENCE CLAIM	21
JURY INSTRUCTION NO. 17: FMLA-ELIGIBLE EMPLOYEE	22
JURY INSTRUCTION NO. 18: DEFINITION OF SERIOUS HEALTH CONDITION.....	23
JURY INSTRUCTION NO. 19: DEFINITION OF HEALTH CARE PROVIDER	24
JURY INSTRUCTION NO. 20: DEFINITION OF APPROPRIATE NOTICE	25
JURY INSTRUCTION NO. 21: DEFINITION OF INTERFERENCE	26
JURY INSTRUCTION NO. 22: DEFENDANT’S INTENT	27
JURY INSTRUCTION NO. 23: BURDEN OF PROOF—FMLA RETALIATION CLAIM	28
JURY INSTRUCTION NO. 24: LEGITIMATE, NONDISCRIMINATORY REASON	30
JURY INSTRUCTION NO. 25: PRETEXT.....	31
JURY INSTRUCTION NO. 26: WILLFULNESS.....	32
JURY INSTRUCTION NO. 27: DISABILITY DISCRIMINATION	33
JURY INSTRUCTION NO. 28: ADA EMPLOYMENT CLAIMS	34
JURY INSTRUCTION NO. 29: ELEMENTS OF AN ADA CLAIM (1 OF 2).....	35
JURY INSTRUCTION NO. 30: ELEMENTS OF AN ADA CLAIM (2 OF 2).....	37
JURY INSTRUCTION NO. 31: DEFINITION OF DETERMINATIVE FACTOR	39
JURY INSTRUCTION NO. 32: ADA DEFINITIONS	40
JURY INSTRUCTION NO. 33: DISABILITY DISCRIMINATION	42
JURY INSTRUCTION NO. 34: ESSENTIAL FUNCTIONS	43
JURY INSTRUCTION NO. 35: REASONABLE ACCOMMODATION.....	44
JURY INSTRUCTION NO. 36: CAUSATION	45
JURY INSTRUCTION NO. 37: MEDICAL DOCUMENTS— CONFIDENTIALITY	46
JURY INSTRUCTION NO. 38: RETALIATION	47
JURY INSTRUCTION NO. 39: RETALIATION ELEMENTS	48
JURY INSTRUCTION NO. 40: FMLA DAMAGES GENERALLY	49
JURY INSTRUCTION NO. 41: FRONT-PAY.....	50
JURY INSTRUCTION NO. 42: BACKPAY	51

JURY INSTRUCTION NO. 43: MITIGATION OF BACK PAY DAMAGES.....52
JURY INSTRUCTION NO. 44: COMPENSATORY DAMAGES53
JURY INSTRUCTION NO. 45: EXEMPLARY DAMAGES.....55
JURY INSTRUCTION NO. 46: JURY’S RESPONSIBILITY56
JURY INSTRUCTION NO. 47: COMMUNICATIONS BETWEEN COURT
AND JURY DURING JURY DELIBERATIONS57
JURY INSTRUCTION NO. 48: DUTY TO DELIBERATE.....58

Additional Keywords:
Michigan Civil Rights Act
Michigan CRA

JURY INSTRUCTION NO. 1: JURORS' DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if Mr. Reeder proved that Wayne County is liable by a preponderance of the evidence. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

JURY INSTRUCTION NO. 2: EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; and the parties' agreed stipulations. Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. My comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. Sometimes, I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way. Make your decision based only on the evidence, as I have defined it here, and nothing else.

JURY INSTRUCTION NO. 3: DIRECT AND CIRCUMSTANTIAL EVIDENCE

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.”

Direct evidence is simply evidence like the testimony of an eyewitness that, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, then that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weights that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

JURY INSTRUCTION NO. 4: CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

In your consideration of the evidence in the case, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. That is, you may make deductions and reach conclusions which reason and commons sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

JURY INSTRUCTION NO. 5: INFERENCES

An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has been shown to exist. It is for you, and you alone, to decide what inferences you will draw from the established facts, the existence of some other fact, based upon your reason, experience, and common sense.

JURY INSTRUCTION NO. 6: CREDIBILITY OF WITNESSES

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence you must consider the credibility of the witnesses. You will use the tests of truthfulness which you use in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity she or he had to see, hear and know the things concerning which she or he testified; her or his accuracy of memory; frankness or lack of it; intelligence, interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness' testimony such weight as you think proper.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you think it deserves. You are not required to believe the testimony of any witness simply because she or he was under oath. You may accept or reject the testimony of any witness in whole or in part.

If you believe any witness has been impeached by contradictory evidence and thus discredited, it is up to you to give the testimony of that witness the weight, if any, that you think it deserves. If you believe a witness has knowingly testified falsely about any significant matter, you have a right to distrust that witness's testimony on other matters, and you may reject all the testimony of that witness or give it such weight as you think it

deserves.

**JURY INSTRUCTION NO. 7: IMPEACHMENT - INCONSISTENT
STATEMENT OR CONDUCT**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves. If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

JURY INSTRUCTION NO. 8: NUMBER OF WITNESSES

One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

JURY INSTRUCTION NO. 9: LAWYERS' OBJECTIONS

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

Do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

JURY INSTRUCTION NO. 10: USE OF DEPOSITIONS AS EVIDENCE

During trial, certain testimony has been presented by way of deposition. The deposition consisted of sworn, recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason is not present to testify from the witness stand may be presented in writing under oath. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by you, insofar as possible in the same way as if the witness had been present and had testified from the witness stand.

JURY INSTRUCTION NO. 11: OUTSIDE COMMUNICATION

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on

information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

JURY INSTRUCTION NO. 12: TREATMENT OF CORPORATIONS

Wayne County, a municipal corporation in this case, is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

JURY INSTRUCTION NO. 13: BURDEN OF PROOF

Mr. Reeder has the burden of proof in this case. The party who has the burden of proof must carry that burden by a preponderance of the evidence. This means, simply, the greater weight of the evidence. It may be helpful to envision a set of balancing scales. After considering all the proof on a particular element of Mr. Reeder's case, the scales must be tipped in his favor on that issue, be it ever so slightly, for him to prevail on that issue.

A preponderance of the evidence, thus, means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

JURY INSTRUCTION NO. 14: INTRODUCTORY INSTRUCTION – FMLA

Yasin Reeder claims that Wayne County violated the “Family and Medical Leave Act,” which is often referred to by its initials, “FMLA.” This law entitles an eligible employee to take up to 12 weeks of unpaid leave during any 12-month period because of the employee’s serious health condition that makes him unable to perform the functions of his position. The FMLA also allows an employee with a serious health condition to take intermittent leave. “Intermittent leave” refers to leave taken in separate blocks of time (from an hour or more to several weeks) for a serious health condition. The FMLA prohibits an employer (1) from interfering with an employee’s exercise of any right provided by the FMLA and (2) from retaliating against an employee because of the employee’s exercise of any right provided by the FMLA.

Mr. Reeder seeks damages against Wayne County under these two theories: interfering with his FMLA rights and retaliating against him for taking FMLA leave. Wayne County denies each of Mr. Reeder’s claims and contends that its actions were not motivated by Mr. Reeder’s leave taking. You must consider each claim separately.

I will now instruct you more fully on the issues that you must address in this case.

JURY INSTRUCTION NO. 15: FMLA INTERFERENCE GENERALLY

The Family and Medical Leave Act provides eligible employees the right to take a total of twelve weeks of unpaid leave per year to care for the employee's own "serious health condition" that renders the employee unable to perform his or her work functions. After the period of qualified leave expires, the employee generally is entitled to be reinstated to the former position, or an equivalent one, with the same benefits and terms of employment that existed before the employee took the leave.

To insure the availability of these guarantees, the FMLA declares that it is unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by the FMLA.

JURY INSTRUCTION NO. 16: BURDEN OF PROOF—FMLA INTERFERENCE CLAIM

To establish his claim for interference with FMLA rights, Yasin Reeder must prove all of the following by a preponderance of the evidence:

First: Mr. Reeder is an “eligible employee.”

Second: Wayne County is a “covered employer.”

Third: Mr. Reeder had a serious health condition.

Fourth: Mr. Reeder gave Wayne County appropriate notice of his intention to take leave.

Fifth: Mr. Reeder sought leave on an intermittent basis due to his serious health condition.

Sixth: Wayne County interfered with Mr. Reeder’s right to take FMLA leave.

The parties agree that Wayne County is an employer covered by the FMLA.

Your verdict will be for Mr. Reeder if you find that Wayne County denied Mr. Reeder FMLA benefits to which he was entitled.

Your verdict will be for Wayne County if you find that Wayne County did not deny Mr. Reeder FMLA benefits to which he was entitled.

Now I will define some of the terms that pertain to these elements.

JURY INSTRUCTION NO. 17: FMLA-ELIGIBLE EMPLOYEE

With respect to the second element, an employee is eligible for leave under the FMLA where he or she has worked for the employer for over 12 months and 1,250 hours during the 12 months prior to the start of FMLA leave.

**JURY INSTRUCTION NO. 18: DEFINITION OF SERIOUS HEALTH
CONDITION**

With respect to the third element, the phrase “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.

JURY INSTRUCTION NO. 19: DEFINITION OF HEALTH CARE PROVIDER

“Health care provider” includes doctor of medicine, doctor of osteopathy, clinical psychologist, or nurse practitioner, so long as the provider is authorized to practice in Michigan and is performing within the scope of his or her practice.

JURY INSTRUCTION NO. 20: DEFINITION OF APPROPRIATE NOTICE

With respect to the fourth element, the term “appropriate notice” as used in these instructions means Mr. Reeder must have notified Wayne County of his need for leave as soon as practicable after Mr. Reeder’s learned of the need to take leave.

Both the employee and the employer have notice obligations under the FMLA. To invoke the protection of the FMLA, an employee must provide notice and a qualifying reason for requesting the leave. But an employee does not have to expressly assert his right to take leave as a right under the FMLA. Because an employee need not expressly invoke the FMLA, the critical question is whether the information imparted to the employer is sufficient to reasonably apprise it of the employee’s request to take time off for a serious health condition. An employee gives his employer sufficient notice that he is requesting leave for an FMLA-qualifying condition when he gives the employer enough information for the employer to reasonably conclude that an event described in the FMLA has occurred.

JURY INSTRUCTION NO. 21: DEFINITION OF INTERFERENCE

With respect to the sixth element, the phrase “Wayne County interfered with Mr. Reeder’s right to take FMLA leave,” may include one or more of the following:

- a) Interfering with Mr. Reeder’s entitlement to take time off work;
- b) Restraining Mr. Reeder’s entitlement to take time off work; or
- c) Denying Mr. Reeder his entitlement to take time off work.

JURY INSTRUCTION NO. 22: DEFENDANT'S INTENT

It does not matter whether Wayne County intended to violate the FMLA. If Wayne County denied Mr. Reeder a right to which he was entitled under the FMLA, then Wayne County is liable and Mr. Reeder should prevail. Mr. Reeder need not prove that he was treated worse than other employees to prevail on his FMLA interference claim.

JURY INSTRUCTION NO. 23: BURDEN OF PROOF—FMLA RETALIATION CLAIM

In addition to his claim for FMLA interference, Mr. Reeder claims that Defendant retaliated against him for exercising his rights under the Family and Medical Leave Act.

In order to prevail on this claim, Mr. Reeder must prove all of the following elements by a preponderance of the evidence:

First: Mr. Reeder asserted his rights under the FMLA.

Second: Mr. Reeder was subjected to a materially adverse action at the time, or after, the protected conduct took place.

Third: There was a causal connection between the materially adverse action and Mr. Reeder's assertion of rights under the Act.

Mr. Reeder need not prove the merits of any FMLA claim, but only that he was acting under a good faith belief that his rights under the FMLA were violated.

The parties do not dispute that Defendant terminated Mr. Reeder's employment. You must decide, however, whether Defendant terminated Mr. Reeder because of his protected activity.

The causal connection can be shown in many ways. For example, you may or may not find that there is sufficient connection through timing, that is Defendant's action followed shortly after Defendant became aware of Mr. Reeder's activity. Causation is not necessarily ruled out by a more extended passage of time. Causation may or may not be

proved by antagonism shown toward Mr. Reeder or a change in demeanor toward Mr. Reeder.

You must decide whether Mr. Reeder's assertion of his rights under the FMLA was a motivating factor when Defendant terminated his employment. "Motivating factor" means that you should find in Mr. Reeder's favor so long as you find that impermissible factors motivated the termination decision.

**JURY INSTRUCTION NO. 24: LEGITIMATE, NONDISCRIMINATORY
REASON**

If you determine Mr. Reeder has made proven a case of FMLA retaliation, Wayne County must articulate a legitimate, nondiscriminatory reason for the action. A reason is not legitimate and nondiscriminatory if it relates directly to protected activity under the FMLA.

JURY INSTRUCTION NO. 25: PRETEXT

Once Wayne County gives a legitimate non-discriminatory reason for Mr. Reeder's termination, he must show that that stated reason is mere pretext for his claimed reason. To demonstrate Wayne County's proffered reason for termination was merely pretextual, Mr. Reeder may show that the proffered reason:

- (1) has no basis in fact;
- (2) did not actually motivate Wayne County's decision; or
- (3) was insufficient to warrant the challenged decision.

JURY INSTRUCTION NO. 26: WILLFULNESS

You must decide if Wayne County willfully violated Mr. Reeder's FMLA rights. Although willfulness is not required to find a FMLA violation occurred, an employer commits a willful violation of the FMLA when it acts with knowledge that its conduct is prohibited by the FMLA or with reckless disregard of the FMLA's requirements.

JURY INSTRUCTION NO. 27: DISABILITY DISCRIMINATION

Under the Americans Disabilities Act (also referred to as the “ADA”) and the Michigan Persons with Disabilities Civil Rights Act (also referred to as the “PWDCRA”), it is unlawful for any “entity [to] discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” Resolution of Yasin Reeder’s ADA claim will resolve Mr. Reeder’s PWDCRA claim because the PWDCRA substantially mirrors the ADA.

JURY INSTRUCTION NO. 28: ADA EMPLOYMENT CLAIMS

In this case, Yasin Reeder makes a claim based on a federal law known as the Americans with Disabilities Act, which will be referred to in these instructions as the ADA.

Under the ADA, an employer may not deprive a person with a disability of an employment opportunity because of that disability, if that person is able, with reasonable accommodation if necessary, to perform the essential functions of the job. Terms such as “disability”, “qualified individual” and “reasonable accommodations” are defined by the ADA and I will instruct you on the meaning of those terms.

Yasin Reeder’s claim under the ADA is that he was discriminated against by Wayne County because of his medical condition.

Wayne County denies Yasin Reeder’s claims. Further, Wayne County asserts that it had just cause to terminate Yasin Reeder for continued violations of the employer’s work rules.

As you listen to these instructions, please keep in mind that many of the terms I will use, and you will need to apply, have a special meaning under the ADA. So please remember to consider the specific definitions I give you, rather than using your own opinion of what these terms mean.

JURY INSTRUCTION NO. 29: ELEMENTS OF AN ADA CLAIM (1 OF 2)

In this case, Yasin Reeder is alleging Wayne County discriminated against him. In order for Mr. Reeder to recover on this discrimination claim against Wayne County, Mr. Reeder must prove that Wayne County intentionally discriminated against him. This means that Mr. Reeder must prove that his disability was a determinative fact in Wayne County's decision to discipline and then terminate Mr. Reeder's employment from Wayne County.

To prevail on this claim, Mr. Reeder must prove all of the following by a preponderance of the evidence:

1. Mr. Reeder has a "disability" within the meaning of the ADA.
2. Mr. Reeder is a "qualified individual" able to perform the essential functions of a Police Officer assigned to Jail Security in a Wayne County Jail.
3. Mr. Reeder's disability was a determinative factor in Wayne County's decision to discipline and then terminate Mr. Reeder's employment from Wayne County.

Although Mr. Reeder must prove that Wayne County acted with the intent to discriminate on the basis of a disability, Mr. Reeder is not required to prove that Wayne County acted with the particular intent to violate Mr. Reeder's federal rights under the ADA. Moreover, Mr. Reeder is not required to produce direct evidence of intent, such as statements admitting discrimination. Intentional discrimination may be inferred from the

existence of other facts.

JURY INSTRUCTION NO. 30: ELEMENTS OF AN ADA CLAIM (2 OF 2)

If you find that Wayne County has given a nondiscriminatory reason for its decision to discipline and terminate Mr. Reeder from Wayne County employment, then you must determine whether you believe or disbelieve that explanation. If you find that Wayne County has shown some legitimate, nondiscriminatory reason for Mr. Reeder's termination then you must consider whether the Mr. Reeder has shown by a preponderance of the evidence that either:

1. That the proffered reasons had no basis in fact;
2. That the proffered reasons did not actually motivate his discharge; or
3. That they were insufficient to motivate discharge.

If you find that Mr. Reeder has met his burden of proof your verdict must be for Mr. Reeder. If you find that Mr. Reeder has not met his burden your verdict must be for Wayne County.

In determining whether Wayne County's stated reason for its actions was a pretext, or excuse, for discrimination, you may not question Wayne County's business judgment. You cannot find intentional discrimination simply because you disagree with the business judgment of the County or believe it is harsh or unreasonable. You are not to consider Wayne County's wisdom. However, you may consider whether Wayne County's reason is merely a cover-up for discrimination.

Ultimately, you must decide whether Mr. Reeder has proven that his disability was a determinative factor in Wayne County's employment decision.

JURY INSTRUCTION NO. 31: DEFINITION OF DETERMINATIVE FACTOR

“Determinative factor” means that if not for Mr. Reeder’s disability, the disciplines and termination would not have occurred.

I will now provide you with more explicit instructions on statutory terms.

JURY INSTRUCTION NO. 32: ADA DEFINITIONS

Under the ADA, the term “disability” means a physical or mental impairment that “substantially limits” a “major life activity.” I will now define some of these terms in more detail. Again, I remind you to consider the specific definitions I give you, and not to use your own opinions as to what these terms mean.

The term “physical impairment” means any condition that prevents the body from functioning normally. The term “mental impairment” means any condition that prevents the mind from functioning normally.

“Major life activities” are activities that are of central importance to everyday life. Major life activities include the operation of major bodily functions, including, but are not limited to, such fundamental functions as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Under the ADA, an impairment “substantially limits” a person’s ability to perform a major life activity if it prevents or restricts him from performing the relevant activity compared to the average person in the general population.

To decide if Mr. Reeder’s alleged impairment substantially limits Mr. Reeder’s ability to perform a major life activity, you should consider the nature of the impairment and how severe it is, how long it is expected to last, and its expected long-term impact.

If you find that Mr. Reeder's impairment is a substantial limitation, it does not matter that it can be corrected by the use of such devices as a hearing aid, medication, or prosthetics.

Only impairments with a permanent or long-term impact are disabilities under the ADA. Temporary injuries and short-term impairments are not disabilities. Even so, some disabilities are permanent, but only appear from time to time. For example, if a person has a mental or physical disease that usually is not a problem, but flares up from time to time, that can be a disability if it would substantially limit a major life activity when active.

If you find that Mr. Reeder's impairment substantially limits one major life activity, you must find that it is a disability even if it does not limit any other major life activity.

The name of the impairment or condition is not determinative. What matters is the specific effect of an impairment or condition on the life of Mr. Reeder.

Please keep in mind that the definition of "disability" is to be construed in favor of broad coverage of individuals. The primary question for you to decide is whether Wayne County has complied with its obligations under the ADA.

JURY INSTRUCTION NO. 33: DISABILITY DISCRIMINATION

Under the Americans Disabilities Act (“ADA”) and the Michigan Persons with Disabilities Civil Rights Act (“PWDCRA”), it is unlawful for any “entity [to] discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” Resolution of Mr. Reeder’s ADA claim will generally resolve Mr. Reeder’s PWDCRA claim because the PWDCRA substantially mirrors the ADA.

JURY INSTRUCTION NO. 34: ESSENTIAL FUNCTIONS

“Essential functions” means the fundamental duties of the job, as opposed to marginal duties of the job. The essential functions of a job are determined by employers and due consideration should be given to the employer’s judgment as to what are the essential functions of a job.

If you find that employees are not actually required to perform the function, it is not an essential function. If you find that the job function is actually required to be performed by employees in the job, the following evidence may be considered in deciding whether the job function is essential:

1. The employer’s judgment as to which functions are essential;
2. Written job descriptions prepared before advertising the position or interviewing applicants for the position;
3. The amount of time the employee must spend performing the function;
4. The consequences of not requiring the employee to perform the function;
5. The work experience of past employees in the job;
6. The current work experience of employees in similar jobs; and
7. All other facts and circumstances in evidence.

JURY INSTRUCTION NO. 35: REASONABLE ACCOMMODATION

The term “reasonable accommodation” means making modifications to the work place allowing a person with a disability to perform the essential functions of the job or allows a person with a disability to enjoy the same benefits and privileges as an employee without a disability.

The term “reasonable accommodation” does not include efforts that would cause an undue hardship on Wayne County.

JURY INSTRUCTION NO. 36: CAUSATION

Mr. Reeder must show that his disability was a motivating factor for his termination. The connection between Mr. Reeder's termination and his disability may be shown in many ways. For example, you may find that there is a sufficient connection through timing, that is Mr. Reeder's termination followed shortly after Wayne County became aware of Mr. Reeder's disability. Mr. Reeder need not prove that the alleged disability was the only reason for the termination of employment. It is sufficient if Mr. Reeder proves that the disability was a motivating factor in the employer's decision.

JURY INSTRUCTION NO. 37: MEDICAL DOCUMENTS—CONFIDENTIALITY

Under the Americans with Disabilities Act, an employer may make an inquiry of an employee that is job-related and consistent with business necessity. Under the Family and Medical Leave Act and the Americans with Disabilities Act, records and documents relating to the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record. However, supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

JURY INSTRUCTION NO. 38: RETALIATION

Under the Americans with Disabilities Act (“ADA”) and Persons with Disabilities Civil Rights Act (“PWDCRA”) (collectively, “the Acts”), it is unlawful for any entity to retaliate against employees for asserting their rights under the Acts.

For his claims under the Acts, Mr. Reeder must show that retaliation was a “motivating factor” for his termination.

JURY INSTRUCTION NO. 39: RETALIATION ELEMENTS

Before you can find for Mr. Reeder, you must find by the preponderance of the evidence that:

- (A) Mr. Reeder engaged in a protected activity by exercising his rights under the Acts, including requesting a reasonable accommodation and filing a discrimination complaint with the Equal Employment Opportunity Commission;
- (B) Wayne County had knowledge of his protected conduct;
- (C) Wayne County took an adverse employment action towards him; and
- (D) There was a causal connection between the protected activity and the adverse employment action.

The parties agree that Mr. Reeder filed a complaint of discrimination on April 21, 2014 with the Equal Employment Opportunity Commission and that he was terminated on May 7, 2014.

JURY INSTRUCTION NO. 40: FMLA DAMAGES GENERALLY

If you find that Wayne County interfered with Mr. Reeder's right to FMLA leave or retaliated against him for exercising his rights under the Act, you may award him a particular set of damages. The FMLA states that an employer who violates the statute will be liable for:

(a) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation or;

(b) In a case in which wages, salary, employment benefits, or other compensation has not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee.

JURY INSTRUCTION NO. 41: FRONT-PAY

For wrongful termination in violation of the FMLA when reinstatement is not appropriate, front-pay may be awarded. When making this determination you should consider:

- (1) the employee's future in the position from which he was terminated;
- (2) his work and life expectancies;
- (3) his obligation to mitigate damages;
- (4) the availability of comparable employment opportunities and the time reasonably required to find a substitute; and
- (5) the present value and future damages as determined through application of the appropriate discount rate.

JURY INSTRUCTION NO. 42: BACKPAY

If you find for Mr. Reeder on any of his claims, you may award him back pay. This means that you are to award Mr. Reeder an amount equal to the pay and fringe benefits Mr. Reeder would have received had he not been terminated in violation of the law.

You should deduct from this sum whatever wages Mr. Reeder has obtained from other employment during this period.

JURY INSTRUCTION NO. 43: MITIGATION OF BACK PAY DAMAGES

Mr. Reeder has a duty to mitigate damages. Any back pay and employment benefits you award Mr. Reeder shall be reduced by any employment earnings and benefits he earned or could have earned through reasonable diligence.

In attempting to mitigate damages, Mr. Reeder is not required to accept any offer of employment, or abandon his home or place of residence to seek other employment, but is only required to exercise reasonable diligence in seeking other employment of a similar or comparable nature.

Defendant has the burden of establishing that Mr. Reeder failed to use reasonable diligence in mitigating damages. Defendant must prove both the availability of suitable and comparable substitute employment, and the lack of reasonable diligence on the part of Mr. Reeder. Defendant must establish that equivalent positions were available with virtually identical promotional opportunities, compensation and benefits, job responsibilities, working conditions, and status.

JURY INSTRUCTION NO. 44: COMPENSATORY DAMAGES

If you find that Wayne County violated Mr. Reeder's rights under the Americans with Disabilities Act, you may award him compensatory damages. If you find Wayne County discriminated against Mr. Reeder based on his disability then you must determine an amount that is fair compensation for Mr. Reeder's damages. You may award compensatory damages only for injuries that Mr. Reeder proves were caused by Wayne County's allegedly wrongful conduct.

The damages that you award must be fair compensation-no more and no less. You may award damages for any pain, suffering or mental anguish Mr. Reeder experienced as a consequence of Wayne County's *discharge*. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damage. Any award you make should be fair in light of the evidence presented at the trial.

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound judgment in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. On the other hand, the law does not require that Mr. Reeder prove the amount of his losses with mathematical

precision, but only with as much definiteness and accuracy as circumstances permit.

JURY INSTRUCTION NO. 45: EXEMPLARY DAMAGES

If you find that Wayne County violated Mr. Reeder's rights under the Persons with Disabilities Civil Rights Act ("PWDCRA"), you may award him exemplary damages. The purpose of exemplary damages is to make an injured party whole. Exemplary damages are recoverable only for intangible injuries or, in other words, injuries to feelings that are not quantifiable in monetary terms. An award of exemplary damages is proper if it compensates Mr. Reeder for the humiliation, sense of outrage, and indignity resulting from injuries maliciously, willfully, and wantonly inflicted by Wayne County.

In regard to proving exemplary damages, it is not essential to present direct evidence of an injury to one's feelings. Rather, the question is whether the injury to feelings and mental suffering are natural and proximate in view of the nature of Wayne County's wrongful conduct.

JURY INSTRUCTION NO. 46: JURY'S RESPONSIBILITY

Nothing said in these instructions and nothing in any of the verdict forms prepared for your convenience is meant to suggest or to convey in any way or manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

**JURY INSTRUCTION NO. 47: COMMUNICATIONS BETWEEN COURT AND
JURY DURING JURY DELIBERATIONS**

No member of the jury should ever attempt to communicate with me by any means other than a signed writing, and I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person-not even to me-how the jury stands, numerically or otherwise, on the questions before you.

JURY INSTRUCTION NO. 48: DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort to reach an agreement. When at least six of you agree upon a verdict for each claim it will be received as your verdict. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

Also, be mindful that you each may process information differently or have different approaches to your deliberations. For example, some of you may need to think quietly while others may want to openly discuss their thoughts. It may take more time for some of you, than for others, to reach a decision. Be patient and considerate of each other's needs as you deliberate. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach agreement, but only if you can do so honestly and in

good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself whether plaintiff's claims were proved by a preponderance of the evidence.