09.03 UNLAWFUL DISCRIMINATION IN HIRING OR PROMOTION: MIXED MOTIVE

The plaintiff claims that [he][she] was [subjected to an adverse employment decision] [not hired] [not promoted] [fired] because of [his][her] sex. You must first decide whether it is more likely true than not true that the employer [insert allegations of direct evidence]. If you decide that one or more of these allegations are true, you must then decide whether it is more likely true than not true that the plaintiff’s sex was a motivating factor in the adverse employment decision. The plaintiff’s sex was a motivating factor if it motivated the employer’s decision at least in part.

If you find that the plaintiff’s sex was a motivating factor, then you must find for the plaintiff, unless the employer has shown that it would have made the same decision regardless of the plaintiff’s sex. If the employer has shown that it is more likely true than not true that the employer would have made the same decision regardless of the plaintiff’s sex, then you must find for the employer on this claim. Otherwise, you must find for the plaintiff.

# Use Note

This instruction should be used in cases in which there is direct evidence of discriminatory intent. For a discussion of what may constitute direct evidence, see Kinzel v. Discovery Drilling, Inc., 93 P.3d 427, 434-36 (Alaska 2004).

# Comment

This instruction is taken from the discussion of “mixed-motive” discrimination claims in Era Aviation, Inc. v. Lindfors, 17 P.3d 40, 44 (Alaska 2000).