

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

NANCY PEERY BALES,)	
)	
Plaintiff,)	CIVIL NO. 4-95-CV-20875
)	
)	
v.)	
)	
WAL-MART STORES, INC. and)	FINAL JURY INSTRUCTIONS
ROBERT LEE VALLEJO,)	
)	
Defendants.)	

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INTRODUCTION

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. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of or during the trial are not repeated here.

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

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

INSTRUCTION NO. ____

Plaintiff alleges that she had been sexually harassed during her employment. The law recognizes two types of sexual harassment claims: quid pro quo and hostile work environment. The fact that a claim for sexual harassment has been brought does not mean that sexual harassment has occurred.

Quid pro quo harassment occurs when a person's submission to, or rejection of, sexual advances is used as a basis for employment decisions affecting that person. For example, quid pro quo harassment occurs when an employee is demoted or discharged because she refused to submit to her supervisor's unwelcome sexual demands.

A hostile-work-environment claim arises when gender-based conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Such harassment may result from unwelcome conduct, but is not limited to conduct that is sexual in nature, such as using vulgar language and obscene gestures, displaying sexually suggestive objects or pictures, talking or joking about sex, or engaging in unwelcome touching.

The line between quid pro quo and hostile-work-environment harassment is not always clear, and these two kinds of harassment may occur together. Nevertheless, you must determine whether Plaintiff was the victim of either quid pro quo harassment or hostile-work-environment harassment, or both.

INSTRUCTION NO. ____

Your verdict must be for Plaintiff and against Defendants on Plaintiff's quid pro quo harassment claim if Plaintiff has proved all of the following elements by the greater weight or preponderance of the evidence:

1. She was subjected to unwelcome sexual advances or requests for sexual favors by a supervisor;
2. The harassment was based on sex; and
3. Her submission to the unwelcome advances was an expressed or implied condition for receiving job benefits, or her refusal to submit resulted in the loss of a tangible job benefit.

If all of the above elements have not been proved by the greater weight or preponderance of the evidence, your verdict must be for Defendants, and you need not proceed further in considering this claim.

Wal-Mart, as an employer, will be held liable for the acts of its supervisors in quid pro quo harassment cases, if the supervisor is an agent of Wal-Mart. Vallejo is Wal-Mart's agent if he was acting within the scope of his employment. His acts were within the scope of his employment only if (a) the conduct was of the kind he was authorized to perform or incidental thereto; (b) the conduct occurred substantially within the authorized time and space limits; and (c) the conduct was actuated, at least in part, by a purpose to serve his employer. An agent's act, although forbidden or done in a forbidden manner, may be within the scope of his employment. As long as the acts complained of were caused by the exercise of supervisory power, the supervisor should be deemed as acting within the scope of his employment and the employer should be held liable for the acts.

INSTRUCTION NO. _____

Your verdict must be for Plaintiff and against Defendant Vallejo on Plaintiff's hostile-work-environment claim, if Plaintiff has proved all of the following elements by the greater weight or preponderance of the evidence:

1. She was subjected to unwelcome harassment;
2. The conduct was based on sex; and
3. The harassment was sufficiently severe or pervasive that Plaintiff and a reasonable woman under similar circumstances would find it created a hostile or abusive work environment;

If all of the above elements have not been proved by the greater weight or preponderance of the evidence, your verdict must be for Defendants, and you need not proceed further in considering this claim.

In order for Plaintiff to prevail on her claim of sexual harassment against Wal-Mart Stores, Inc., Plaintiff must prove element numbers 1 through 3 above, and element number 4 below:

4. The employer knew or should have known of the harassment and failed to take appropriate remedial action.

If Plaintiff has failed to prove by a preponderance of the evidence any of the elements in numbers 1 through 3, you need not proceed further in considering Plaintiff's claim against either Defendant. If Plaintiff has failed to prove by a preponderance of the evidence element number 4, then you may only consider Plaintiff's claim against Defendant Vallejo, and not against Defendant Wal-Mart.

The first element requires you to determine whether the behavior was unwelcome to Plaintiff, and would be unwelcome to a reasonable woman under similar circumstances. You must determine whether the conduct was uninvited and offensive. The conduct must be "unwelcome" in the sense that Plaintiff did not solicit it or invite it and she regarded the conduct as undesirable or offensive.

To determine whether the work environment was hostile under the third element, you must consider the totality of the underlying circumstances. This may include the frequency

of the conduct, its severity, whether it was physically threatening or humiliating, and whether it unreasonably interfered with Plaintiff's work performance. A plaintiff must generally show that the harassment is sustained and non-trivial. More than a few isolated incidents of harassment must occur. However, keep in mind that you may consider all the incidents in combination to determine if there was a hostile working environment.

Under the fourth element, sexual harassment by a co-employee is a violation of law if the employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end the harassment.

INSTRUCTION NO. ____

You should find that Wal-Mart knew or should have known of the harassment if either:

1. Plaintiff or other employees actually notified supervisory or management level employee(s) of the alleged harassment; or
2. If the incidents of harassment were so egregious, numerous, and concentrated as to add up to a campaign of harassment, so that supervisory or management level employees of Wal-Mart should have discovered the harassment and taken steps to prevent further occurrences.

In determining whether Wal-Mart failed to take prompt and effective remedial action, you should consider the following:

1. Whether supervisory or management level employees of Wal-Mart knew of the harassment through the complaint of Plaintiff or otherwise;
2. The gravity of the harassment; and
3. What response was taken by Wal-Mart and the degree to which it was effective in stopping the harassment.

INSTRUCTION NO. _____

In this case, the parties dispute the circumstances under which Plaintiff left employment with Wal-Mart on November 10, 1995. Defendants contend that Plaintiff quit working for Wal-Mart. If she quit, she would not be entitled to an award of damages for back pay or front pay. Plaintiff contends that she was “constructively discharged.” If she was constructively discharged, Plaintiff would be entitled to an award of damages for back pay or front pay.

A constructive discharge arises when an employer causes an employee's work conditions to be so difficult or unpleasant that a reasonable employee in a similar position would feel compelled to resign. The employer's actions must have been taken with the intention of forcing the employee to quit. For work conditions to be so intolerable as to establish a constructive discharge, they must be intolerable not only to the employee involved, but also to a reasonable and objective employee in similar circumstances.

An employee who quits without giving her employer a reasonable chance to work out a problem is not constructively discharged.

To prevail on a claim for constructive discharge, a plaintiff must resign within a reasonable time after last being subjected to the alleged objectionable language or conduct.

Your verdict must be for Plaintiff and against Defendants on Plaintiff's constructive discharge allegation, if you find by the preponderance of the evidence that the employer rendered the employee's working conditions intolerable, forcing the employee to quit.

INSTRUCTION NO. _____

If you find in favor of Plaintiff on her claims of quid pro quo harassment and/or hostile work environment, then you must award Plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of either or both of the Defendants' actions referenced in the claim or claims in which you find in her favor. Plaintiff's claim for damages includes three types of damages, and you must consider them separately.

First, for back pay, you must determine the amount of any wages and fringe benefits Plaintiff would have earned in her employment with Wal-Mart if she had not been constructively discharged on November 10, 1995, through the date of your verdict, minus the amount of earnings and benefits that Plaintiff received from other employment during that time.

Second, for front pay, you must determine the amount of any future wages and fringe benefits Plaintiff would reasonably have earned in her employment with Wal-Mart. Future lost wages consist of the difference in monetary value between the wages Plaintiff would reasonably have earned in her employment with Wal-Mart from the date of your verdict, minus the wages you believe Plaintiff would have received in other employment, for as long as Plaintiff would have been employed with Wal-Mart.

Damages for future lost wages and fringe benefits need not be made with any specific prevision, but must be that amount that the jury believes Plaintiff will reasonably incur in the future as a result of Defendants' actions referenced in the claim or claims in which you find in her favor. Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate, will compensate Plaintiff for future losses.

Third, you must determine the amount of any other past damages sustained by Plaintiff, such as damages for emotional distress and mental anguish including humiliation and embarrassment, and medical costs. The amount, if any, you award for emotional distress and mental anguish cannot be measured by an exact or mathematical standard. The determination of the amount must rest in the sound discretion of the jury. Such

discretion must not be exercised arbitrarily or out of passion or sympathy, or out of prejudice for or against the parties, but must be based on a fair, intelligent, dispassionate, and impartial consideration of the evidence. A plaintiff need not show physical injury, outrageous conduct or severe distress to obtain an award for emotional distress.

Plaintiff cannot recover any damages for emotional distress or mental anguish resulting from negative reactions to the filing of this lawsuit or resulting from Plaintiff's participation in this lawsuit. Further, negative reactions of individuals that are not the result of the discriminatory or unfair practices, cannot result in an award of damages for emotional distress.

Any damage award to Plaintiff must include only those damages that occurred as a direct result of either or both of Defendants' actions. You are also instructed that Plaintiff has a duty under the law to mitigate her damages, that is, to exercise reasonable diligence under the circumstance to minimize these damages. Therefore, if you find by the greater weight or preponderance of the evidence that Plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to her to minimize her damages, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

You must enter separate amounts for each type of damage on the verdict form and must not include the same items in more than one category.

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

INSTRUCTION NO. ____

In addition to the damages mentioned in the other instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish Defendant Wal-Mart for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct. If you find in favor of Plaintiff under her quid pro quo claim and/or her hostile-work-environment claim, and if you find by a preponderance of the evidence that Defendant acted with malice or with reckless indifference to Plaintiff's rights not to be discriminated against on the basis of her sex, then in addition to any damage to which you find Plaintiff entitled you may, but are not required to, award Plaintiff an additional amount as punitive damages, if you find it is appropriate to punish Defendant, to deter Defendant and others from similar conduct in the future. Whether to award punitive damages and the amount of those damages are within your discretion.

You may assess punitive damages, or you may refuse to impose punitive damages.

INSTRUCTION NO. _____

If you find in favor of Plaintiff as to a particular claim, but find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of one dollar (\$1.00) with respect to that claim.

INSTRUCTION NO. _____

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

You should not interpret the fact that I have given instructions about Plaintiff's damages as an indication in any way that I believe that Plaintiff should, or should not, win this case.

INSTRUCTION NO. _____

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your answers must be unanimous if you return a verdict within six hours. After six hours, only seven jurors must agree to reach a verdict.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine 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 evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. _____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at _____ a.m./p.m. on this _____ day of March, 1997.

CELESTE F. BREMER
CHIEF U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

NANCY PEERY BALES,)	
)	
Plaintiff,)	CIVIL NO. 4-95-CV-20875
)	
v.)	
)	
WAL-MART STORES, INC. and)	SPECIAL VERDICT FORM
ROBERT LEE VALLEJO,)	
)	
Defendants.)	

QUESTION ONE: Has Nancy Bales proved her claim of quid pro quo sexual harassment:

a. against Wal-Mart as explained in these instructions?

Answer "yes" or "no."

ANSWER: _____

b. against Robert Vallejo as explained in these instructions?

Answer "yes" or "no."

ANSWER: _____

QUESTION TWO: Has Nancy Bales proved her claim of hostile-work-environment sexual harassment against Robert Vallejo as explained in these instructions?

Answer “yes” or “no.”

ANSWER: _____

QUESTION THREE: Has Nancy Bales proved her claim of hostile-work-environment harassment against Wal-Mart as explained to you in these instructions?

Answer “yes” or “no.”

ANSWER: _____

QUESTION FOUR: Did Nancy Bales quit in November 1995, or was she “constructively discharged?”

Answer “Quit” or “Constructive Discharge”

ANSWER: _____

(If your answer is “Quit,” do not award back pay or front pay in questions five or six.)

QUESTION FIVE: Damages against Wal-Mart Stores, Inc.

Answer question five if, and only if, you answered “yes” to question one and/or question three.

We, the jury, award damages against Defendant Wal-Mart Stores, Inc., for the

following:

A. Compensatory damages.

- | | | |
|----|-------------------------|----------|
| 1. | Back pay and benefits | \$ _____ |
| 2. | Front pay and benefits* | \$ _____ |
| 3. | Past emotional distress | \$ _____ |
| | TOTAL | \$ _____ |

*If you awarded front pay, how many years into the future is this intended to compensate Plaintiff?

ANSWER: _____ Years

B. Nominal damages.

- | | | |
|----|-----------------|----------|
| 1. | Nominal damages | \$ _____ |
|----|-----------------|----------|

C. Punitive damages.

Answer part C if, and only if, you awarded some amount of damages in part A or B.

1. Did Nancy Bales prove by a preponderance of the evidence that Wal-Mart's actions were done with malice or reckless indifference to her right not to be discriminated against on the basis of her sex?

Answer "yes" or "no."

ANSWER: _____

If you answered yes to the above question, please state the amount of punitive damages, if any, that you believe is appropriate.

\$ _____

QUESTION SIX: Damages against Robert Vallejo.

Answer question six if, and only if, you answered “yes” to question one and/or question two.

We, the jury, award damages against Defendant Robert Vallejo for the following:

A. Compensatory damages.

- | | | |
|----|-------------------------|----------|
| 1. | Back pay and benefits | \$ _____ |
| 2. | Front pay and benefits* | \$ _____ |
| 3. | Past emotional distress | \$ _____ |
| | TOTAL | \$ _____ |

*If you awarded front pay, how many years into the future is this intended to compensate Plaintiff?

ANSWER: _____ Years

B. Nominal damages.

- | | | |
|----|-----------------|----------|
| 1. | Nominal damages | \$ _____ |
|----|-----------------|----------|

PRESIDING JUROR*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the seven out of eight Jurors concurring if the verdict is not unanimous.