



RIGHTS STUFF

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Changing Genders Does Not Void Marriage

David Summers and Angela Summers were married in 1999. They had a child in 2005. At some point, David was diagnosed as having gender dysphoria, which was previously called gender identity disorder. It's the medical term for someone whose "gender at birth is contrary to the one they identify with."

In 2005, David filed a court petition to have his name changed to Melanie Lauren Artemisia Davis and to have the gender on his birth certificate changed from male to female. The court granted the name change and three years later, granted the gender change as well.

Melanie filed for divorce in 2012, and Angela did not object. Indiana law says that "only a female may marry a male. Only a male may marry a female. A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it was solemnized." The trial judge ruled that once David legally became Melanie, their marriage became one between two women, and thus, under Indiana law, the marriage was void. Thus, the trial judge said she could not grant the divorce, quoting a previous case that held that "a trial court cannot dissolve a marriage that is not a marriage because it is already void." Melanie appealed.

The Court of Appeals disagreed with the trial court's findings, noting that

when the two were first married, David was a man and Angela was a woman. The marriage at that point was not void under Indiana law. The Court said, "there is nothing in the Indiana code chapter dealing with void marriages that declares that a marriage that was valid when it was entered into becomes void when one of the parties has since changed his or her gender." The Court added that the trial court's reasoning "would also result in an untenable situation regarding the parties' child, who is a legitimate child born to a legally-married man and woman during their marriage. To conclude that the parties' marriage became void when the gender was changed on David's birth certificate would permit David to effectively abandon her own child, even though the parties were validly married at the time of the child's birth and even though David is the child's father. It would also leave the parties' child without the protection afforded by Indiana's dissolution statutes with regard to parenting time and child support. We do not think that our General Assembly intended such a result."

The Court noted that there was no evidence to suggest that David/Melanie wanted to abandon her child. She claimed on appeal that the trial court's ruling could have the undesired effect of terminating her parental rights and the Court of Appeals agreed that the lower court ruling could have that effect. The case is in re the Marriage of David and Angela Summers, I N.E. 3rd 184 (Ct. App. 2013).

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Ventura Corporation to Pay \$354,250 to Settle EEOC Lawsuit Alleging Sex Discrimination Against Men

Ventura Corporation is a wholesaler of makeup, beauty products, jewelry and other personal care items and is based in Puerto Rico. Recently, the U.S. Equal Employment Opportunity Commission (EEOC) announced that it had settled a complaint against the company alleging sex discrimination.

According to the EEOC, Ventura engaged in a pattern or practice of refusing to hire men as zone managers or support managers. The EEOC said that the company promoted a man, Erick Zayas, into a zone manager job after he complained about its discriminatory practices, but then set him up to fail and terminated him in retaliation for complaining.

The EEOC said that Ventura

caused a "great deal of critical evidence supporting the case" to be lost or destroyed. The missing evidence included job applications from qualified male applicants and emails from decision makers.

Under the terms of the settlement, Ventura will pay \$354,250 to settle the lawsuit, including \$150,000 to Mr. Zayas. The rest of the money will go to qualified male applicants for zone or support managers that Ventura never seriously considered hiring. The company also will have to implement a detailed applicant tracking system, actively promote supervisory accountability for discrimination prevention, provide anti-discrimination training to employees and provide regular hiring reports to the EEOC.

In announcing the settlement, Robert E Weisberg, regional attorney for the EEOC's Miami District Office, said "this case is another reminder that federal law protects both men and women from gender discrimination. We are pleased that we have been able to secure relief not only for Mr. Zayas, but also for the many qualified applicants who were not considered by Ventura for employment simply because they were male."

The Bloomington Human Rights Ordinance also protects both men and women from sex discrimination in employment. If you have questions or concerns about your rights under fair employment laws, please contact the BHRC.

President Takes Steps to Ensure Equal Pay for Women

On April 8, President Obama signed an executive order prohibiting federal contractors from retaliating against employees who choose to discuss their pay. It's long been illegal to pay women less than men for doing the same job. But if women don't know they are getting paid less than men, and if they can be fired for discussing their pay with their coworkers, they are unlikely to be able to take steps to correct the problem. The order does not require employees to discuss

their pay and it does not require contractors to disseminate pay data.

On the same day, the president signed a memorandum instructing the secretary of labor to establish new regulations requiring federal contractors to provide summary data on compensation paid to their employees, including data broken down by sex and race.

A bill, the Paycheck Fairness Act,

is pending before Congress that would impose similar requirements on all employers covered by the Fair Labor Standards Act, not just federal contractors.





Does Conducting a Poor Investigation of a Sexual Harassment Complaint Constitute Sex Discrimination?

Brian Davis worked for Per Mar Security in Illinois as a security guard. He was providing security at a hospital when he was told by a nurse that an individual was masturbating in one of the emergency rooms. Davis called the police, who arrested the individual. The next day, Davis told the nurse that he had to write a report about the incident and would have to tell his supervisor "about the jerking off." The nurse told her supervisor that Davis had said, "I am going in there to jack off for her," but apparently that was not an accurate quote. Nevertheless, Per Mar investigated and eventually terminated Davis for sexual harassment.

Davis sued Per Mar, saying they conducted "an incomplete, incompetent, and negligent investigation." He said that Per Mar accepted the nurse's statement, even though it was "defamatory and inaccurate," and that by taking her word over his, it was engaging in sex discrimination. He alleged, in essence, that taking an adverse employment action against an employee based on unfounded sexual harassment charges is a violation of fair employment laws. The Court did not agree. Nor did the Court agree that the nurse's untruthful statement was itself a form of sexual harassment.

The Court said that fair employment laws make it illegal for an employer to engage in sexual harassment. Nothing in the laws makes it illegal for an employer to conduct an apparently botched investigation. Davis had no evidence that Per Mar believed the nurse and not him because he is male and she is female.

The case is Davis v. Per Mar Security and Research Group, 2013 WL 1914324 (N.D. Ill. 2013).

Rhode Island Signs Consent Decree to Provide More Integrated Work Experiences for People With Disabilities

Sheltered workshops are segregated facilities that exclusively or primarily employ people with intellectual or developmental disabilities. They are usually large institutional facilities where the employees have little or no contact with people who don't have disabilities, except for staff members. They usually get paid well below the minimum wage under an exception to the federal minimum wage law.

Rhode Island recently entered into a consent decree with the U.S. Department of Justice (DOJ) to place more of these employees into integrated

work environments. Before the consent decree, about 80% of the people with intellectual or developmental disabilities receiving state services were working in segregated sheltered workshops. Only about 12% of them were placed in individualized, integrated work environments. DOJ's investigation found that Rhode Island over-relied on segregated settings, to the exclusion of integrated alternatives.

Under the terms of the consent decree, these individuals will be placed in integrated employment settings where they will be paid at least the minimum

wage, will be scheduled to work the maximum number of hours consistent with their abilities and preferences and will interact with co-workers without disabilities to the greatest extent possible.

Individuals who prefer to remain in segregated employment will be able to request a variance to do so, after they have received a vocational assessment, a trial work experience, outreach information and benefits counseling.



Fair Housing and Victims of Domestic Violence

Most landlords know, we hope, that they may not discriminate on the basis of race, sex, religion, color, disability, ancestry, national origin, sexual orientation, gender identity or familial status. What they may not know is that state law also protects victims of domestic violence, sexual assault or stalking from discrimination because of their status as victims.

Indiana law says that "A landlord may not terminate a lease, refuse to renew a lease, refuse to enter into a lease, or retaliate against a tenant solely because [the] tenant, applicant, or an individual who is a member of the household" is a victim of a crime such as domestic violence, sexual assault or stalking. The law also requires that landlords must change the locks of a unit within 48 hours of a written request of a tenant who has an

order of protection or a no contact order against an abuser.

And if a victim of domestic abuse or assault needs to terminate her lease early, she has that right if she meets certain conditions. She must submit written notice to the landlord or management thirty days before leaving. She also must give her landlord a copy of a court-issued order of protection or no contact order, or a safety plan from an accredited domestic violence or sexual assault program that recommends relocation. Landlords may not legally charge qualified victims penalties for early cancellation of the lease and must refund deposits as if the lease had expired on its stated terms.

Landlords sometimes evict

tenants because police are called to the unit too frequently. If tenants are calling the police because of domestic violence, landlords need to take care to properly sort out the cause of those calls.

Steps landlords can take to help victims of domestic violence:

- Make sure the property is well-lit, safe and secure.
- Complete repairs that may pose a safety issue, such as broken locks and windows, promptly.
- Acknowledge domestic violence protection orders and help to enforce them.
- Respect your tenants' privacy. Do not publish victims' addresses in newsletters or give out information to anyone without a release from the tenant.



Byron Bangert, Kim Stanley, Nicole Bolden and Barbara McKinney participated in the 2014 VITAL Quiz Bowl at the Monroe County Public Library. Their team, Rights Stuff, came in fourth.