

13-2304. Retaliatory discharge.

In this case you must [also] determine whether _____
(*employee*) was discharged because [he][she] _____ (*insert
conduct court has determined is protected by public policy*). If
_____ (*employee*) was discharged because [he] [she]
_____ (*insert conduct court has determined is protected by
public policy*) [and if _____ (*employee's*) conduct which
triggered the discharge was taken in furtherance primarily of a public interest rather
than primarily a private interest], then the discharge was retaliatory and was wrongful.

In determining whether _____ (*employee*) was
discharged because [he] [she] _____ (*insert conduct court has
determined is protected by public policy*), you must determine whether that conduct was
a motivating factor in the decision to discharge [him] [her]. A motivating factor is a factor
that plays a role in the decision to discharge. It need not be the only reason, nor the last
nor latest reason, for the discharge.

USE NOTES

This instruction should be given in all wrongful discharge cases involving a claim
of discharge in violation of public policy. If the case involves issues of employment at
will, this instruction should immediately follow UJI 13-2301, UJI 13-2302 or UJI 13-
2303, if given.

Before this instruction is given, the court must determine as a matter of law that
a public policy exists that was violated if plaintiff was discharged for the reason alleged.

A statement of the public policy relied on by the plaintiff and a description of the
act or refusal to act which was allegedly the reason for the discharge should be inserted
in the instruction as indicated.

The bracketed clause in the second sentence, which raises the issue of public
versus private interest, is to be given only in the limited class of "whistleblower" cases in
which the plaintiff made a report of wrongdoing to a private party rather than to public
authorities. See Committee Commentary.

In some cases, it may be appropriate to give further instruction to the jury on the
causation requirement associated with this claim. In those cases, the trial court must
fashion a supplemental instruction based on the court's determination of the governing
law.

[Approved, effective January 1, 1999; as amended by Supreme Court Order No. 08-
8300-012, effective June 13, 2008.]