

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

No. 16-CV-2222

Magistrate Judge Eric I. Long

**DEFENDANT RENT-A-CENTER EAST, INC.'S
PROPOSED JURY INSTRUCTIONS AND PROPOSED VERDICT FORM**

Defendant Rent-A-Center East, Inc., submits its Proposed Jury Instructions and Proposed Verdict Form.

Respectfully submitted,

/s/ J. Bradley Spalding

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Dated: December 15, 2017

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1

SPOILIATION/DESTRUCTION OF EVIDENCE

Rent-A-Center contends that the EEOC at one time possessed an attachment to Ms. Kerr's EEOC Intake Form. However, the EEOC contends that, while the evidence is now lost, the loss of evidence was accidental. You may assume that such evidence would have been unfavorable to the EEOC only if you find by a preponderance of the evidence that: (1) The EEOC intentionally destroyed the evidence; and (2) The EEOC destroyed the evidence in bad faith.¹

GIVEN: _____

MODIFIED: _____

DENIED: _____

WITHDRAWN: _____

UNITED STATES DISTRICT COURT

¹ Federal Civil Jury Instructions of the Seventh Circuit 1.20 (as modified)

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 2

TRANSCRIPTIONS

The parties agree that the typed transcriptions of the EEOC's handwritten investigation notes accurately reflect the contents of these notes. You should consider these transcriptions just like all of the other evidence in the case.²

GIVEN: _____

MODIFIED: _____

DENIED: _____

WITHDRAWN: _____

UNITED STATES DISTRICT COURT

² Federal Civil Jury Instructions of the Seventh Circuit 1.23 (as modified)

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 3

GENERAL DAMAGES INSTRUCTION

If you find that the EEOC has proved its claim against Rent-A-Center, the Court will calculate and determine damages for past or future lost wages and benefits, if any.

If you find that the EEOC has proved its claim against Rent-A-Center, then you must determine what amount of compensatory and/or punitive damages, if any, the EEOC is entitled to recover. The EEOC must prove its damages by a preponderance of the evidence.

If you find that the EEOC has failed to prove its claim, then you will not consider the question of damages.³

GIVEN: _____

MODIFIED: _____

DENIED: _____

WITHDRAWN: _____

UNITED STATES DISTRICT COURT

³ Federal Civil Jury Instructions of the Seventh Circuit 3.09 (as modified).

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 4

COMPENSATORY DAMAGES

You may award compensatory damages only for injuries that the EEOC has proved by a preponderance of the evidence were caused by Rent-A-Center's wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In calculating damages, you should not consider the issue of lost wages and benefits. The court will calculate and determine any damages for past or future lost wages and benefits.

You should only consider the following types of compensatory damages, and no others:

The physical and mental or emotional pain and suffering that Ms. Kerr has experienced. No evidence of the dollar value of physical or mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Ms. Kerr for the injury she has sustained.⁴

If you find that Ms. Kerr engaged in misconduct for which Rent-A-Center would have legitimately discharged her solely on that basis, then do not include any damages suffered past the date that Rent-A-Center discovered that Ms. Kerr engaged in that conduct.⁵

⁴ Federal Civil Jury Instructions of the Seventh Circuit 3.10 (as modified).

⁵ *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1995).

GIVEN: _____

MODIFIED: _____

DENIED: _____

WITHDRAWN: _____

UNITED STATES DISTRICT COURT

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 5

MITIGATION OF DAMAGES

Defendant argues that Plaintiff's claim for lost wages and benefits should be reduced due to Ms. Kerr's failure to mitigate her damages.

If you find that

1. Ms. Kerr did not take reasonable actions to reduce her damages, and
2. that Ms. Kerr reasonably might have found comparable employment if she had taken such action,

the Court shall reduce any damages for past or future lost wages and benefits, if any. ⁶

GIVEN: _____

MODIFIED: _____

DENIED: _____

WITHDRAWN: _____

UNITED STATES DISTRICT COURT

⁶ Federal Civil Jury Instructions of the Seventh Circuit 3.12 (as modified).

DEFENDANT’S PROPOSED VERDICT FORM

- 1) Has the EEOC proved by a preponderance of the evidence that Megan Kerr’s transgender status was a motivating factor in Rent-A-Center’s decision to discharge her?

Answer Yes or No: _____

If your answer to Question No. 1 is “Yes,” then answer Question No. 2. If you answered “No” to Question No. 1, then proceed to the end of this form and sign and return this verdict form.

- 2) Has Rent-A-Center proved by a preponderance of the evidence that it would have made the same decision to discharge Megan Kerr even if it had not considered her transgender status?

Answer Yes or No: _____

If your answer to Question No. 2 is “No,” then proceed to Question No. 3. If you answered “Yes” to Question No. 2, then proceed to the end of this form and sign and return this verdict form.

- 3) What amount will fairly compensate Megan Kerr for the physical, emotional, and/or mental pain she experienced, if any, as a result of Rent-A-Center's decision to discharge her?

Answer: \$ _____

Proceed to Question No. 4.

- 4) Has Rent-A-Center proven by a preponderance of the evidence that Megan Kerr failed to take reasonable actions to reduce her damages?

Answer Yes or No: _____

If your answer to Question No. 4 is "Yes," then proceed to Question No. 5. If you answered "No" to Question No. 4, then proceed to Question No. 6.

- 5) Has Rent-A-Center proven by a preponderance of the evidence that Megan Kerr might reasonably have found comparable employment if she had taken reasonable actions to reduce her damages?

Answer Yes or No: _____

Proceed to Question No. 6.

- 6) Has the EEOC proven by a preponderance of the evidence that punitive damages are appropriate?

Answer Yes or No: _____

If you answered “Yes” to Question No. 6, then answer Question No. 7. If you answered “No” to Question No. 6, then proceed to the end of this form and sign and return this verdict form.

7) What amount will be sufficient to punish Rent-A-Center for its conduct and to serve as an example or warning to Rent-A-Center and others not to engage in similar conduct in the future?

Answer: \$ _____

Dated this _____ day of February 2018.

Juror #1: _____

Juror #2: _____

Juror #3: _____

Juror #4: _____

Juror #5: _____

Juror #6: _____

Juror #7: _____

Juror #8: _____

CERTIFICATE OF SERVICE

I, **J. Bradley Spalding**, an attorney, certify that I served the attorney of record named below with a copy of **Defendant's Proposed Jury Instructions and Proposed Verdict Form** via ECF (*Electronic Case Filing*) on December 15, 2017:

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J. Bradley Spalding

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