



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

December 2011

Volume 148

When Does Leave Become "Indefinite?"

Arlene Moore began working for Patuxent Institution as a correctional officer in the summer of 1993. She received satisfactory performance evaluations for the next 17 years.

In October of 2009, she was diagnosed with Stage III breast cancer. The facility granted her a medical leave beginning in November. By December, she had used up all of her paid leave. Co-workers generously donated their paid leave to her, and she was on extended paid leave through the summer of 2010.

At some point, Moore's supervisor urged her to apply for medical disability retirement. She said she wanted to return to work when she was finished with her medical treatment. Her supervisor told her that effective August 4, 2010, she would be on unpaid leave. She said her co-workers were told not to donate any more leave to her.

On August 5, Moore's doctor said she could return to work. She called the facility and said she planned to return to work on August 13. But on August 9, she was told that she had been fired on August 4, 2010. She was told she could reapply for a

position and file for unemployment benefits. She won unemployment benefits, and she was hired for a similar job at a different facility in December 2010. She sued, alleging disability discrimination in employment in violation of the Americans with Disabilities Act.

Patuxent argued that Moore wanted an indefinite medical leave and that an indefinite medical leave is not a reasonable accommodation under the ADA. Courts have said that indefinite leaves are not required by the ADA, but temporary leaves of absences may be. The Court in this case said that "Whether Ms. Moore's eight-month absence from her job to receive cancer treatment was a reasonable accommodation under the ADA, or amounted to an 'indefinite leave of absence' that imposed an undue hardship on the State, is a factual question that cannot be answered at this stage." The Court noted that Moore's doctor had cleared her to work just one day after she was terminated. The Court remanded the case back to Trial Court to decide the factual question.

The case is Moore v. Maryland Department of Public Safety and Correctional Services, Patuxent Institution, 2011 WL 4101139 (D.Ct. MD 2011). If you have questions about your rights and responsibilities under the ADA, please contact the BHRC.

Dr. Martin Luther King, Jr. Legacy Award Call for Nominations

Do you know someone who deserves recognition for making significant contributions in race relations, justice, or human rights? Submit a nomination online at www.bloomington.in.gov/mlk.

Bloomington's Dr. Martin Luther King, Jr. Birthday Celebration Commission is soliciting nominees for the annual Dr. Martin Luther King, Jr. Legacy Award. The winner will be honored at the Dr. Martin Luther King, Jr. Birthday Celebration on January 16, 2012 at the Buskirk-Chumley Theater in downtown Bloomington.

Criteria: Nominees must have been Monroe County residents, businesses or advocacy groups for at least one year, and must have been involved in making tangible and meaningful contributions to the advancement of race relations, justice and/or human rights causes.

Past Legacy Award Winners

- (2011) Daniel Soto Mayorga
- (2010) Elizabeth Mitchell
- (2009) WHFB Community Radio
- (2008) Ken Thomas
- (2007) Dr. Charlie Nelms

BHRC Staff

Barbara E. McKinney,
Director

Barbara Toddy,
Secretary

Veronica Carsaro,
Editorial assistant

Commission Members

Dorothy Granger, Chair

Byron Bangert, Vice Chair

Prof. Carolyn Calloway-Thomas

Valeri Haughton

Michael Molenda

Amy Jackson

Teri Guhl

Mayor

Mark Kruzan

Corporation Counsel

Margie Rice

BHRC

PO BOX 100

Bloomington IN

47402

349-3429

human.rights@

bloomington.in.gov



Woman Loses Race Discrimination Case

Sylvia Elmore, an African American woman, began working for Northwest Community Hospital in November of 2001. She started out as a temporary claims credit project specialist, reviewing and reconciling patient account files and contacting patients and third-party payers to resolve account discrepancies and disputes. Before taking this job, she had worked in collections for several companies.

In June of 2002, Elmore told her supervisor that a co-worker had made a comment that she found offensive. He told her, "Your people don't need an education; all they need is a job." She believed he was saying African Americans don't need education. Her supervisor reprimanded the co-worker and the co-worker apologized. That fall, Elmore accepted a permanent position with the hospital as a claims specialist.

NCH regularly evaluates its employees, and from 2002 through 2007 its reviews of Elmore's job performance consistently said she needed to improve her attendance. Her 2004-05 review said that she "had often been excluded from time sensitive projects due to her inability to adhere to her scheduled hours, which has negatively impacted the productivity of the Credit/Project Team." Her next review said that her absences "continue to interfere with her ability to maintain her productivity at an acceptable level and diminish her overall job performance." She was suspended for one day in July 2006, because of her poor

attendance, and NCH gave her a performance action plan outlining the company's expectations as far as her work attendance.

In April 2007, NCH reassigned Elmore, making her a self pay adjudicator in the customer service division. Her supervisors thought she would have more job security there because of planned layoffs, but apparently no one told her that at the time. She was placed at a desk where other adjudicators could hear her make calls, because her supervisors "liked how she sounded on the phone . . . she sounded very nice and very aggressive." NCH considered giving this position to two white employees as well, but did not.

Elmore did not report to work from May 8, 2007, through May 15, 2007. When she got back to work, she told her supervisors she intended to request FLMA time for her unscheduled absences in May. NCH sent her a letter, telling her to submit her FMLA forms by May 31. She did not. On July 10, she called in sick and said she would not return to work until July 24. NCH sent her another letter, requesting documentation by July 12. She did not submit any documentation and she did not return to work. NCH fired her on July 24, 2007, because of her numerous undocumented and unexcused absences.

She sued, alleging race discrimination in employment, and lost.

Elmore said that her negative

performance reviews in 2005 and 2006, as well as her suspension in 2006, constituted an adverse employment action and created a hostile work environment. The Court said that her "precise argument is difficult to discern," but both of her claims were clearly beyond the scope of her EEOC complaint. In her complaint with the EEOC, she said that her 2007 transfer was motivated by racism, but she didn't mention her earlier reviews or suspension, and the Court said that they were "not reasonably related to the allegations" in her EEOC charge.

Nor was Elmore able to show that her transfer was an adverse employment action. Her wages and benefits stayed the same after the transfer. Part of both jobs involved collections. The Court said that an "adverse employment action is one that significantly alters the terms and conditions of the employee's job," and that was not true in this case. She argued that she would have fewer promotional opportunities in the self pay adjudicator job, but she didn't provide any evidence to support that claim. And as the Court noted, "the fact that Elmore was displeased with her reassignment does not establish that the changes in job duties constituted an adverse employment action."

The case is [Elmore v. Northwest Community Hospital](#), 2011 WL 3439257 (N.D. Ill 2011). If you have questions about your rights and responsibilities under fair employment laws, please contact the Bloomington Human Rights Commission.

Do Landlords Have to Accommodate Non-Smokers?

Housing and Urban Development is suing a landlord for allegedly not accommodating a tenant with a disability. The tenant, who is not named in the lawsuit, is a woman with chronic obstructive pulmonary disease, emphysema and limited eyesight. She rents an apartment from Magnolia Walk Apartments in Florida. These apartments are rented pursuant to a low-income housing tax credit program under federal law. Tenants at

this complex are allowed to smoke in their apartments and outside of the buildings, but not in the common areas.

The tenant complained that people in the apartments adjacent to hers and above hers smoked, and that the smoke entered her apartment through the baseboards. In October of 2008, she was having trouble breathing and had to go to the hospital. Her doctor diagnosed her as having

chronic bronchitis, emphysema and a persistent cough. He told her to avoid any exposure to cigarette smoke because it could exacerbate her medical condition.

In July of 2009, she had to return to the emergency room when again she had trouble breathing.

Continued page 3



Bloomington Human Rights Commission Seeking Nominations for Its Annual Human Rights Award

The Bloomington Human Rights Commission 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, and New Leaf/New Life.

The recipient(s) will be honored at a public ceremony. Nominations are due by December 16, 2011. For a nomination form, or for more information, call the Bloomington Human Rights Commission at (812) 349-3429, or send an e-mail to human.rights@bloomington.in.gov. The nomination form is also available at the City's web page, www.bloomington.in.gov

Do Landlords Have to Accommodate Non-Smokers? (cont.)

Cont. from page 2

She was diagnosed with acute bronchitis and again told to avoid second-hand smoke. She told her landlord that her neighbors' smoking was a health hazard and asked to be moved to another apartment where none of the neighbors smoked. She provided medical documentation of her need to avoid smoke and asked her landlord to provide her with a "safe and healthy environment in which to enjoy" her apartment.

In response, the landlord told the tenant that she could re-caulk the baseboards at her expense. The landlord did not do any tests to figure out where the smoke was coming in or how much smoke was present in her apartment. The tenant did not re-caulk the baseboards because she didn't think that would take care of the problem.

The landlord told the tenant that tax regulations prohibited her from simply being allowed to move to a different wing of the complex where there were

no smokers. He said she would have to pay an application fee and an additional security deposit. He offered to let her move into another apartment in the wing where she currently lived, but she rejected that offer as the previous tenant there was a smoker.

The landlord told the tenant that there was no available space in the wing where she wanted to move, but for six months in 2009, one of these apartments was vacant and was used as a model apartment to show prospective tenants. Eventually the tenant paid the additional fees and was allowed to move into the wing without smokers.

She complained to HUD, and HUD said there were no tax laws requiring the tenant to pay additional fees when moving to a vacant apartment. HUD said that the landlord did not talk to the federal government to verify that the tenant needed to pay additional fees. Nor did the landlord talk to the federal government to see if a transfer would be considered to be a reasonable accommodation for a person with a

disability under the federal fair housing law.

HUD is asking the Court to declare that Magnolia Walk's policies violated the Fair Housing Act, to enjoin them from further discrimination and to pay the tenant for her economic loss, "including but not limited to out-of-pocket expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, and any and all other damages caused by Respondents' discriminatory conduct in violation of the [Fair Housing] Act."

Lawsuits present only one side of the case, and Magnolia Walk has not yet filed its response. The case is [The Secretary, United States Department of Housing and Urban Development, on behalf of XXXX, v. Magnolia Walk Apartments, II](#) FHEO No-04-10-0110-8 (2011). If you have questions about your rights and responsibilities under fair housing laws, please contact the BHRC.



City Dr. Martin Luther King, Jr. Commission Announces Funding for "A Day On! Not A Day Off"

Mayor Mark Kruzan has announced that the City of Bloomington Dr. Martin Luther King, Jr. Commission has funding available to help local organizations pay for supplies used by volunteers on "A Day On! Not A Day Off."

"Martin Luther King, Jr. Day presents an excellent opportunity for us to enhance community condition and collaborations," Kruzan said. "We are pleased to call for proposals for funding, thanks to the generosity of the primary financial supporters of 'A Day On! Not A Day Off.' Thank you to these supporters, the Community Foundation of Bloomington and Monroe County, and Service for Peace. We are making all funds we receive from these supporters available to local groups to help them acquire the materials and supplies that will be used by volunteers."

Organizations are invited to create service projects that are dynamic and relevant by combining meaningful service and thoughtful reflection, and that provide volunteers with opportunities for sustained service and ongoing community involvement. Grants will be awarded to those selected by the King Commission based upon the number and quality of proposals funded, with funding amounts based partially on the number of volunteers to be utilized. Projects using large numbers of volunteers will receive more funding than those using fewer volunteers. Projects that include continued service during "40 Days of Peace" are particularly encouraged, and projects that involve disadvantaged youth, veterans or military families in service activities or as recipients of service are particularly encouraged as well.

Eligible groups include not-for-profit organizations, businesses, faith organizations, schools, community and neighborhood organizations, public and private agencies, student groups, organizations that serve veterans or military families and governmental entities. City of Bloomington departments and City-sponsored commissions must partner with non-City organizations in order to apply for funding.

Apply online at www.bloomington.in.gov/mlk. Groups are also encouraged to register their service projects even if not applying for funding. The deadline to request funding is December 2, 2011.

For more information, please go to <http://bloomington.in.gov/mlk> or contact Craig Brenner, Special Projects Coordinator, at 349-3471.