



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

November 2015

Volume 195

Ignoring Sexual Harassment Complaints Has Consequences

The stereotypical sexual harassment case involves a male boss harassing a female subordinate. But that is certainly not always the case.

Jonathan Woon Teck Yap was a student in a combined M.D. and Ph.D. program at Northwestern University. The director of the program, David Engman, recruited him in 2006, telling him that he could pursue a third degree at the same time, that he would be awarded a fellowship for five years and that the program would supplement his fellowship. Yap enrolled in the program in 2007 based at least in part on those promises.

Engman allegedly began making suggestive comments about Yap's appearance while conspicuously looking at him and ogling him. At an academic retreat on Engman's boat, Engman complimented Yap's teeth and smiled at him in a lascivious way. Engman was wearing only a swimsuit at the time. He did the same thing in a department conference room later (presumably he was fully clothed at that time). And he asked Yap's fellow grad students about Yap's sexual orientation.

According to Yap, when he ignored Engman's advances, Engman began interfering with Yap's academic opportunities. He opposed Yap's application for an International Health Fellowship, opposed his acceptance of that fellowship and gave him an unsatisfactory grade despite the fact that Yap had completed all of the requirements. When Yap asked for a

leave for a family emergency, Engman denied the request. He routinely granted such leaves for other students. When Yap asked for explanations, Engman would use his requests as a reason for private meetings.

At another retreat, Engman repeatedly commented, in front of other students, that Yap had "really nice hair." He asked Yap to come to his hotel room that night so that he could cut Yap's hair. When Yap ignored these and other advances, Engman failed to forward Yap's application for a fellowship from the Howard Hughes Medical Institute.

In 2011, Engman lost his director position, just after the assistant director, a woman, filed a sexual harassment complaint against him. But according to Yap, Engman continued to exert control over the program and to retaliate against and harass him. Yap was told he no longer could pursue his third degree, despite the fact that at least one other student was allowed to do so, and despite the fact that he had completed almost all of the requirements for the third degree based on Engman's assurances back in 2007. Yap's additional stipend was taken away. So, in 2012 he complained about the harassment to his Ph.D. thesis advisor. She told him they would not follow up because the incidents had happened more than two years earlier. Eventually, the school did a cursory investigation, but only months

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Man Wins Mark of the Beast Lawsuit

Beverly Butcher, Jr. began working at Consol Energy's Robinson Run Mine in 1977. In 2012, the company installed hand scanners to track the comings and goings of employees for payroll purposes. He objected to being scanned, saying he feared it would imprint him with the "Mark of the Beast," a reference to Revelation in the Bible.

Butcher met with human resources officials, who showed him a letter from the manufacturer of the scanner that said, in all capital letters, that scanners "do not in any way have the ability to detect . . . or place the 'Mark of the Beast' or any other mark on a person's hand." The company suggested that employees with concerns might want to have their left hand scanned instead of their right hands, because scriptures "consistently refer to the 'Mark of the Beast' being found or placed only on the RIGHT hand or forehead."

Butcher did not find that to be a satisfactory option, believing that anything having to do with his hands, either hand, would place him in danger. He said that as an evangelical Christian who believes that everything in the Bible is literally true, he could not use the machine.

Consol refused to count Butcher's attendance any other way, so he retired under protest, five years earlier than he had planned. After he retired, he learned that Consol had accommodated two of his co-workers who were missing fingers. Since the machine does not work properly on hands with missing digits, these employees were given the option of punching in their employee numbers on a keypad on the scanning machine. But Consol never gave Butcher this option.

Butcher filed a complaint of religious discrimination in

employment, and the case recently went to trial. At the trial, he testified that "even though this hand scanner is not giving a number or mark, it is a device leading up to that time when it will come to fruition, and in good faith and a strong belief in my religion, I would not want to participate in this program."

The jury awarded Butcher \$150,000 in punitive damages. A judge will now consider whether Butcher is also entitled to back pay and other compensation from Consol.

In a press release, Spencer H. Lewis, Jr., District Director for the Equal Employment Opportunity Commission, said, "Many times, when there is a conflict between an employee's religious beliefs and a work rule, there are easy modifications to company policies permitting an employee to continue to work without violating his religious beliefs."

Spanish Version of FMLA Poster Now Available

The federal Department of Labor (DOL) has issued a Spanish version of its Family and Medical Leave Act (FMLA) poster that incorporates recent changes in regulations implementing the law.

The Family and Medical Leave Act requires covered employers to post FMLA notices in

every location where the employer has employees, even if none of the employees at that site are covered by the FMLA. The posters have to be posted prominently, where they can be readily seen by employees and applicants.

If a significant portion of the employer's workforce is not

literate in English, the employer is required to provide the notice in a language in which the employees are literate, according to the DOL.

Employers that fail to comply with FMLA notice requirements may be subject to civil fines. The poster is available on the DOL website.



Man Loses Age and Disability Discrimination Lawsuit

Michael Sellers began working for Deere & Company in 1979. He had several positions during his tenure with Deere. In 2002, his supervisor, Clyde D'Cruz, changed Sellers' job title from management specialist to process pro for the supply management department. Process pro positions are described as "dynamic and fluid positions" in which "job assignments and projects c[ould] change at any time."

Sellers and D'Cruz got along well for a while, but Sellers objected to some comments D'Cruz made about older employees, comparing them to "sheep that can be slaughtered" and saying "we need to get all these old farts out of here." Sellers said that after he complained, D'Cruz promoted younger employees, which led to a "gap of knowledge" in the department. Twice in 2003, D'Cruz yelled at Sellers in front of co-workers, saying Sellers struggled when he was interacting with others and had

"analysis paralysis."

Darla Jerauld became Sellers' supervisor in late 2003. She increased Sellers' job duties. He said he was not sure he could handle the new workload because of his depression. In 2004, Jerauld evaluated Sellers and said he "does not meet expectations."

Sellers said that in 2004 and 2005, Jerauld refused to let him use conference rooms, and D'Cruz refused to put his new job duties in writing. In 2005, Sellers was diagnosed with post-traumatic stress disorder, arising in part from stress at work. He went on medical leave and never returned to work. Instead, he filed a complaint of age and/or disability discrimination in employment. He lost.

To win, Sellers would have to show that he experienced an adverse employment action. The Court said that his additional job duties were not an adverse employment action. His job title

was described as being "dynamic and fluid," noting that his projects could change frequently. He agreed with that description. The Court said "that was the job Sellers signed up for."

He would also have to show that he experienced a hostile work environment, harassment severe enough to affect the terms, conditions or privileges of his employment. Even if D'Cruz did yell at him in front of co-workers, it happened only twice. The Court said those incidents were isolated, happening only twice in the two years he worked under D'Cruz. Being given too much work, not being allowed to use the conference rooms and not being given a list of job duties might have been "rude or unpleasant," but they were not "severe enough to affect the terms, conditions or privileges of his employment."

The case is Sellers v. Deere & Company, aka John Deere Company, 2015 WL 4033501 (8th Cir. 2015).

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later, and many witnesses were not interviewed. The university found that Engman had made ill-advised and unwelcome comments, but they were not sexual, and thus the school's sexual harassment policy had not been violated.

Yap took the university to Court.

The school tried to argue that his complaints were outside the two-year statute of limitations, but the Court found that the university's inaction was within the two-year time requirement. The sexual harassment was outside the statute of limitations, but his complaint that the university had treated his complaints differently from how it would treat a complaint from a

woman, and then retaliated against him for having complained, were filed within the deadline.

The case is Yap v. Northwestern University, 2015 WL 4692492 (N.D. Ill. 2015). If you have questions about sexual harassment, please contact the BHRC.



BHRC Seeks Award Nominations

The BHRC is seeking nominations for its annual Human Rights Award. Nominees should be individuals or groups who have made specific, significant contributions to improving civil rights, human relations or civility in our community. The BHRC especially welcomes nominations demonstrating success in ensuring rights to equal access to housing, employment or education, in ensuring equal access to community life for people with disabilities and nominations of people or organizations who have done exemplary work and advocacy in increasing civility and tolerance.

Past recipients include Bloomington High School North, Bloomington United, Dick McKaig, the Study Circles Project, Daniel Soto, John Clower, Clarence and Frances Gilliam, the Rev. Ernie Butler, the Council for Community Accessibility, Frank McCloskey, the Bill of Rights Defense Committee, WFHB Radio, Doug Bauder, Lillian Casillas, Helen Harrell, Voices & Visions, New Leaf/New Life, Charlie Dupree and Virginia Hall for their work with Trinity Episcopal Church, Guy Loftman, David Metheny and the Rev. Bill Breeden.

The recipients will be honored at a public ceremony. Nominations are due by 5 p.m. on Friday, November 30, 2015. For a nomination form, or for more information, call the Bloomington Human Rights Commission, 812-349-3429. Or send an email message to human.rights@bloomington.in.gov. The nomination form also is available on the City's web page, www.bloomington.in.gov.

Facebook Postings Hurt FMLA Complaint

Sara Jaszczyszyn worked for Advantage Health Physician Network. About a year and a half into her employment tenure, she began taking intermittent Family and Medical Leave Act (FMLA) leave for a back problem. About five weeks into her approved leave, several of her co-workers saw pictures on Facebook that she had posted, showing her drinking at a local festival. They reported this to her supervisor, and she was terminated for fraud. Jaszczyszyn sued, alleging retaliation and interference with her FMLA rights. She lost.

Her doctor had certified her as being completely medically incapacitated from

September 10 until October 26. But on October 3, Jaszczyszyn attended Pulaski Days, a local Polish heritage festival. She was there for at least eight hours. A friend of hers shared 127 pictures of the festival with Jaszczyszyn, and Jaszczyszyn published nine of the photos on her Facebook page.

When Jaszczyszyn's co-workers saw the photos, they were annoyed, as they were having to do additional work to cover for her absences. Her supervisors called her into a meeting to talk about problems with her communication and documentation and also about the photos. She defended having attended the festival, saying no one had told her she could not. They asked her how she could attend a festival for eight hours if she were medically incapacitated. She didn't have a

response. She said she was often in pain at the festival, but just didn't show it. Because she didn't have any plausible explanation, she was fired. She sued.

At trial, Advantage won a summary judgment, and they prevailed when Jaszczyszyn appealed to the Court of Appeals. The Court said that Advantage had the right to consider FMLA fraud to be a serious issue and that the company had adequately investigated her behavior. She was fired after she failed to address the company's concerns during the meeting. She did not "refute Advantage's honest belief that her behavior in the photos was inconsistent with her claims of total disability." The case is Jaszczyszyn v. Advantage Health Physician Network, 504 Fed. Appx. 440 (6th Cir. 2012).