

NOTICE TO THE BAR

MODEL CIVIL JURY CHARGES UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the revision of the following Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including the following charges, are available for downloading from the Judiciary's website at <http://www.njcourts.gov/attorneys/civilcharges.html>.

2.22 Unlawful Employment Practices Under the New Jersey Law Against Discrimination (LAD) — RETALIATION (N.J.S.A. 10:5-12(d) and -12(r)) (Approved 09/2009; Revised 01/2019)

This charge is revised to incorporate and reference the amendment to section 12(d) and the new section 12(r) of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12, based on the enactment of the Diane B. Allen Equal Pay Act (New Jersey Equal Pay Act).

2.24A New Jersey Equal Pay Act (Approved 03/2019)

This new charge is created in light of the new Diane B. Allen Equal Pay Act.

2.24B Wage Disparity Under the NJLAD (Formerly 2.24) (Approved 05/1991; Revised 03/2019)

A Note to Judge is added to incorporate reference to the Diane B. Allen Equal Pay Act ("NJEPa") as well as citation to *Perrotto v. Morgan Advanced Materials, PLC*, No. 2:18-13825, 2019 U.S. Dist. LEXIS 6745 (D.N.J. Jan. 15, 2019), an unpublished District of New Jersey case that held that the NJEPa does not apply retroactively. This charge will continue to apply to equal pay claims that predate the effective date of the NJEPa. This charge is redesignated as 2.24B since it is likely to have limited application going forward.

2.41 Worker's Compensation Retaliation (Approved 01/2019)

This new charge is created to address cases where retaliation for seeking Worker's Compensation benefits is alleged.

5.10A Negligence and Ordinary Care – General (Approved before 1984; Revised 01/2019)

Reference to *Henebema v. S. Jersey Transp. Auth.*, 403 N.J. Super. 485, 506-07 (App. Div. 2013), *aff'd*, 219 N.J. 481 (2014), is added to the Note to Judge to advise where there is a genuine dispute of material fact as to whether one or more of the parties performed a discretionary function (subject to a “palpably unreasonable” standard) or ministerial function (subject to “ordinary negligence principles”), N.J.S.A. 59:2-3, N.J.S.A. 59:3-2, both the final jury charge and the verdict sheet must be tailored so the jury can make the appropriate fact findings and evaluate the party’s liability exposure using the proper standard of care.

5.12 Gross Negligence (Approved 02/2004; Revised 03/2019)

Reference to *Steinberg v. Sahara Sam's Oasis, LLC*, 226 N.J. 344 (2016), is added to the Note to Judge given the Supreme Court’s endorsement of the definition of “gross negligence” found within the charge. Additionally, citations to other cases in the Note to Judge defining gross negligence are removed in order to avoid confusion and focus on the Court’s language in *Steinberg*.

5.20A Dangerous Condition of Public Property (Approved 02/1996; Revised 01/2019)

A Note to Judge is added to instruct the court to omit reference to non-applicable possibilities under the fourth element in an effort to avoid jury confusion. Additionally, reference to *Henebema v. S. Jersey Transp. Auth.*, 403 N.J. Super. 485, 506-07 (App. Div. 2013), *aff'd*, 219 N.J. 481 (2014), is added to the second Note to Judge to advise where there is a genuine dispute of material fact as to whether one or more of the parties performed a discretionary function (subject to a “palpably unreasonable” standard) or ministerial function (subject to “ordinary negligence principles”), N.J.S.A. 59:2-3, N.J.S.A. 59:3-2, both the final jury charge and the verdict sheet must be tailored so the jury can make the appropriate fact findings and evaluate the party’s liability exposure using the proper standard of care.

5.34 Property Damage in Motor Vehicle Accidents (Approved 10/2009; Revised 01/2019)

This charge is renamed and revised to include instances where vehicle damage is alleged, but there is no photographic evidence of damage, in light of the published trial court opinion *Abdurraheem v. Koch*, 456 N.J. Super. 496 (Law Div. 2018).

Questions regarding these model civil jury charges may be directed to Kristi Jasberg Robinson, Esq., Chief, Civil Practice Liaison, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; phone (609) 815-2900 ext. 54900; e-mail Kristi.Robinson@njcourts.gov.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 29, 2019