N.C.P.I.-Civil. 640.29E
EMPLOYMENT RELATIONSHIP - ADVERSE EMPLOYMENT ACTION IN VIOLATION OF NORTH CAROLINA WHISTLEBLOWER ACT - MIXED MOTIVE CASE (DEFENDANT).
GENERAL CIVIL VOLUME
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640.29E EMPLOYMENT RELATIONSHIP - ADVERSE EMPLOYMENT ACTION IN VIOLATION OF NORTH CAROLINA WHISTLEBLOWER ACT - MIXED MOTIVE CASE (DEFENDANT).

> *NOTE WELL: Prior to instructing a jury in a case under the North Carolina Whistleblower Act, read carefully N.C.P.I.-Civil 640.29A ("Employment Relationship-Adverse Employment Action in Violation of the North Carolina Whistleblower Act, N.C. Gen. Stat. § 126-84 et seq.-INTRODUCTION").*

The (*state number*) issue reads:

"Would the defendant have taken the same adverse employment action against the plaintiff absent the plaintiff's [participation in conduct protected by law] [refusal to carry out an improper directive]?"

You will answer this issue only if you have answered Issue (*state issue number*) "Yes" in favor of the plaintiff.[1]

On this issue the burden of proof is on the defendant.[2] This means that the defendant must prove, by the greater weight of the evidence,[3] that it would have taken the same adverse employment action against the plaintiff even if the plaintiff had not [participated in conduct protected by law] [refused to carry out an improper directive]. Stated another way, the defendant must prove that the lawful reason[s] it has given for its adverse employment action against the plaintiff would, standing alone, have induced it to take the same adverse employment action even if the plaintiff had not [participated in conduct protected by law] [refused to carry out an improper directive].

Finally, if you find by the greater weight of the evidence that the defendant would have taken the same adverse employment action against the plaintiff absent the plaintiff's having [participated in conduct

protected by law] [refused to carry out an improper directive], then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

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1. This issue would be submitted only if the issue contained in N.C.P.I. 640.29D ("Employment Relationship-Adverse Employment Action in Violation of North Carolina Whistleblower Act, N.C. Gen. Stat. § 126-84 *et seq.* -Mixed Motive Case (plaintiff)") has been answered in favor of the plaintiff.

2. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 245, 104 L.Ed.2d 268, 285 (1989) (stating that "[t]he employer . . . must show that its legitimate reason, standing alone, would have induced it to make the same [adverse employment] decision . . . . [T]he better rule is that the employer must make this showing by a preponderance of the evidence.").

3. *See* N.C.P.I.-Civil 640.29A, n.13 ("Employment Relationship-Adverse Employment Action in Violation of the North Carolina Whistleblower Act, N.C. Gen. Stat. § 126-84 *et seq*.-*Introduction*").