

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIM MUNIZ,  
Plaintiff,  
v.  
UNITED PARCEL SERVICE,  
Defendant.

No. C 09-1987 CW  
PRELIMINARY JURY  
INSTRUCTIONS

**DUTY OF THE JURY**

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. You will be given a copy of these instructions to keep throughout the trial. This set of instructions is not to be taken home and must remain in the jury room when you leave in the evenings. At the end of the trial, I will give you a final set of instructions. It is the final set of instructions which will govern your deliberations.

You must not infer from these instructions or from anything I may say or do that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the

1 case. To those facts you will apply the law as I give it to you.  
2 You must follow the law as I give it to you whether you agree with  
3 it or not. And you must not be influenced by any personal likes or  
4 dislikes, opinions, prejudices, or sympathy. That means that you  
5 must decide the case solely on the evidence before you. You will  
6 recall that you took an oath to do so.

7 In following my instructions, you must follow all of them and  
8 not single out some and ignore others; they are all important.

9 **CLAIMS AND DEFENSES**

10 To help you follow the evidence, I will first give you a brief  
11 summary of the positions of the parties:

12 Plaintiff Kim Muniz claims that Defendant UPS unlawfully  
13 discriminated against her on the basis of her gender and  
14 negligently hired, supervised or retained one of its employees, Ron  
15 Meyer. In particular, she complains of three adverse employment  
16 actions taken against her: (1) the denial of a stock bonus; (2) her  
17 placement on a performance improvement plan; and (3) her demotion.  
18 Ms. Muniz alleges that she suffered damages as a result of these  
19 actions. In separate instructions, I will explain what constitutes  
20 discrimination based on gender and what damages are recoverable.  
21 Ms. Muniz has the burden of proving these claims.

22 UPS denies those claims. UPS contends that, regardless of any  
23 discriminatory animus, it would have made the same decisions with  
24 regard to the adverse employment actions described above. I will  
25 explain what this affirmative defense means in a separate  
26 instruction. UPS has the burden of proof on this affirmative  
27 defense.

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**CORPORATIONS**

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors and officers performed within the scope of authority. All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

**BURDEN OF PROOF**

Ms. Muniz must prove her claims and UPS must prove its affirmative defenses by a preponderance of the evidence. When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

**WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the lawyers may agree.

**WHAT IS NOT EVIDENCE**

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1 (1) Arguments and statements by lawyers are not evidence. The  
2 lawyers are not witnesses. What they will say in their opening  
3 statements, closing arguments, and at other times is intended to  
4 help you interpret the evidence, but it is not evidence. If the  
5 facts as you remember them differ from the way the lawyers state  
6 them, your memory of them controls.

7 (2) Questions and objections by lawyers are not evidence.  
8 Attorneys have a duty to their clients to object when they believe  
9 a question is improper under the rules of evidence. You should not  
10 be influenced by the objection or by the Court's ruling on it.

11 (3) Testimony that is excluded or stricken, or that you are  
12 instructed to disregard, is not evidence and must not be  
13 considered.

14 (4) Anything you see or hear when the Court is not in session  
15 is not evidence. You are to decide the case solely on the evidence  
16 received at the trial.

17 **EVIDENCE FOR LIMITED PURPOSE**

18 Some evidence may be admitted for a limited purpose only. If  
19 I instruct you that an item of evidence is admitted for a limited  
20 purpose, you must consider it only for that limited purpose and for  
21 no other.

22 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

23 Evidence may be direct or circumstantial. Direct evidence is  
24 direct proof of a fact, such as testimony by a witness about what  
25 that witness personally saw or heard or did. Circumstantial  
26 evidence is proof of one or more facts from which you could find  
27 another fact. You should consider both kinds of evidence. The law

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1 makes no distinction between the weight to be given to either  
2 direct or circumstantial evidence. It is for you to decide how  
3 much weight to give to any evidence.

4 **RULING ON OBJECTIONS**

5 There are rules of evidence that control what can be received  
6 into evidence. When a lawyer asks a question or offers an exhibit  
7 into evidence and a lawyer on the other side thinks that it is not  
8 permitted by the rules of evidence, that lawyer may object. If I  
9 overrule the objection, the question may be answered or the exhibit  
10 received. If I sustain the objection, the question cannot be  
11 answered, and the exhibit cannot be received. Whenever I sustain  
12 an objection to a question, you must ignore the question and must  
13 not guess what the answer might have been.

14 **CREDIBILITY OF WITNESSES**

15 In deciding the facts in this case, you may have to decide  
16 which testimony to believe and which testimony not to believe. You  
17 may believe everything a witness says, or part of it, or none of  
18 it.

19 In considering the testimony of any witness, you may take into  
20 account:

- 21 (1) the opportunity and ability of the witness to see or hear  
22 or know the things testified to;  
23 (2) the witness's memory;  
24 (3) the witness's manner while testifying;  
25 (4) the witness's interest in the outcome of the case and any  
26 bias or prejudice;  
27 (5) whether other evidence contradicts the witness's

- 1 testimony;
- 2 (6) the reasonableness of the witness's testimony in light of
- 3 all the evidence; and
- 4 (7) any other factors that bear on believability.

5 The weight of the evidence as to a fact does not necessarily

6 depend on the number of witnesses who testify about it.

7 **CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE**

8 Certain charts and summaries not received in evidence may be

9 shown to you in order to help explain the contents of books,

10 records, documents, or other evidence in the case. They are not

11 themselves evidence or proof of any facts. If they do not

12 correctly reflect the facts or figures shown by the evidence in the

13 case, you should disregard these charts and summaries and determine

14 the facts from the underlying evidence

15 **OVERVIEW OF APPLICABLE LAW - GENDER DISCRIMINATION CLAIM**

16 Ms. Muniz claims that UPS wrongfully discriminated against

17 her. The parties agree that Ms. Muniz was employed by UPS. Thus,

18 to establish her claim, Ms. Muniz must prove all of the following:

- 19 (1) That UPS took an adverse employment action against Ms.
- 20 Muniz. She claims that UPS did not provide her with a
- 21 stock bonus; placed her on a performance improvement
- 22 plan; and demoted her.
- 23 (2) That Ms. Muniz's gender was a motivating reason for any
- 24 of the adverse employment actions of which she complains.
- 25 (3) That Ms. Muniz was harmed; and
- 26 (4) That the claimed adverse employment action or actions
- 27 were a substantial factor in causing Ms. Muniz's harm.

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**MOTIVATING REASON**

A "motivating reason" is a reason that contributed to the decision to take certain action, even though other reasons also may have contributed to the decision.

**SUBSTANTIAL FACTOR**

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

**INFLUENCE OF A BIASED SUBORDINATE**

Ms. Muniz may prove that her gender was a motivating reason for an adverse employment decision by proving that the person who made the decision was influenced by another person who was motivated by gender discrimination. To do so, Ms. Muniz must prove that Ron Meyer was motivated by gender discrimination and that his discriminatory intent influenced or contributed to adverse employment decisions made by Mary Gill. Ms. Muniz must prove that Mr. Meyer "contributed materially" to the adverse employment decision. An individual contributed materially to a decision if he had a "pervasive influence" over the decision.

**"SAME DECISION" AFFIRMATIVE DEFENSE**

Even if Ms. Muniz proves each element of her claim that gender discrimination was a motivating factor in one or more adverse employment decisions, UPS can escape liability by proving that

(1) it had a non-discriminatory reason for taking the adverse

1           employment action or actions and  
2           (2) it is more likely than not that the same adverse  
3           employment action or actions would have been taken for  
4           the non-discriminatory reason.

5                           **UPS'S BUSINESS JUDGMENT**

6           UPS had the right to make its business decisions, including  
7 personnel decisions, for a good reason, a bad reason or no reason  
8 at all, as long as the decisions were not motivated by intentional  
9 gender discrimination.

10                           **DAMAGES - PROOF**

11           It is the duty of the Court to instruct you about the measure  
12 of damages. By instructing you on damages, the Court does not mean  
13 to suggest for which party your verdict should be rendered.

14           If you find for Ms. Muniz, you must determine her damages.  
15 She has the burden of proving damages by a preponderance of the  
16 evidence. Damages means the amount of money that will reasonably  
17 and fairly compensate Ms. Muniz for any injury you find was caused  
18 by UPS. Damages claimed by Ms. Muniz fall into two categories  
19 called economic damages and non-economic damages. You should  
20 consider the following: (1) the reasonable value of past and future  
21 medical expenses; (2) the reasonable value of compensation lost to  
22 the present time; (3) the reasonable value of compensation which  
23 with reasonable probability will be lost in the future; (4) the  
24 mental suffering, loss of enjoyment of life, inconvenience, grief,  
25 anxiety, humiliation and emotional distress experienced to the  
26 present time and reasonably expected in the future.

27           It is for you to determine what damages, if any, have been  
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1 proved. No fixed standard exists for deciding the amount of non-  
2 economic damages. You must use your judgment to decide a  
3 reasonable amount based on the evidence and our common sense.

4 Your award must be based upon evidence and not upon  
5 speculation, guesswork or conjecture.

6 **DAMAGES ARISING IN THE FUTURE - DISCOUNT TO PRESENT CASH VALUE**

7 Any award for future economic damages must be for the present  
8 cash value of those damages.

9 Future non-economic damages, such as mental suffering and  
10 emotional distress, are not reduced to present cash value.

11 Present cash value means the sum of money needed now, which,  
12 when invested at a reasonable rate of return, will pay future  
13 damages at the times and in the amounts that you find the damages  
14 will be incurred.

15 **NO PUNITIVE DAMAGES**

16 You must not include in your award any damages to punish or  
17 make an example of UPS. Such damages would be punitive damages,  
18 and they cannot be a part of your verdict. You must award only the  
19 damages that fairly compensate Ms. Muniz for her loss.

20 **CONDUCT OF THE JURY**

21 I will now say a few words about your conduct as jurors.

22 First, keep an open mind throughout the trial, and do not  
23 decide what the verdict should be until you and your fellow jurors  
24 have completed your deliberations at the end of the case.

25 Second, because you must decide this case based only on the  
26 evidence received in the case and on my instructions as to the law  
27 that applies, you must not be exposed to any other information

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1 about the case or to the issues it involves during the course of  
2 your jury duty. Thus, until the end of the case or unless I tell  
3 you otherwise do not communicate with anyone in any way and do not  
4 let anyone else communicate with you in any way about the merits of  
5 the case or anything to do with it. This includes discussing the  
6 case in person, in writing, by phone or electronic means, via e-  
7 mail, text messaging, or any Internet chat room, blog, Web site or  
8 other feature. This applies to communicating with your fellow  
9 jurors until I give you the case for deliberation, and it applies  
10 to communicating with everyone else including your family members,  
11 your employer, and the people involved in the trial, although you  
12 may notify your family and your employer that you have been seated  
13 as a juror in the case. But, if you are asked or approached in any  
14 way about your jury service or about this case, you must respond  
15 that you have been ordered not to discuss the matter and to report  
16 the contact to the court. Because you will receive all the  
17 evidence and legal instruction you properly may consider to return  
18 a verdict: do not read, watch, or listen to any news or media  
19 accounts or commentary about the case or anything to do with it; do  
20 not do any research, such as consulting dictionaries, searching the  
21 Internet or using other reference materials; and do not make any  
22 investigation or in any other way try to learn about the case on  
23 your own.

24       The law requires these restrictions to ensure the parties have  
25 a fair trial based on the same evidence that each party has had an  
26 opportunity to address. A juror who violates these restrictions  
27 jeopardizes the fairness of these proceedings, and a mistrial could  
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1 result that would require the entire trial process to start over.  
2 If any juror is exposed to any outside information, please notify  
3 the court immediately.

4 **NO TRANSCRIPT AVAILABLE TO JURY**

5 During deliberations, you will have to make your decision  
6 based on what you recall of the evidence. You will not have a  
7 transcript of the trial. I urge you to pay close attention to the  
8 testimony as it is given.

9 If at any time you cannot hear or see the testimony, evidence,  
10 questions or arguments, let me know so that I can correct the  
11 problem.

12 **TAKING NOTES**

13 If you wish, you may take notes to help you remember the  
14 evidence. If you do take notes, please keep them to yourself until  
15 you and your fellow jurors go to the jury room to decide the case.  
16 Do not let note-taking distract you. When you leave, your notes  
17 should be left in the jury room. No one will read your notes.  
18 They will be destroyed at the conclusion of the case.

19 Whether or not you take notes, you should rely on your own  
20 memory of the evidence. Notes are only to assist your memory. You  
21 should not be overly influenced by your notes or those of your  
22 fellow jurors.

23 **QUESTIONS TO WITNESSES BY JURORS**

24 You will be allowed to propose written questions to witnesses.  
25 You may propose questions in order to clarify the testimony, but  
26 you are not to express any opinion about the testimony or argue  
27 with a witness. If you propose any questions, remember that your

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1 role is that of a neutral fact finder, not an advocate. You may  
2 write out your questions. Do not sign the questions. I will  
3 review the question with the attorneys to determine if it is  
4 legally proper.

5 There are some proposed questions that I will not permit, or  
6 will not ask in the wording submitted by the juror. This might  
7 happen either due to the rules of evidence or other legal reasons,  
8 or because the question is expected to be answered later in the  
9 case. If I do not ask a proposed question, or if I rephrase it, do  
10 not speculate as to the reasons. Do not give undue weight to  
11 questions you or other jurors propose. You should evaluate the  
12 answers to those questions in the same manner you evaluate all of  
13 the other evidence.

14 By giving you the opportunity to propose questions, I am not  
15 requesting or suggesting that you do so. It will often be the case  
16 that a lawyer has not asked a question because it is legally  
17 objectionable or because a later witness may be addressing that  
18 subject.

19 **OUTLINE OF TRIAL**

20 The trial will now begin. First, each side may make an  
21 opening statement. An opening statement is not evidence. It is  
22 simply an outline to help you understand what that party expects  
23 the evidence will show.

24 After opening statements, Ms. Muniz will present evidence, and  
25 counsel for UPS may cross-examine. Then UPS may present evidence,  
26 and counsel for Ms. Muniz may cross-examine.

27 After the evidence has been presented, I will instruct you on  
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1 the law that applies to the case and the attorneys will make  
2 closing arguments. After that, you will go to the jury room to  
3 deliberate on your verdict. After you have reached your verdict,  
4 you will be excused.

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6 Dated: September 16, 2010



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CLAUDIA WILKEN  
United States District Judge

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