

## **Exhibit 1**

## **Plaintiff's Revised Proposed Issue Instruction 2**

The following facts are not in dispute:

1. The plaintiff had several serious health conditions, including PTSD and anxiety, requiring time off from work due to anxiety and flashbacks, lack of concentration.
2. Plaintiff applied for FMLA leave in 2014 and 2015 for the next year.
3. The Sheriff granted plaintiff's request for FMLA leave each year on an "intermittent basis" of 7 episodes a month up to 1 day per episode."
4. On September 15, 2016, plaintiff's treating psychiatrist, Dr. Danish Hangora, recommended that plaintiff take 8 weeks off and attend a partial hospitalization to secure treatment for psychological programs.
5. Thereafter, plaintiff spoke with the Sheriff's FMLA manager, Wylola Shinnawi, to discuss taking more FMLA leave,
6. After speaking with Shinnawi, Plaintiff resigned from his employment with the Sheriff on September 20, 2016.

Plaintiff claims that the Sheriff's FMLA manager interfered with his right to exercise FMLA leave, and that this interference caused him to resign. The Sheriff denies each contention.

To succeed on this claim plaintiff must prove that the Sheriff's FMLA manager interfered with his right to exercise FMLA leave. If you find for the defendant Sheriff on this issue, you should return a verdict for the defendant.

If you find in favor of plaintiff on the issue of interference, then you should decide whether this interference caused plaintiff to resign. If you find for the defendant Sheriff on the issue of interference, you should return a verdict for the defendant.

If you have found for the plaintiff on both issues, you should then turn to the amount of lost wages and benefits, if any, to which plaintiff is entitled.

The FMLA authorizes damages for wages, salary, benefits, or other compensation lost. The statute does not allow damages for emotional distress.

Plaintiff has presented evidence about the *lost sick time*, wages and benefits he would have received had he not resigned. Defendant has argued that the amount wages should be reduced because plaintiff did not mitigate his damages. Defendant has the burden of proof on this issue.

If you find that Defendant has proven a failure to mitigate, you should reduce any amount you might award Plaintiff for lost wages or benefits by the amount you find he reasonably would have earned during the period for which you are awarding lost wages or benefits.

If you find that plaintiff has not proved that he is entitled to compensation for lost wages or benefits, then you should return a verdict in favor of plaintiff and against defendant in the amount of one dollar.

[authority and original objections on next page]

*Ziccarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022), Seventh Circuit Pattern Jury Instruction 10.1.  
*Trahanas v. N.W. U.*, 64 F.4th 842, 858 (7th Cir. 2023) (no emotional distress damages);  
*Simon v. Coop. Educ. Serv. Agency #5*, 46 F.4th 602, 611 n.3 (7th Cir. 2022) (availability of nominal damages is an open question)

**Plaintiff**

\*\*Defendants object to this instruction because it does not accurately reflect the holding in *Ziccarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022). Several of the bases for Defendants' objections are addressed in Defendants' motions in limine. The final sentence of the instruction does not accurately reflect the holding of *Simon v. Coop. Educ. Serv. Agency #5*, 46 F.4th 602, 611 n.3 (7th Cir. 2022) (plaintiff sought only injunctive and declaratory relief not a damage award at trial and therefore attorney fees were allowable.

Plaintiff's Revised Proposed Form of Verdict

**VERDICT FORM**

Check either "for plaintiff" or "for defendant" and, if "for plaintiff" fill in the amount of damages:

We, the jury, find:

For plaintiff and award:

Compensation for lost sick time \$\_\_\_\_\_

Compensation for lost wages \$\_\_\_\_\_

Compensation for lost benefits \$\_\_\_\_\_.

For defendant.

Each member of the jury must sign on one of the lines below. The foreperson also should write today's date on the appropriate line. After the signatures and date have been added, please return the entire Verdict Form to the court security officer.

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Foreperson

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Juror

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

**Plaintiff**

\*\*Defendants object to the verdict form based on issues raised in Defendants' motions in limine.