



RIGHTS STUFF

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Legal to Require Employee to Undergo Psychiatric Exam

Franklin Owusu-Ansah began working for Coca-Cola in 1999 as a customer service representative. He was promoted three times, becoming a quality assurance specialist in 2005. In that job, he worked from home, monitoring the performance of call center associates. He still had to report to the call center for meetings.

He met with his supervisor, Tanika Cabral, in 2007 for a routine one-on-one meeting. At that meeting, he completed a questionnaire. Under "Barriers to success and proposed resolutions," he answered, "candid discussion about work environment." He wrote a similar response under "What steps have you taken to move closer to your career goals?" During this meeting, Owusu-Ansah complained that he had been mistreated and harassed by his co-workers for years because he is from Ghana. He had never mentioned this before. Cabral said he became agitated during the meeting, banged his hand on the table and said that someone "was going to pay for this."

Cabral, concerned about Owusu-Ansah's behavior, went to the HR manager, Melissa Welsh, and described the meeting. Welsh perceived Owusu-Ansah's behavior to be potentially threatening. She

met with him, but he would not talk to her about his meeting with Cabral. She asked him if he would meet with a Coca-Cola consultant, and he agreed. He then met with Dr. Marcus McElhaney, a psychologist who specializes in crisis management and threat assessment. McElhaney believed that there was a "strong possibility that [Owusu-Ansah] was delusional." He thought that Owusu-Ansah was a "very stressed and agitated individual" and recommended that he go on paid leave to allow for more evaluation.

At Coca-Cola's urging, Owusu-Ansah agreed to visit a psychiatrist, but would not talk about workplace issues, and would not sign a release that would allow the psychiatrist to report his findings to McElhaney.

Eventually, Coca-Cola told Owusu-Ansah that he had to be professionally evaluated and cleared to return to work by a medical professional before he would be allowed to return to work. He was evaluated, declared to be "within normal limits" and returned to work. He then sued, saying that Coca-Cola discriminated against him in violation of the Americans with Disabilities Act (ADA) by requiring an evaluation.

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Trying to Study Age Discrimination

Princeton researchers recently showed 137 undergraduates a video of a man who would be their partner in a trivia contest. The man's name was Max, a white man wearing a checkered shirt who said he was from Hamilton, New Jersey.

Max was played by three different actors. One was 25, one was 45 and one was 75. Regardless of who was playing Max, each followed the same script, with one exception. In half of the videos, Max described himself as the type of person who would share his wealth with relatives. In the other half, Max said he felt no obligation to share his wealth.

After watching the videos, the Princeton students were asked their opinion of Max. For those who saw the younger actors, it did not matter how willing Max was to share his wealth. But the students who saw the older, less generous Max gave him a higher negative rating.

The researchers said that this study may show that there are consequences when older people speak their mind that may not apply to younger people. Such attitudes may carry over in to the workplace. It's often hard to prove age discrimination, but it's clear that it takes older workers who have lost their jobs longer to find a new job. And their new job often pays less.

Even with the proof problems, age discrimination complaints are on the rise. In 1997, 15,876 people filed complaints alleging age discrimination. In 2012, 22,876 people filed such complaints, an increase of more than 30% increase.

To investigate race or sex discrimination cases, fair employment commissions such as the BHRC may send in testers, equally qualified applicants for a job of different races or of a different sex, to see if there are differences in how the prospective employers treat the applicants. But it's harder to test for age discrimination. If you send in a 25-year-old tester with three years of experience, and a 65-year-old tester with three years experience, the employer is likely to wonder why the older tester has so little experience. In 2005, a researcher from Texas A&M sent out 4000 resumes for fictional job applicants from age 35 to 62. The applications were all for entry-level jobs. All of the fictional applicants were female. The thinking was that prospective employers might assume an older woman had spent years at home taking care of a family and was now ready to return to the workplace. A younger applicant had to, on average, send out 19 resumes before getting an interview. Older workers had to send out 27 resumes, on average, before getting an interview.

At Princeton, the researchers found a possible way to combat age bias. In a second experiment, the students read a newspaper article predicting that there would be enough resources to go around between the generations as the population ages. When the students read that, and then watched the video, the bias effect disappeared, according to the researchers. It's always important to note that one study, particularly a fairly small study, may not definitively prove anything.

(Article based on "Three Men, Three Ages. Who Do You Like? Researchers Seek a Test for Age Discrimination," by Michael Winerip, New York Times, July 23, 2013, page B1.)





Supreme Court Makes it Harder to Prove Retaliation

Dr. Naiel Nassar, a Middle Eastern man, was a faculty member at the University of Texas Southwestern Medical Center (UTSW). UTSW is affiliated with Parkland Hospital. Nassar and other faculty members also worked as doctors at Parkland.

In 2004, UTSW hired a new doctor, Dr. Beth Levine, to oversee the Center. She spent 15 to 20 minutes talking with the other Center doctors when she began her job, but spent an hour and a half with Nassar. She repeatedly expressed concerns about his productivity, even though his immediate supervisor expressed no problems with his work ethics. When the Center was considering hiring a new doctor who, like Nassar, was from the Middle East, Levine said "Middle Easterners are lazy." When the Center hired that applicant, she said, "we hired another one."

Nassar felt that Levine treated him with hostility and thus decided to figure out a way to

work for Parkland Hospital without also being a faculty member at UTSW. He did not want to be under her supervision any longer. Although such an arrangement was unusual, Parkland verbally agreed to hire him. He then resigned from UTSW, writing in a letter to his immediate supervisor, Dr. Gregory Fitz, that he was resigning primarily because of the "continuing harassment and discrimination by Dr. Beth Levine." Fitz was upset that Nassar had "publicly humiliated" Levine and thought she needed to be "publicly exonerated." Fitz's opposition to Parkland's hiring of Nassar led the hospital to withdraw its job offer.

Nassar found another job and sued, alleging that UTSW had constructively discharged him by tolerating a hostile work environment and had retaliated against him by keeping him from getting the job at Parkland. The jury found for him on both counts, awarding him \$438,167 in back pay and \$3,187,500 in compensatory damages. (The

compensatory damages were reduced to \$300,000, the statutory maximum.) The Court of Appeals found against him on the constructive discharge claim, but found for him on the retaliation claim. In June of 2013, the Supreme Court found against him on the retaliation claim.

The question for the Court was whether illegal retaliation was a motivating factor in how NTSW treated Nassar, or whether it was the "but for" reason - in other words, the primary reason. Nassar had to show that but for the illegal retaliation, NTSW would not have urged Parkland not to hire him. It is possible that the fact that all other Parkland doctors were faculty members at NTSW was the primary reason. In a 5-4 vote, the Court remanded the case for further proceedings. Justice Ginsberg wrote a strong dissent, saying the majority was relying on "strange logic." The case is University of Texas Southwestern Medical Center v. Nassar, 2013 WL 3155234 (U.S. Supreme Court 2013).

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The Court disagreed. It said that Coca-Cola's requirement that Owusu-Ansah undergo an evaluation was both "job-related and consistent with medical necessity" as required by the ADA. The company had a reasonable, objective concern about his ability to do his job safely, based on the report from Cabral and the initial evaluation by

McElhaney. The Court said that "an employee's ability to handle reasonably necessary stress and work reasonably well with others are essential functions of any position. Absence of such skills prevents the employee from being 'otherwise qualified.'" Coca-Cola had the right to make sure that Owusu-Ansah

could handle the stress of his job reasonably well.

The case is Owusu-Ansah v. Coca-Cola Company, 715 F. 3d 1306 (11th Cir. 2013). If you have questions about the ADA, please call the BHRC.



Bloomington Human Rights Commission Issues Hate Incidents Report

The BHRC is responsible for gathering data and issuing reports on local hate incidents. It released its latest report this month. This report includes 15 reported incidents from July 2012 through June 2013. The report is available to the public upon request and online at www.bloomington.in.gov/bloomington-human-rights-commission.

The numbers collected each year reflect only those incidents that were reported, which may not be a comprehensive count. The numbers tend to fluctuate each year. The 2011 - 2012 report had 11

incidents; the 2010-2011 report had 18 incidents and the 2009 - 2010 report had 26 incidents.

The hate incidents described in the current report take a variety of forms, including verbal harassment, threats of physical harm, actual physical harm and vandalism.

The report also addresses the apparent motivations behind each incident. Six of the incidents were apparently motivated by bias against gays and lesbians, six by

racial bias, two by sex and/or racial bias and one by bias against gays and/or racial bias.

The BHRC receives its reports from a variety of sources, including the Bloomington Police Department, news reports and individuals. Victims of hate incidents are urged to report the incident to the police by calling 911 or to the BHRC by calling 349-3429 or e-mailing human.rights@bloomington.in.gov. The BHRC accepts anonymous reports.

Bloomington Dr. Martin Luther King, Jr. Commission Announces Video Contest

The City of Bloomington Dr. Martin Luther King, Jr. Birthday Celebration Commission invites elementary, middle and high school students to submit an original video that addresses the legacy of Dr. Martin Luther King, Jr.

Successful videos will include specific references to the life and legacy of Dr. King. Videos posted by the December 13 deadline and acceptable to the Commission will be available for public viewing and voting. The winning video may be shown at the City's Dr. Martin Luther King, Jr. Birthday Celebration on January 20, 2014, at the Buskirk-Chumley Theater.

Videos must be between 45 seconds and 180 seconds in length. The prize for the best individual video is an Apple iPad; the group prize is a pizza party. To enter, go to bloomington.in.gov/mlk and follow the on-line submission process. Entrants must also print, sign and submit contest participant release forms.

Bloomington Council for Community Accessibility Seeks Nominees

The City of Bloomington's Council for Community Accessibility (CCA) is accepting nominations for its annual awards ceremony. The awards recognize individuals, businesses and organizations that make the community more accessible for people with disabilities. The CCA advocates on behalf of people with disabilities, promoting awareness and working to develop solutions to problems of accessibility in the community. The deadline is October 11, 2013.

Award categories include:

Kristin Willison Volunteer Service Award

Business Service Award

Professional and Community Service Award

Housing Service Award

Self-Advocacy Award

Mayor's Award

For more information contact Craig Brenner, Special Projects Coordinator, by email at brennerc@bloomington.in.gov or by phone 349-3471.