

ORIGINAL

COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
FOURTH DIVISION
CASE NO. 19-CI-1631

KEVIN BERLING

PLAINTIFF

v.

GRAVITY DIAGNOSTICS, LLC

DEFENDANT

JURY INSTRUCTIONS

INSTRUCTION NO. 1

(1) Immediately upon retiring to the jury room, you should elect one of your number to be foreperson.

(2) Nine or more of you must agree in order to make any of the determinations required by these instructions. The nine or more who agree on one, however, need not be the same jurors who agree on another.

(3) If nine or more, but less than twelve, of you agree on an instruction, those in agreement shall sign the verdict form. If all twelve of you agree on the answers to all of the determinations to which you are required to respond in an instruction, the foreperson alone can sign for you, indicating a unanimous verdict as to that Instruction.

INSTRUCTION NO. 2

For the purpose of these Instructions, the following words or terms have the following meanings:

Adverse Employment Action – an adverse employment action is an action taken by an employer which is materially adverse to the employee, and can include, by way of example only, demotion, discipline, reduction in pay or job responsibilities, or termination.

Disability – an individual has a disability under the terms of Kentucky law if he (a) has a physical or mental impairment that substantially limits one or more major life activities; or (b) has a record of such an impairment; or (c) is regarded as having such an impairment.

Substantially Limiting – in determining whether a disability is “substantially limiting,” an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives and the impairment’s impact must be permanent or long term.

Factors to be considered in determining whether a disability is “substantially limiting” are: (i) the nature and severity of the impairment; (ii) the duration of or expected duration of the impairment; and (iii) the permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

Major Life Activity – a major life function including, but not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Reasonable Accommodation – making existing facilities used by employees readily accessible to and usable by individuals with disabilities; 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.

INSTRUCTION NO. 3

Kentucky law protects workers who have a disability from adverse employment actions taken by their employers because of the disability.

You will find for the Plaintiff, Kevin Berling, if and only if you believe from the evidence alone all of the following:

- A. That Plaintiff had a disability as defined in Instruction No. 2;
- AND,
- B. That Plaintiff was able to perform the essential functions of his job with, or without, reasonable accommodations;
- AND,
- C. That Plaintiff suffered an adverse employment action because of that disability.

Otherwise, you will find for the Defendant, Gravity Diagnostics.

Question A

Do you believe from the evidence that Plaintiff suffered an adverse employment action because of a disability as explained in Instruction No. 3?

YES X

NO _____

Michael J. Rouse
FOREPERSON, if unanimous

*If you answered YES to Question A, please proceed to Instruction No. 4;
If you answered NO to Question A, your verdict is complete.*

INSTRUCTION NO. 6

You have found for the Plaintiff, Kevin Berling. You must now determine from the evidence what sum of money will reasonably compensate him for his damages.

Question B

(i) We, the jury, have found for the Plaintiff, Kevin Berling, and find that the sum of \$ 120,000 (not to exceed \$120,000.00) will reasonably compensate him for his lost wages, considering the gross amount of compensation he would have earned from Gravity Diagnostics between August 9, 2019, and the present, including benefits, and less any compensation he actually earned or could have earned through the exercise of reasonable diligence.

Michael J. House
FOREPERSON, if unanimous

(ii) We, the jury, have found for the Plaintiff, Kevin Berling, and find that the sum of \$ 30,000.00 (not to exceed \$64,130.40) will reasonably compensate him for his lost wages and benefits in the future.

Michael J. Rouse
FOREPERSON, if unanimous

(iii) We, the jury, have found for the Plaintiff, Kevin Berling, and find that the sum of \$ 300,000.00 (not to exceed \$500,000.00) will reasonably compensate him for his past, present and future mental pain and suffering, mental anguish, embarrassment, humiliation, mortification, and loss of self-esteem.

Michael J. Roese
FOREPERSON, if unanimous

Your verdict is complete.