



**PROVINCES OF THE COURT AND JURY**

**MEMBERS OF THE JURY:**

Now that you have heard the evidence, it becomes my duty to instruct you as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in these instructions and to apply these rules of law to the facts as you find them from the evidence in the case.

The following instructions will be provided to you in writing for your use during your deliberations. Therefore, you do not need to try to memorize these instructions or be concerned about taking notes.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Nor are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but yours.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Counsel may properly refer to the rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and the law as stated by the Court in these instructions, you are to be governed by these instructions.

**ALL PERSONS EQUAL BEFORE THE LAW**

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth and holding the same or similar stations in life. Both Plaintiff and Defendant are entitled to the same fair trial at your hands. All persons, including both Ms. Fredericks and the Postal Service, stand equal before the law and are to be dealt with as equals in a court of justice.

**COURT'S QUESTIONS TO WITNESSES**

During the course of trial, I occasionally ask questions of a witness in order to clarify an answer that I can see the jury did not understand. The Court is not an advocate for either side and doesn't want to be seen as taking sides. For that reason, this Court is reluctant to participate in the questioning of witnesses, which is the function of the lawyers.

**OBJECTION BY COUNSEL**

It is the duty of attorneys on each side of a case to object when the other side offers testimony or other evidence which counsel believes is not properly admissible. No juror should ever draw an unfavorable inference against an attorney who objects.

When the Court has sustained an objection to a question, you must disregard the question, and may not speculate as to what the answer of the witness might have been.

Allowing testimony or other evidence to be introduced over the objection of counsel does not indicate any opinion by the Court as to the weight or effect of such evidence. That is up to you to determine.

**EVIDENCE**

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Any evidence to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

Statements, questions, and arguments of counsel are not evidence.

## **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence - such as the testimony of an eyewitness. When a witness testifies about what is known to the witness as personal knowledge by virtue of his or her own senses - what he or she observes and hears - that is called direct evidence.

The second type of evidence is indirect or circumstantial evidence - the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. Circumstantial evidence is evidence which tends to prove or disprove a disputed fact by proof of other facts. You infer based on reason and common sense from an established fact the existence or nonexistence of some other fact. Circumstantial evidence is of the same value as direct evidence.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with all the evidence in the case, both direct and circumstantial.

## EVALUATION OF EVIDENCE

As the sole judges of the facts, you must determine which of the witnesses you believe, what portion of their testimony you accept and what weight you attach to it. The law does not require you to accept all of the evidence I have admitted, even though it is legally admissible. In determining what evidence you will accept, you must make your own evaluation of each witness's testimony and determine the weight you choose to give that testimony. The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood, did not accurately see or hear, has faulty recollection, or has not expressed himself or herself clearly. There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability or unreliability of statements made to you by others. The same tests that you use in your everyday dealings are the tests which you apply in your deliberations.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive, state of mind, and the witness's appearance and conduct while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

A witness may also 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 which is inconsistent with the witness's present testimony.

If a witness is shown knowingly to have testified falsely or incorrectly concerning any material matter, you may or may not choose to distrust such witness's testimony in other particulars and you may or may not reject all the testimony of that witness.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

### **CHARTS, DIAGRAMS AND SUMMARIES**

As a technique to summarize testimony and evidence, the parties may prepare charts, diagrams and summaries of pertinent items. This is an acceptable technique of presentation. Such charts, diagrams and summaries are not evidence in and of themselves. The materials upon which they are based are evidence.

If the items listed on a summary chart are not in your opinion accurate or differ from your recollection of the evidence, you may disregard all or any part of the charts, diagrams and summaries and rely upon your recollection.

## **JURY'S RECOLLECTION CONTROLS**

If any reference by the Court or counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

In connection with notes you may have taken during the trial, neither your own notes nor those of fellow jurors should replace your own recollection, for it is possible that a note may be in error. If your personal recollection of the evidence is different than the information contained in any juror's notes, you must rely on your recollection.

**EACH PARTY ENTITLED TO THE BENEFIT OF ALL EVIDENCE**

There is no significance to be attached to the fact that certain witnesses were called to the witness stand by one party rather than the other. Each party is entitled to the benefit of any evidence tending to establish its contentions, even though such evidence may have come from the other party's witnesses.

### **PREPONDERANCE OF THE EVIDENCE**

Plaintiff has the burden to prove every essential element of her claims by a preponderance of the evidence. If she does not do so, then you should find for Defendant. If you find the evidence to be evenly balanced, then you must find for Defendant.

To establish something by a “preponderance of the evidence” means simply to prove that something is more likely to be so than not so. To put it differently, if you were to put Plaintiff’s and Defendant’s evidence on opposite sides of the scales, Plaintiff would have to make the scales tip somewhat on her side in order to prevail. Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value.

Plaintiff need only prove her case by a preponderance of the evidence; she need not prove her case beyond a reasonable doubt, as is necessary in criminal cases. But speculation or mere possibility is not sufficient to support a judgment in Plaintiff’s favor. Plaintiff is not obliged to produce all of the witnesses who may know something about her case; she simply has the burden to produce sufficient evidence to prove her case by a preponderance of the evidence.

The test is not which side brings the greater number of witnesses or produces the greater quantity of testimony, but which side produces those witnesses and evidence which in your minds are the more accurate and trustworthy.

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

### **CLAIMS OF THE PARTIES**

Plaintiff Joan Fredericks brings this case under the federal Rehabilitation Act against Defendant United States Postal Service Postmaster General John E. Potter. The Rehabilitation Act prohibits discrimination against disabled employees by recipients of federal funds. It is undisputed that Defendant is a recipient of federal funds and a covered entity under the Rehabilitation Act.

Plaintiff brings two claims under the Rehabilitation Act. First, Plaintiff alleges the Defendant violated her rights by denying her request for a reasonable accommodation for her disability. Second, Plaintiff alleges the Defendant violated her rights by retaliating against her when she complained about disability discrimination.

The Defendant denies it discriminated against Plaintiff and claims that Plaintiff is not a qualified disabled individual under the Rehabilitation Act. Defendant also denies it retaliated against Plaintiff.

It is your responsibility as the jury to decide whether the Plaintiff has proven her claims against the Defendant by a preponderance of the evidence as that term has been defined in these instructions.

### **STIPULATED FACTS**

The parties have agreed, or stipulated, to the following facts. This means that both sides agree that the following statements are fact. You must therefore treat these facts as having been proved.

1. Joan Fredericks began working for the U.S. Postal Service (“Post Office”) August 29, 1998. She began as a part-time flex clerk. In November 2003 she became a regular full-time clerk. Ms. Fredericks worked at the Bulk Mail Center – sometimes called the BMC – in Sharonville. As a clerk over the years, the Post Office gave her various assignments at the BMC facility.

2. Ms. Fredericks injured her right knee at work.

3. In March 2002 Ms. Fredericks was diagnosed with chondromalacia (kōn'drō-mə-lā'shə) patella, a knee condition that causes the cartilage underneath the kneecap to soften and degenerate.

4. Ms. Fredericks’ doctor permitted her to return to work on April 1, 2002 with restrictions that limited her walking, climbing stairs, kneeling, bending and stooping at work.

5. Ms. Fredericks applied for and was granted federal worker’s compensation benefits for the time she was off work.

6. On April 8, 2002, Ms. Fredericks returned to work. She requested a limited duty job which allowed her to work within her restrictions. She returned to work in a job that accommodated her restrictions.

7. On May 17, 2002 Richard Hohenstatt, a Post Office manager, informed Ms. Fredericks that the Post Office was unable to provide her with work based on her doctor’s restrictions. Ms. Fredericks was off work for five months.

8. In October 2002, the Post Office offered Ms. Fredericks a limited duty job within her restrictions. In October 2002, the Post Office offered Ms. Fredericks a limited duty job within her restrictions. The Post Office provided her with

limited duty in the "loose in the mail" section where she could sit and sort and repair loose mail. This assignment lasted for a year.

9. On October 8, 2003, the Post Office, reassigned Ms. Fredericks to third tour, beginning work at 7:00 pm and ending at 3:50 a.m. Due to this tour reassignment, her limited duty assignment in the loose in the mail section ended, as this section does not operate on third tour.

10. On October 21, 2003, the Post Office offered Ms. Fredericks a third shift limited duty position on a machine known as a small parcel bundle sorter. This job required Ms. Fredericks to use three steps to access this machine. Ms. Fredericks rejected this job offer stating that the three steps were outside her medical restrictions.

11. On October 24, 2003 Ms. Fredericks stopped working at the Post Office.

12. In March 2003, the federal worker's compensation office sent Ms. Fredericks to a physician, Dr. Sheridan, who confirmed her diagnosis of chondromalacia patella, and stated that her work restrictions were permanent.

13. While Ms. Fredericks was off work the federal worker's compensation office asked the Post Office to provide Ms. Fredericks a job position consistent with her restrictions. Other than the job offer described in Stipulation No 10 (the small parcel bundle sorter), the Postal Office did not make Ms. Fredericks another job offer.

14. In January 2005 Ms. Fredericks formally requested a reasonable accommodation in writing. A year later the Post Office's reasonable accommodation committee met with her. In February 2006 the committee denied her a reasonable accommodation request because it found she was not disabled. Shortly thereafter, Ms. Fredericks received a proposed notice of separation from the Post Office. She filed this lawsuit in March 2006. Because of this litigation she has not been separated and today remains an employee.

**ESSENTIAL ELEMENTS OF FAILURE TO ACCOMMODATE CLAIM**

Plaintiff claims the Defendant failed to reasonably accommodate Plaintiff in violation of the Rehabilitation Act.

For Plaintiff to establish her claim of unlawful disability discrimination, she must prove all the essential elements by a preponderance of the evidence. Plaintiff must prove the following elements:

1. Plaintiff's medical condition is a "disability" under the Act;
2. Plaintiff is a "qualified individual with a disability;"
3. The accommodation was needed, presently or in the near future, in order for the disabled employee to perform the essential functions of the position, *i.e.*, that a causal relationship existed between the disability and the request for accommodation;
4. Defendant was aware of Plaintiff's disability;
5. Plaintiff requested a reasonable accommodation; and
6. Defendant denied Plaintiff a reasonable accommodation.

If Plaintiff proves the existence of these six essential elements by a preponderance of the evidence, she has proven her case of discrimination based on failure to accommodate and your verdict shall be for Plaintiff.

**DEFINITION OF DISABILITY**

The term “disability” means a physical impairment that substantially limits one of the major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

It is undisputed that Plaintiff suffered from a physical impairment known as Chondromalacia Patellae.

**DISABILITY-MAJOR LIFE ACTIVITY**

A major life activity is one which is “of central importance to daily life.” There is no exhaustive list of major life activities. Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Plaintiff has claimed limitations in the major life activities of walking and caring for herself.

**DISABILITY-SUBSTANTIALLY LIMITED**

An impairment substantially limits one or more major life activities if an individual is unable to perform an activity, or is significantly limited in the ability to perform an activity, compared to an average person in the general population. In determining whether plaintiff is substantially limited in a major life activity, you should consider the nature and severity of her impairment; the duration or expected duration of her impairment; and the permanent or long-term impact, or the expected permanent or long-term impact of the impairment. Impairments that interfere only in a minor way with the performance of a major life activity are not substantial limitations. Moderate difficulty or pain is not a substantial limitation. A medical diagnosis alone does not establish a substantial limitation; whether an impairment is substantially limiting must be determined on a case-by-case basis.

**QUALIFIED INDIVIDUAL WITH A DISABILITY**

Plaintiff must prove by a preponderance of the evidence that she is a qualified individual with a disability.

A “qualified individual with a disability” is an individual who (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) can perform the essential functions of the position, with or without reasonable accommodation.

Plaintiff does not dispute that she cannot perform the essential functions of her position without accommodation.

Therefore, if the evidence shows that Ms. Fredericks was able to perform the essential functions of her position, with a reasonable accommodation, you should find that she was a qualified individual.

**DEFINITION OF ESSENTIAL JOB FUNCTIONS**

The term “essential job functions” means the fundamental duties of the Plaintiff’s job. The term “essential functions” does not include the marginal functions of the position.

## REASONABLE ACCOMMODATION

The term “reasonable accommodation” means making modifications to the work place that allow a person with a disability to perform the essential functions of the job.

Under the Rehabilitation Act, an employer must be willing to consider making certain changes, or accommodations, in its ordinary work rules, facilities, or the terms and conditions of employment in order to enable a disabled individual to work. A reasonable accommodation is a change which presently or in the near future will enable a disabled employee to perform the essential functions of the job.

The term “reasonable accommodation” may include:

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

A disabled employee has the obligation to first initiate communication and suggest a reasonable accommodation to the employer. An employee need not use “magic words” when asking for an accommodation. A request for accommodation need not be in writing or formally invoke the words “reasonable accommodation.” The notice nonetheless must make clear that the employee wants assistance for his or her disability. You may consider whether the employee or a representative for the employee provides the employer with enough information that, under the circumstances, the employer can fairly said to know of both the disability and desire for an accommodation. What information the employee’s initial notice must include depends on what the employer knows.

**DISABILITY DISCRIMINATION -- DUTY TO ENGAGE IN THE INTERACTIVE PROCESS AND GOOD FAITH**

Once the employee requests an accommodation, the employer shall initiate an informal, interactive process with the qualified individual. The employer has a duty to work with the employee to identify a reasonable accommodation. This interactive process requires communication between the employee and employer. The employer must meet the employee half way. The interactive process can include meeting with the employee to review a list of jobs in an effort to match her restrictions with the requirements of the available jobs.

An employer's refusal to participate in the process can be evidence of a violation of the federal law. If an employer's unwillingness to engage in such a process leads to a failure to reasonably accommodate an employee, the employer is liable for disability discrimination. A party that unreasonably obstructs or delays the interactive process is acting in bad faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith.

If you determine that the employer failed to offer Plaintiff a reasonable accommodation, or refused to participate in the interactive process, or acted in bad faith, or caused the breakdown of the interactive process, then you must conclude that Defendant failed to provide a reasonable accommodation.

On the other hand, Plaintiff may not be awarded damages if the Defendant demonstrates good faith efforts, in consultation with the Plaintiff, to identify and make a reasonable accommodation that would provide the Plaintiff with an equally effective opportunity to be accommodated.

## **ESSENTIAL ELEMENTS OF PLAINTIFF'S RETALIATION CLAIM**

Plaintiff's second claim is for retaliation. She claims that once she complained that Defendant would not accommodate her disability Defendant retaliated against her.

No employer shall discriminate against an employee because such individual has opposed any act of discrimination. A Plaintiff asserting a claim of retaliation must establish the following elements:

- (1) that she engaged in protected activity;
- (2) that the exercise of protected rights was known to the agents of the defendant who took the adverse action;
- (3) that the defendant thereafter took an adverse employment action against the plaintiff; and
- (4) there was a causal connection between the protected activity and the adverse employment action.

Filing a grievance or a charge of discrimination with the Equal Employment Opportunity agency is a protected activity. The parties agree that Plaintiff engaged in a protected activity by commencing grievance and EEO actions in October 2005.

An "adverse employment action" is a materially adverse change in the terms and conditions of employment. The parties agree that the decision of the District Reasonable Accommodations Committee in January 2006 and the proposed letter of separation issued in February 2006 were both adverse employment actions.

In order to determine if there is a causal connection between the protected activity and the adverse employment action, you may look to the proximity in time between the protected activity and the adverse action. The causal connection is strengthened if the defendant's retaliatory action occurred soon after the plaintiff's protected activity. However, temporal proximity, standing alone, is insufficient to establish a causal connection for a retaliation claim.

If the Plaintiff presents proof of all the elements of her retaliation claim, the Defendant may defend by stating legitimate reasons for its employment action.

If the Defendant presents legitimate reasons for its employment action, the Plaintiff must present evidence that the legitimate reasons were not its true reasons, but instead a pretext designed to mask retaliation.

## **PRETEXT**

A pretext is a fictitious reason advanced to conceal the real reason. Plaintiff can prove that a given reason for Defendant's decisions is pretextual (1) by proving by a preponderance of the legal evidence that the reason has no basis in fact; (2) by proving by a preponderance of the legal evidence that even if the reason had a basis in fact, the reason was insufficient to motivate the decision; or (3) by proving by a preponderance of the legal evidence that the reason did not actually motivate the decision. To prove pretext, Plaintiff must present more than her personal beliefs, conjecture or speculation, or the opinions of nondecisionmakers.

### **BUSINESS JUDGMENT**

You should be mindful that the law applicable to this case requires only that an employer not discriminate against an employee because of the employee's disability.

The laws do not require employers to make perfect decisions, nor do they forbid them from making decisions with which others may disagree, nor do the laws prohibit employers from treating employees unfairly or unjustly. The laws require only that employers not make employment decisions for discriminatory or retaliatory reasons. You must not second guess that decision or permit any sympathy for the Plaintiff to lead you to substitute your own judgment for that of the Defendant even though you personally may not approve of the action taken and would have acted differently under the circumstances.

An employer is entitled to make business decisions. A business decision can be based on subjective evaluations of an employee's conduct and/or performance, and making such evaluations does not automatically subject the employer to liability, nor does it automatically insulate the employer from liability.

You may consider the reasonableness or lack of reasonableness of the defendant's stated business judgment along with all the other legal evidence in determining whether defendant's actions were motivated by plaintiff's alleged disability or complaints of discrimination.

**DAMAGES**

The burden of proof is on the Plaintiff to establish all elements of damages. You are not permitted to award speculative damages. Damages must be reasonable. If you find the Plaintiff is entitled to a verdict, you will award her only such reasonable damages as you find from a preponderance of the evidence in this case that she has sustained as a direct result of the conduct of the Defendant.

## **COMPENSATORY DAMAGES**

If you find that Plaintiff has prevailed on her failure to accommodate claim or retaliation claim, then you must determine by a preponderance of the evidence an amount of money that will reasonably compensate Ms. Fredericks for her actual injury caused by the conduct of the United States Postal Service.

In awarding compensatory damages, you should consider the nature, character, seriousness, and duration of any emotional pain, suffering, inconvenience, and mental anguish that Plaintiff may have experienced from the discriminatory or retaliatory conduct. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence.

The damages that you award must be fair compensation – no more and no less. In determining the amount of any damages that you decide to award, you should be guided by common sense. You must use sound judgment in fixing an award of damages, drawing reasonable inferences from the facts in evidence.

You are not permitted to award speculative damages. This means you are not to include in any verdict compensation for prospective loss that, although possible, is wholly remote or left to conjecture or guess. Damages are considered speculative when their existence is uncertain or when the proof is insufficient to enable you to make a fair and reasonable assessment of damages.

### LOST WAGES AND BENEFITS

If you find that Plaintiff has prevailed on her failure to accommodate claim or her retaliation claim, then she is entitled to recover lost wages and benefits, including any increases in wages and benefits that Plaintiff would have received had Plaintiff not been discriminated against.

The parties agree that the amount of Plaintiff's lost wages from October 24, 2003 to the present are:

<b>Dates</b>	<b>Lost Wages</b>
10/24/03 to 12/31/03	\$6,288
2004	44,417
2005	47,146
2006	50,504
2007	53,127
1/1/08 – 8/15/08	29,544.88
<b>Total</b>	<b>\$231,026.88</b>

You may not deduct any Workers Compensation benefits received by Ms. Fredericks from any damages awarded.

### **MITIGATION OF DAMAGES**

Plaintiff has an obligation to use reasonable efforts to mitigate or lessen her damages by seeking and continuing to seek comparable employment in a related field. If Plaintiff failed to make reasonable efforts to obtain comparable employment, she is not entitled to recover any damages incurred after the date she failed to mitigate.

Plaintiff, however, does not have the burden of proving that she mitigated her damages. On this issue, Defendant has the burden of showing by a preponderance of the evidence that Plaintiff did not exercise reasonable diligence in seeking comparable employment in a related field.

In order to meet its burden of proving that Plaintiff failed to mitigate damages, Defendant must show by a preponderance of the evidence that there were comparable positions available which Plaintiff could have discovered and for which she was qualified, and that Plaintiff failed to exercise reasonable diligence in seeking such employment. Even if Defendant fails to offer evidence on the issue of mitigation, its burden may be satisfied by Plaintiff's evidence.

### **FRONT PAY**

If you find for the Plaintiff, the Court will determine whether the Defendant will reinstate the Plaintiff. If the Court declines to reinstate the Plaintiff, then Plaintiff must be awarded an amount of front pay to be determined by you. In that event, you must calculate separately, as future damages, an award of front pay. Front pay includes the amount the Plaintiff would have earned from the date of the verdict until the date that Plaintiff would have voluntarily resigned or obtained other employment.

In awarding front pay, the following factors are to be considered:

- (1) the employee's future in the position from which she was terminated;
- (2) her work and life expectancy;
- (3) her obligation to mitigate her damages
- (4) the availability of comparable employment opportunities and time reasonably required to find a substitute employment;
- (5) the discount tables to determine present value of future damages; and,
- (6) other factors that are pertinent in prospective damages awards.

Any amount of front pay or benefits you may make must be limited to the amount required to place Plaintiff in the position she would have occupied in the absence of discrimination.

If you award front pay, you must consider an ending date and must take into account any amount that the Plaintiff could earn using reasonable efforts.

## **REDUCTION TO PRESENT VALUE**

Should you decide to award front pay to Plaintiff, any award of front pay that you make must be reduced to its present value in order to take into account the present value of money. The reason you make this reduction is because an award of an amount representing future loss of earnings is more valuable to Plaintiff if Plaintiff receives it today than if Plaintiff were to receive it in the future, when Plaintiff would otherwise have earned it. To calculate the present value of the award, you should first determine the highest, safe rate of return that Plaintiff could reasonably expect to receive on any lump sum amount. You should multiply the rate of return by the number of years between now and when the Plaintiff would have received the money. Then, reduce the actual future loss amount by that resulting percentage to determine its present value. You should not reduce any lost back pay or benefits, or compensatory damages to present value.

**NO INFERENCE TO BE DRAWN FROM  
COURT'S DAMAGES INSTRUCTIONS**

The fact that I have instructed you on the elements of damages does not mean that I have any opinion as to what damages, if any at all, you should award in this case.

**IMPARTIAL CONSIDERATION OF EVIDENCE**

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of Plaintiff's complaint and Defendant's answers thereto. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

**MISCELLANEOUS**

The exhibits pertaining to the issues before you and a copy of these instructions will go to the jury room with you. All communication between yourselves and either the Court or the Clerk should be in writing, signed by the foreperson. This, of course, does not apply to your communication with the courtroom deputy about recesses, lunch, provisions in the jury room, directions to the courthouse and the like.

**ELECTION OF FOREPERSON**

Upon retiring to the jury room, you will select one of your members to act as your foreperson. The foreperson will preside over your deliberations, make certain that every juror has an opportunity to be heard, and will be your spokesperson here in Court. He or she will hand your verdict to the Clerk when you return to Court.

## **DELIBERATIONS**

After you adjourn to the jury room, it is your duty to deliberate on the evidence that has been presented to you. It may be helpful for you to first review the instructions I have just read to you and the verdict form which will be found in the back of the jury book. That will provide guidance for organizing and discussing the evidence that both sides have presented during the trial.

You may take a poll of the jury members regarding a verdict at any time, but a vote may be more productive after you first thoroughly discuss all the evidence before you.

**UNANIMOUS VERDICT AND DUTY TO DELIBERATE**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

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 abandoning your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow 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 your fellow jurors, or for the mere purpose of returning a verdict or because of the time of day.

Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole intent is to seek the truth from the evidence in the case.

**NO RECOMMENDED VERDICT**

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

### **SPECIAL INTERROGATORIES**

You will take these instructions, and a form including a series of written questions with you into the jury room. You will enter findings on the form indicating whether Plaintiff has proven disability discrimination in violation of the Rehabilitation Act. If you find in favor of Plaintiff, you will also enter findings indicating the amount of damages to be awarded. When you have reached a unanimous agreement as to your verdict, the foreperson will fill in, date and sign the form. All other jurors will sign the verdict form. Then advise the Court that you are ready to return to the courtroom with your verdicts by calling the courtroom deputy.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JOAN NADINE FREDERICKS,  
Plaintiff,

Case No. 1:06cv113

Magistrate Judge Hogan

v.

JOHN E. POTTER,  
Defendant.

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**SPECIAL INTERROGATORIES**

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Each of the following questions are to be resolved by unanimous vote of the jury:

1. Did the United States Postal Service discriminate against Joan Fredericks by not reasonably accommodating her disability?

YES \_\_\_\_ NO \_\_\_\_

2. Did the United States Postal Service retaliate against Joan Fredericks for complaining about the Postal Service not accommodating her?

YES \_\_\_\_ NO \_\_\_\_

If your answer to Question No. 1 or No. 2 is "YES," then go to Question No. 3. If your answer to Question No. 1 and No. 2 are both "NO," then sign the verdict form.

3. Is Joan Fredericks entitled to damages?

YES \_\_\_\_ NO \_\_\_\_

If your answer to No. 3 is "YES," go to Question No. 4. If your answer to No. 3 is "NO," then sign the verdict form.

4. The parties have stipulated to the amounts of lost wages. What is the amount that will compensate Joan Fredericks for lost wages and benefits?

AMOUNT \$ \_\_\_\_\_

5. What is the amount that will compensate Joan Fredericks for front pay?

AMOUNT \$ \_\_\_\_\_

6. What amount of compensatory damages, if any, will compensate Joan Fredericks? This amount shall be in addition to the lost wages and front pay amounts.

AMOUNT \$ \_\_\_\_\_

**ALL JURORS MUST SIGN THE VERDICT**

_____	_____
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_

Foreperson: \_\_\_\_\_