

13-2320. Special verdict form for wrongful discharge cases.

Question 1:

(A) Was there an implied contract of employment between _____ (*plaintiff*) and _____ (*defendant*) that _____ (*plaintiff*) would only be discharged [for cause] [and] [or] [through the use of certain procedures]?

Answer: _____ (Yes or No)

If the answer to Question 1(A) is "Yes," answer Question 1(B).

If the answer to Question 1(A) is "No," go to Question 2.

(B) Did _____ (*defendant*) breach the implied contract of employment with _____ (*plaintiff*)?

Answer: _____ (Yes or No)

If the answer to Question 1(A) is "Yes," and you have answered Question 1(B) (regardless of the answer), go to Question 3.

Question 2: Was _____ (*name of the plaintiff*)'s _____ (*alleged impermissible basis for termination*) a motivating factor in the decision to discharge _____ (*name of the plaintiff*)?

Answer: _____ (Yes or No)

Go to Question 3.

Question 3: Did _____ (*defendant*) discharge _____ (*plaintiff*) in violation of _____ (*identify the statute in question, e.g., the New Mexico Human Rights Act, Title VII, etc.*)?

Answer: _____ (Yes or No)

If you did not answer Question 1(B) or if you answered "No" to Question 1(B), and if the answers to Question 2 and Question 3 are "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendant and against the plaintiff, and you will all return to open court.

If your answer to any of Questions 1(B), 2, or 3 is "Yes," you are to answer Question 4.

Question 4: Did _____'s (*defendant's*) conduct cause damage to _____ (*plaintiff*)?

Answer: _____ (Yes or No)

If the answer to Question 4 is "No," you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for the defendant and against the plaintiff, and you will all return to open court.

If the answer to Question 4 is "Yes," also answer Question 5.

Question 5: In accordance with the damage instructions given by the court, we find the damages suffered by _____ (*plaintiff*) to be:

(Elements of damages)	(Amount)
_____	\$ _____
_____	\$ _____

If the answer to Question 2 is "Yes," also answer Question 6.

Question 6: Did _____ (*plaintiff*) suffer emotional distress as a result of _____'s (*defendant's*) violation of _____ (*a statute allowing for recovery of emotional distress damages, e.g., the New Mexico Human Rights Act or Title VII*)?

Answer: _____ (Yes or No)

If the answer to Question 6 is "Yes," also answer Question 7.

Question 7: In accordance with the damage instructions given by the court, we find the damages suffered by _____ (*plaintiff*) for emotional distress to be \$ _____.

Foreperson

USE NOTES

This instruction provides a form of special verdict for a wrongful discharge case involving claims for breach of an implied employment contract, retaliatory discharge, and violation of the New Mexico Human Rights Act [28-1-1 NMSA 1978]. It should be modified as necessary to suit the case at hand. The Court may exercise its discretion to utilize a general verdict form if appropriate in a given case. The Court should determine the appropriate elements of damage to be included under Question 5.

[Approved, effective January 1, 1999; as amended by Supreme Court Order No. 08-8300-012, effective June 13, 2008; by Supreme Court Order No. 12-8300-012, effective May 19, 2012.]