

2.22A LAW AGAINST DISCRIMINATION (LAD) INDIVIDUAL LIABILITY CLAIMS (Approved 3/10)

If you find that defendant *[employer]* has unlawfully discriminated [and/or retaliated] against plaintiff, you must then consider whether defendant *[individual]* should be held individually and personally responsible for aiding and abetting that discrimination [and/or retaliation].¹ To hold defendant *[individual]* liable, plaintiff must show that (1) defendant *[individual]* was generally aware of his/her role in the overall illegal, unlawful, or tortious activity at the time that he/she provided the assistance, and (2) defendant *[individual]* knowingly and substantially assisted defendant *[employer]* in discriminating [and/or retaliating] against plaintiff. You may consider the following five factors when deciding whether defendant *[individual]* knowingly and substantially assisted defendant *[employer]*'s discrimination [and/or retaliation] against plaintiff: (1) the nature of the wrongful conduct encouraged; (2) the amount of assistance defendant *[individual]* provided to defendant *[employer]*; (3) whether defendant *[individual]* was present at the time that the discrimination [and/or retaliation] occurred; (4) defendant *[individual]*'s relationship to anyone else involved in the discrimination [and/or

¹ It remains unsettled whether a non-supervisory employee may be held individually liable for aiding and abetting the discrimination of his/her employer. See *Cicchetti v. Morris County Sheriff's Office*, 194 N.J. 563 (2008); *Herman v. Coastal Corp.*, 348 N.J. Super. 1 (App. Div. 2002).

retaliation]; and (5) defendant *[individual]*'s state of mind. Defendant *[individual]*'s failure to act so as to protect plaintiff or failure to respond effectively to plaintiff's complaints of discrimination is insufficient to conclude that defendant *[individual]* provided substantial assistance to defendant *[employer]* so as to hold defendant *[individual]* personally liable.

Cases:

Cicchetti v. Morris County Sheriff's Office, supra; Tarr v. Ciasulli, 181 N.J. 70 (2004); *Hurley v. Atlantic City Police Dep't*, 174 F.3d 95 (3d Cir. 1999), *cert. denied*, 528 U.S. 1074, 120 S.Ct. 786, 145 L.Ed. 2d 663 (2000).