



# RIGHTS STUFF

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## Court Finds La Quinta Inn Tolerated a Hostile Work Environment

Charles Livingston is the general manager of a La Quinta Inn in Nashville, Tennessee. Housekeepers working for him complained that he said or did the following:

- He often used the word "monkey," saying the African American housekeepers looked like a "bunch of monkeys" when they were standing in the hallway.
- He repeatedly said that President Obama did not know what race he was and should "go back to Africa."
- He said that an African American should not be president because "it's the White House, not the Black House."
- He said he would prefer hiring Latinos, because they know how to work and African Americans do not.
- He said that the first of the month was "Black Mother's Day," because that is when welfare payments are made.
- He allowed white housekeepers to get bottled water or snacks from the guest services area, but not African American housekeepers.
- He required African American

housekeepers to use only one exit so he could see if they had stolen anything.

- When one of the African American housekeepers passed her Certified Nursing exam, he said she must have cheated off a white person.
- He told the African American housekeepers not to bring chitlins to a holiday party because "white people don't eat that."

The women sued, alleging race discrimination in employment, and the Court found that the hotel had tolerated a hostile and abusive work environment. The evidence showed that Livingston made offensive comments or took actions based on race several times a week. "While some of the comments may have been misguided attempts at humor, others were downright offensive, and all were unwelcome."

The Court awarded the five women \$2,500 to \$20,000 each, based on the length of time each of them worked at the hotel.

The case is Atkins v. LO Management, LLC, d/b/a La Quinta Inn and Suites, 2015 WL 5773581 (M.D. TN 2015). If you have questions about fair employment laws, please contact the BHRC.

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## Village Did Not Discriminate Against Patrol Officer

Mark Swanson, a Puerto Rican man, was hired as a patrol officer by the Village of Flossmoor, Illinois police department in January of 2000. He was promoted to detective in 2006. In July of 2009, he suffered a stroke. He went on leave pursuant to the Family and Medical Leave Act (FMLA) for two weeks. His doctor suggested that he work part-time until he could be seen by a neurologist a month later. Swanson began working three days a week, using his accrued medical leave for two days a week so that he could continue to receive a full paycheck.

Swanson said that he experienced some lightheadedness at work and asked to be put on light duty. His supervisor told him that they didn't have any such work assignments, so he continued to use his accrued medical leave to work at a reduced schedule.

On September 30, Swanson had another stroke, and his doctor said he could not immediately return to work. By November 17, when his doctor was still saying he could not return to work, he asked that his FMLA leave be applied retroactively to September 30, and the department agreed. On December 10, his supervisor told him in a letter that he had exhausted his leave under the FMLA and that his medical leave would expire on December 18. The letter

said that when he did return to work, he would likely be assigned to patrol.

On December 16, Swanson's doctor released him to return to work without restrictions. But before he could return to work, he suffered another medical episode. His doctor rescinded his earlier release and a few days later, Swanson resigned. His resignation letter said that he was "simply physically unable to return to my duties with the department." He applied for his pension and asked if he could remain on an unpaid leave of absence for two months so that he could continue to have health insurance. The department agreed.

Swanson then sued, alleging discrimination on the basis of his race, national origin and/or disability, and lost. He testified that he had earlier been subjected to several derogatory comments because of his race and national origin, but all of his claims were barred by the statute of limitations.

Swanson said that his supervisor's comment that he likely would be returned to patrol when he returned to work was a demotion based on discrimination, but the Court said that he never experienced that demotion because his health kept him from returning to work. His disability pension was based on

his detective salary, so he suffered no financial consequences because of this comment.

He said that the department refused to give him light duty work, even though its personnel policy includes light duty as a possibility. But the policy says that light duty will be assigned at the department's discretion, and only with proper medical certification. Swanson's doctor never recommended light duty; he recommended part-time work, and that is what Swanson did as long as his health permitted, using his medical leave as long as he could so that he continued to receive his regular salary. The Court said, "The Village's accommodation (and, frankly, its general treatment of Swanson in the wake of his medical issues) seems quite reasonable here. In addition to permitting him to work a part-time schedule after his first stroke, the Village granted Swanson's requests to extend his leave following his second stroke to ensure that he would remain on the Village's health plan during his medically difficult time. Swanson's briefs leave entirely unclear why in retrospect he deems these accommodations unacceptable."

The case is Swanson v. Village of Flossmoor, 794 F. 3d 820 (7th Cir. 2015).



## Supermarket Sued for Religious Discrimination

Complaints of religious discrimination in employment are fairly rare, but one is currently pending in federal court.

According to the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency that enforces fair employment laws, Food Lion, LLC discriminated against an employee on the basis of his religion.

Victaurius L. Bailey was hired as a meat cutter for a Food Lion store in North Carolina in 2011. He is a Jehovah's Witness minister and elder, and as such is required to attend church services and related meetings on Thursday evenings and Sundays. He asked not to be scheduled to work at those times, and his store manager agreed. But when he was transferred to a new store,

his new manager said he could not see how Bailey could work for Food Lion if he could not work on Sundays. According to the EEOC, Food Lion fired Bailey because he could not work on Sundays.

Title VII of the Civil Rights Act says that employers have to make reasonable accommodations to accommodate employees' sincerely held religious beliefs unless doing so would create an undue hardship for the employer. The EEOC is suing Food Lion on Bailey's behalf, for back pay, compensation for past and future losses, compensatory damages, punitive damages and injunctive relief.

Lynette A. Barnes, an attorney with the EEOC, said "Employers

need to ensure that their supervisors and managers who are called upon to make decisions on employees' requests for religious accommodations are fully knowledgeable of their obligations under federal law. Many decision makers seem to forget that unless providing a reasonable accommodation would impose an undue hardship on the company, the accommodation must be provided. No person should ever be forced to choose between his religion and his job."

In reviewing such a request from an employee, employers should consider options such as swapping schedules or duties, and should work with the employee to come up with a solution that best meets everyone's needs.

## Bills Introduced to Limit Restroom Use Based on Biological Sex

Indiana State Senator Jim Tomes has introduced a bill to limit the use of school restrooms by biological sex.

According to the bill, Senate Bill 35, public school restrooms must be designated for use by only female students or only male students. Restrooms designated for use by female students may be used only "by students of female biological gender," meaning "born female at birth" or

having "at least one X chromosome and no Y chromosome." Restrooms designated for use by male students may be used only "by students of male biological gender," meaning "born male at birth" or having "at least one X chromosome and at least one Y chromosome."

Anyone who violates this provision, if it becomes law, would be committing the new crime of "single sex public facility

trespass," a Class A misdemeanor. Sentences for violations of such crimes include a prison term of up to 365 days and/or a fine of up to \$5,000.

The bill makes exceptions for people entering the restroom of the opposite sex for custodial purposes, to render medical assistance or to accompany a child less than eight years of age. A similar bill, SB 1079, would apply the same restrictions to all public restrooms.

## When Does Homeowner Have to Remove Accessibility Modifications?

Colleen and John Austin have two sons who both have disabilities. One has cerebral palsy and the other has autism. They bought a home in a neighborhood where no "accessory structures" could be built, but were able to obtain a variance from the town, Farmington, New York, that allowed them to erect a fence and an above-ground pool. They said they needed the fence and pool for the safety and rehabilitation of one of their sons.

One condition of the variance was that if the Austins stopped being the owners of the home for any reason, they would have to remove the fence and pool at their expense. They sued, alleging that this condi-

tion was a violation of fair housing laws, and lost.

Fair housing laws require landlords or other authorities to allow tenants and homeowners to make accessibility modifications to their properties at their expense. The laws say that removing the improvement at the end of the occupancy may be required when it's reasonable to do so. It might be reasonable to require tenants to remove braille lettering on stove buttons or smoke detectors that emit light instead of sound when they move out. It might not be reasonable to require tenants to narrow a doorway that they had widened for wheelchair use.

The Court said that in this case, "there are simply no facts alleged that evince a discriminatory intent in requiring that plaintiffs restore their property to its original condition, once the need for the modifications are no longer present." They had no evidence that the restoration rule would not be applied to residents without disabilities. The purpose of the modification rule is to require authorities to permit accommodations when doing so "may be necessary to afford such person equal opportunity to use and enjoy a dwelling." Once the Austins no longer lived in this home, the accommodation would no longer be necessary.

The case is Austin v. Town of Farmington, 2015 WL 360467 (W.D. N.Y. 2015).

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## Free Tax Service Available

If you made less than \$54,000 in 2015, you may be eligible for free tax preparation services, sponsored in part by United Way and the Financial Stability Alliance. In 2015, the Free Community Tax Service sites, along with almost 200 volunteers, filed 3,533 federal and state tax returns for free, which saved area residents as much as \$920,000 in tax preparation fees.

Tax services available include the following:

-Full-service sites, with one-on-one tax preparation by

a certified tax preparer, and with interpreters available at some sites;

-Self-service sites, where people can file their own taxes electronically using an on-site computer. Certified tax preparers are available to assist as needed;

-Mobile sites, where the alliance will take its services to several sites in the community, including the Bloomington Housing Authority, Life Designs, New Leaf-New Life, Positive Link, El Centro

Comunal, St. Paul's Catholic Church and Stone Belt;

And MyFreeTaxes.com, where you can file your own taxes for free wherever there is an internet connection. Your adjusted gross income has to be less than \$62,000 to receive this service free of charge.

For more information about these services, call 211 or visit [MonroeUnitedWay.org/FreeTaxes](http://MonroeUnitedWay.org/FreeTaxes). También, ofrecemos servicio en Español, 812.349.3860.