

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON**

C. MARTIN GASKELL,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 09-244-KSF
vs.	)	
	)	
UNIVERSITY OF KENTUCKY,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF’S PROPOSED JURY INSTRUCTIONS**

Pursuant to the Court’s Amended Scheduling Order [DE #17] No. (10), Plaintiff, by and through undersigned counsel, proposes the following jury instructions to be used at the trial of this matter February 8, 2011:

**I. Title VII General Instruction**

Plaintiff, Dr. Martin Gaskell, brings this action against the Defendant, the University of Kentucky, under Title VII, the Civil Rights Act of 1964, which makes it unlawful for an employer not to hire an individual because of such individual’s race, color, religion, sex, or national origin.

Gaskell alleges that the University failed to hire him because of his religion.

Title VII defines religion to include all aspects of religious observance, practice, and belief.

Sources of Instruction: *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 396 (2008); 42 U.S.C. § 2000e(j).

## **II. Motivating Factor — Mixed Motives Instruction**

Your verdict will be for Gaskell if you find that Gaskell has demonstrated by a preponderance of the evidence that Gaskell's religion was a motivating factor in the University's decision not to hire him, even if other factors also motivated the University's decision.

However, if you find that the University's treatment of Gaskell was motivated by Gaskell's religion and lawful reasons, you must decide whether Gaskell is entitled to damages.

Gaskell is entitled to damages unless the University proves by a preponderance of the evidence that the University would not have hired Gaskell even if Gaskell's religion had played no role in the decision.

Remember that Gaskell is not obligated to show that the University's legitimate reasons played no role in the decision not to hire Gaskell, nor does Gaskell need to show that his religion was the sole or principal reason or the true reason which motivated the University's decision not to hire him.

Sources of Instruction: *Barnes v. City of Cincinnati*, 401 F.3d 729, 740 (6<sup>th</sup> Cir. 2005); *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 94-5 (2003).

## **III. Actual Damages Instruction**

If you find in favor of Gaskell that his religion was a motivating factor in the University's decision not to hire him, and you find that he is entitled to damages, then you must award Gaskell such sum as you find will fairly and justly compensate him for any damages you find he sustained as a direct result of the University's decision not to hire him.

Gaskell's claim for damages includes three distinct types of damages and you must consider them separately:

1. The wages and fringe benefits Gaskell would have earned in his employment with the University from the date he would have been hired by the University through

the date of your verdict, minus the amount of earnings and benefits that Gaskell received from other employment during that time.

2. Future wages and fringe benefits Gaskell would reasonably have earned in his employment with the University from the date of your verdict through [*specify cut-off date for any "front pay" award*], minus the amount of earnings and benefits Gaskell will receive from other employment during that time.
3. Any other damages sustained by Gaskell, such as future pecuniary losses, emotional pain, suffering, inconvenience, and mental anguish.

You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Gaskell has a duty under the law to "mitigate" his damages; that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find by the preponderance of the evidence that Gaskell failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

Source of Instruction: *Model Jury Instructions (Civil) Eighth Circuit* §5.02 (2001).

Dated this 5<sup>th</sup> day of January, 2011,

/s/ Francis J. Manion

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 5<sup>th</sup>, 2011, I electronically filed the foregoing Plaintiff's Proposed Jury Instructions, by emailing a copy to Hon. K. S. Forester, pursuant to the Amended Scheduling Order, and with the Clerk of Court using the CM/ECF filing system and, which will send notification of such filing to the following:

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/s/ Francis J. Manion