

PJC 107.6 Question and Instruction on Unlawful Employment Practices

QUESTION _____

Was [*race, color, disability, religion, sex, national origin, or age*] a motivating factor in *Don Davis*'s decision to [*fail or refuse to hire, discharge, or (describe other adverse employment action)*] *Paul Payne*?

A “motivating factor” in an employment decision is a reason for making the decision at the time it was made. There may be more than one motivating factor for an employment decision.

If you do not believe the reason *Don Davis* has given for [*failing or refusing to hire, discharge, or (describe other adverse employment action)*], you may, but are not required to, infer that *Don Davis* was motivated by *Paul Payne*'s [*race, color, disability, religion, sex, national origin, or age*].

Answer “Yes” or “No.”

Answer: _____

COMMENT

When to use. PJC 107.6 should be used for a claim that the employer has committed an unlawful employment practice as set out in [Tex. Lab. Code §§ 21.001–.556](#) (chapter 21) (formerly Texas Commission on Human Rights Act (TCHRA)). PJC 107.6 applies to employment practices prohibited by [Tex. Lab. Code § 21.051\(1\)](#) and will need to be modified according to the facts of the case. If there is a fact issue concerning the existence of an adverse employment action, an additional instruction or question may be necessary. See, e.g., PJC 107.10 (constructive discharge). If the claim is for discrimination based on a regarded-as or perceived disability, see PJC 107.11B.

Broad-form submission. PJC 107.6 is a broad-form question designed to be accompanied by one or more appropriate instructions. [Tex. R. Civ. P. 277](#) requires that “the court shall, whenever feasible, submit the cause upon broad-form questions.” [Tex. R. Civ. P. 277](#); see *Thota v. Young*, 366 S.W.3d 678, 689 (Tex. 2012) (rule 277’s use of “whenever feasible” mandates broad-form submission in any or every instance in which it is capable of being accomplished). For further discussion, see PJC 116.2 regarding broad-form issues and the *Casteel* doctrine.

Use of federal law. Chapter 21 of the Labor Code is expressly intended to implement policies of title VII of the Civil Rights Act of 1964, [42 U.S.C. §§ 2000e](#) to e–17; title I of the Americans with Disabilities Act of 1990, [42 U.S.C. §§ 12101–12213](#); and