RIGHTS STUFF

A Publication of The City of Bloomington Human Rights Commission

City of Bloomington

June 2012

Volume 154

Not Allowing Breast Pumping May Be a Form of Sex Discrimination

Sophie Currier was a medical student who needed to take the nine-hour medical licensing exam. She was also the nursing mother of a four-month-old child. She asked for additional break time during the exam so she could express milk. The group that administers the exams, the National Board of Medical Examiners (NBME), refused. She sued, and under Massachusetts law, won.

People taking the test have fifteen minutes at the beginning to complete an introductory tutorial. They also have 45 minutes of break time over the course of the day to attend to personal needs such as eating, drinking and using the restroom.

The NMBE in the past had granted exceptions to its break policies to people with impairments - as the Americans with Disabilities Act (ADA) defines that term - and sometimes to people with impairments that were not disabilities under the ADA.

When Currier asked for extra breaks to express milk, the NMBE told her that she could use the break time allotted to everyone - the time for the tutorial and for regular breaks - to pump milk. She argued that nursing mothers need up to thirty minutes for each pumping session, that nursing mothers need to eat and drink more than other people and that it is difficult to pump milk and eat at the same time. She further argued that the neutral-sounding policy had a disparate impact on a subgroup of women (lactating mothers) and thus was a form of sex discrimination in public accommodations. The Court agreed.

NMBE argued that it was not a place of public accommodations and thus the law prohibiting sex discrimination in public accommodations did not apply to it. The Court said that in a time where "business is increasingly conducted through the internet or over the telephone," the definition of a place of public accommodations has to be expanded.

The Court emphasized that its conclusion was based on a set of unique facts, "including the fact that a lactating mother was required (or faced adverse professional consequences) to be present at the place of public accommodation for a lengthy period of time (nine consecutive hours), and takes into account the fact that the NBME did not make any showing that it could not reasonably accommodate Currier's need without incurring undue hardship (such as, for example, incurring exorbitant or unrecoverable costs associated with providing a private room with an electrical outlet for a woman to express milk)."

BHRC Staff

Barbara E. McKinney, Director

Barbara Toddy, Secretary

Commission Members

Byron Bangert, Chair

Prof. Carolyn Calloway-Thomas, Vice Chair

Amy Jackson, Secretary

Valeri Haughton

Michael Molenda

Teri Guhl

Alexa Lopez

Mayor
Mark Kruzan

Corporation Counsel
Margie Rice

BHRC
PO BOX 100
Bloomington IN
47402
349.3429
human.rights@
bloomington.in.gov

Housing Discrimination in Bridgeport Alleged

George and Petyon Willborn, an African American couple, found the house they wanted for their family in the Bridgeport neighborhood of Chicago, Illinois. It was 8,000 square feet and had five bedrooms, large closets, a basketball court and a home theater.

The house was owned by Daniel and Adrienne Sabbia. When they decided to sell the house, they met with Jeffrey Lowe, a real estate agent. They allegedly told Lowe that they would prefer not to sell their house to an African American. The house was listed, taken off the market for a short period and then listed again, in April of 2009, for a reduced price of $1,799,000.

In January of 2010, the Willborns offered $1.5 million for the house. After some negotiating back and forth, the Willborns agreed to buy the house for $1.7 million. They signed an agreement to that effect. At about this same time, their real estate agent, Dylcia Cornelious, told the Sabbias that George Willborn was a radio personality. This allegedly led the Sabbias to do a Google search on the Willborns, where they allegedly found out that the Willborns are African American. The Sabias did not sign the contract. They took the house off the market, saying they had changed their mind about moving, that they could not find a suitable new home and that they wanted to keep their children in their current schools. They didn't explain why they had put the house on the market in the first place or why they had recently been negotiating the price of the house.

The Willborns then filed a complaint of race discrimination in housing against both the Sabbias and Lowe. They told reporters that this had been their dream house and that their children had already picked out their rooms.

When the Sabbias received the complaint, they offered to sell the house to the Willborns, but the Willborns refused. George Willborn told the Chicago Tribune that he was appalled by the situation. "The feeling that my entire family has, it's hard to describe. You're talking about 2010 [when the story first ran]. I don't know if people realize it, but we elected an African American president, so it's not asking too much to be able to live where we want to live."

Lowe recently asked the Court to dismiss the case against him, but the Court refused. Lowe said there was no evidence that he had any animus against the Willborns because of their race, but the Court said, "If Lowe knowingly assisted the Sabbias in their unlawful conduct, he could be held liable for such conduct." Lowe also said he told the Sabbias that it would be unlawful to refuse to sell a house because of the buyers' race. But the Court said, "it remains a factual issue whether, at the point that the Sabbias decided not to sell the property to the Willborns, Lowe knowingly assisted in that unlawful discrimination."

The case is United States v. Sabbia et al, 2011WL 1900055 (N.D. Ill. 2011). If you have questions about your rights and responsibilities under fair housing laws, please contact the BHRC.

PALS to Hold Annual Fundraiser

PALS, or People and Animal Learning Services, Inc. is holding its annual fundraiser on June 1, 2012. The evening will kick off with a silent auction at 6 p.m., along with hors d'oeuvers, live music and local wine and beer tastings. Following that will be dinner and a live auction. Jimmie Dean Coffee Coffee will auction off items such as vacation packages, local artwork and Disney World park hopper passes.

Tickets are $50; guests must be 21 or older. All proceeds benefit PALS, a non-profit organization providing therapeutic riding for individuals with disabilities and at-risk youth. For more information, to donate items or to buy tickets, contact PALS at ManeEvent@palstherapy.org or call 336-2798, ext. 4.

Is it Discriminatory to Require a High School Degree?

Back in 1971, the U.S. Supreme Court ruled that it may be a form of race discrimination to require applicants to have a high school degree. Such requirements may sometimes have a disparate impact on African Americans because they, at least in some geographical areas, graduate at lower rates than whites. If challenged, employers have to be able to show that requiring a high school diploma is job-related and consistent with business necessity.

Recently, the U.S. Equal Employment Opportunity Commission said that requiring high school degrees may sometimes discriminate against people with disabilities as well. If an employer requires applicants to have high school degrees, and has an applicant who says she couldn't get a degree because of her disability, the employer needs to consider its options. The employer should consider whether the applicant has been able to do the same or similar jobs even without a degree and consider allowing the applicant to demonstrate her ability to do the essential functions of the job.

If the applicant's disability is not obvious, and she's asking for a waiver from the diploma requirement, the employer may ask for documentation that she has a disability and that the disability kept her from receiving her diploma. Nothing says the employer must hire the person with a disability. If other applicants are more qualified, the employer is of course free to hire them instead.

In 2003, the EEOC brought a lawsuit against an employer that fired a woman from her job as a nursing assistant in a residential care facility. She had worked there for four years without a problem. She had tried to obtain her GED several times, without success, because of her disability. The only reason she was fired was because the facility adopted a new policy requiring all nursing assistants to have a high school diploma or GED. The case was settled before it went to trial.

EEOC Says Discrimination in Federal Employment on the Basis of Gender Identity is a Form of Sex Discrimination

In 1989, the U.S. Supreme Court ruled that treating women differently because they didn't conform to sex-based stereotypes - for example, refusing to promote a woman because she didn't wear make up or act in a traditionally feminine way - was a form of sex discrimination. Since then, some but not all federal courts have held that discriminating against a person because he or she is transgender is a form of the same type of discrimination and is thus illegal as well.

Recently, the U.S. Equal Employment Opportunity Commission agreed with this interpretation.

Mia Macy, a 39-year-old transgender person, said she had been promised a job at the Bureau of Alcohol, Tobacco, Firearms and Explosives in Walnut Creek, California. She is a military veteran and a former police detective. At the time of the job offer, she was living as a man. Later, she told officials at the bureau that she intended to begin living as a woman. Soon after, she said, she was told the position was no longer available. She filed a complaint with the EEOC, alleging she had been discriminated against on the basis of her sex, in that the bureau refused to hire her because she didn't conform with sex-based stereotypes for males, her sex at birth.

The EEOC said that "intentional discrimination against a transgender person because the person is transgender" is illegal under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex.

Whether the EEOC, the courts or Congress will apply this reasoning to private employers is not yet clear. The Bloomington Human Rights Ordinance prohibits discrimination on the basis of gender identity to the extent permissible by state law.

Restaurant Must Allow Service Dogs

Corey Fancher and his wife went to Shanghai Cottage, a Chinese restaurant in Alabama, in August of last year. Mr. Fancher is blind, so he had his service dog with him. The hostess told them she could not seat them because "no dogs are allowed." She said they had to leave. Mr. Fancher explained that he is blind and that his dog was a service animal. He told her that she had to allow him and the dog into the restaurant, as did other patrons. She still told them they had to leave.

The couple and the dog went outside to wait for their friends who had planned to join them for dinner, so they could decide on an alternate restaurant. The hostess came out and told them she had talked to the owner and found out they could indeed eat at Shanghai, accompanied by the dog. By this time, they were embarrassed and disappointed, and chose to dine elsewhere. They later filed a complaint with the U.S. Department of Justice (DOJ).

The DOJ investigated and found that the hostess thought she could not allow the dog into the restaurant because of state health department rules. DOJ determined that the health regulations "expressly exempt service animals accompanying their owners from the general prohibition against animals entering restaurants."

The complaint was settled. The restaurant agreed to adopt, maintain and enforce a policy covering treatment of customers using service animals. It will post a sign, saying in English and Braille, "This restaurant welcomes customers with disabilities who are accompanied by their service animals." They will pay $2,500 to the government and train their employees on the new policy in whatever language the employees speak.

Midget Football Has To Comply With ADA

A seven-year-old boy wanted to play in the Mountain Valley, PA, midget football league. He has ocular albinism, a condition that results in having little or no pigment in the eyes, and often causes extreme sensitivity to sunlight. His mother asked if he could play football with a helmet with a tinted visor to block sunlight from his eyes. The league refused and so the mother filed a complaint with the U.S. Department of Justice.

The DOJ determined that the league was a public accommodation subject to the ADA. The DOJ said that the league had failed to provide the boy, a qualified person with a disability, a reasonable accommodation in the form of letting him wear a helmet with a visor.

The parties settled. Under the terms of the agreement, the league will develop and implement a disability rights policy, train league officials about ADA requirements and grant requests for reasonable accommodations. The league will also pay the boy's family $1,000.

Applications Available For the Commission on the Status of Black Males

Regina Moore, Bloomington City Clerk, announced recently that applications are being accepted for CSBM.

The Commission on the Status of Black Males is charged with addressing problems of black males in the areas of education, health, criminal justice and employment; serving as a catalyst to promote positive public and private remedies to the multifaceted problems confronting black males and the resulting effects on the community; organizing and convening community forums and neighborhood-based focus groups and networking with groups with similar missions, locally and throughout the state, sharing ideas, information, data and plans. The Commission meets the second Wednesday of each month at 4 p.m. in City Hall. For more information or questions, please contact the City Clerk's office at 349-3408.