



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

July 2014
Volume 179

Department of Justice Announces Settlement in Case Against Gwinnett College

A woman who has HIV applied to the medical assistant program at Gwinnett College in October, 2010. She completed a health questionnaire that disclosed her HIV status. The school did not ask her any additional questions about her health, and her application was accepted. Her classes began in November, 2010.

In December, she was taking a class on medical law and ethics. She asked her professor if she would need to take any additional precautions during her upcoming phlebotomy course because of her HIV. He told her that she would be required to use universal safety precautions, as all health care professionals are required to do.

In January, during the first day of classes in the new quarter, the president of Gwinnett told the woman that she could not continue in the medical assistant program because of her HIV. He told her she was a safety risk to others in her class. The president said if he had known about her status when she applied - a status she disclosed during the application process - he would not have allowed her to enroll in the medical assistant program. He told her she would have to switch to the medical office administrator program or the massage therapy program, or leave the college.

With reluctance, the complainant switched to the medical office administrator program and completed two classes the following quarter. But

then she decided she wanted to resume her studies in the medical assistant field. She tried to talk to the college president again, to see if he would reconsider his decision, but he did not make himself available to her. So she left Gwinnett and resumed her studies at another college. None of the classes she had taken at Gwinnett transferred to the new school, so she had to start all over. She has since graduated with a certification as a medical assistant.

She filed a complaint with the Department of Justice (DOJ), alleging that Gwinnett discriminated against her in education on the basis of her disability, in violation of the Americans with Disabilities Act (ADA). DOJ recently announced the complaint had been settled. Gwinnett College agreed to do the following:

- Comply with the ADA;
- Remove the question about HIV from its health questionnaire;
- Draft and implement a policy saying it complies with the ADA and will provide reasonable accommodations as required by law;
- Train its staff on the ADA, with a focus on HIV-related discrimination;
- Pay the complainant \$19,257 to compensate her for the harm she endured; and
- Pay the National Student Loan Data System \$3,743, the amount of the loan the complainant took out so that she could attend Gwinnett.

BHRC Staff

Barbara E. McKinney,
Director

Barbara Toddy,
Secretary

Commission Members

Byron Bangert, Chair

William Morris, Vice Chair

Michael Molenda,
Secretary

Carolyn Calloway-Thomas

Valeri Haughton

Beth Applegate

Birk Billingsley

Mayor

Mark Krusan

Corporation Counsel

Margie Rice

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



Record Judgment in ADA Lawsuit

In late April of last year, a jury in Iowa awarded \$240 million to 32 men with mental disabilities who used to work at a turkey processing plant. This was the largest judgment ever in a federal abuse and discrimination case.

The men had worked for Henry's Turkey Service, a labor contractor that sent hundreds of men from Texas to Iowa, where they processed turkeys for West Liberty Foods. Henry's paid the men 41 cents an hour. It housed them in a former school building that had been converted into a bunkhouse. Eventually, the building was shut down because it was infested by rodents and was unsafe. The men were subjected to harsh discipline and abuse at home and at work. They were forced to work through illness and injuries, denied bathroom

breaks, locked in their rooms, kicked in the groin and in one case, handcuffed to a bed. West Liberty is not accused of any wrongdoing; it paid Henry's to find workers and Henry's paid and housed the men.

The Labor Department had already won a \$1.76 million judgment against the company for federal labor law violations, and the Equal Employment Opportunity Commission (EEOC) had already won a \$1.3 million judgment for wage violations.

Under the jury verdict, each man is supposed to be awarded \$7.5 million, \$5.5 million in compensatory damages and \$2 million to punish the company for knowingly violating the law. However, the company, which is reported

defunct, may not be able to pay. P. David Lopez, general counsel for the EEOC, said, "This historic verdict marks one of the EEOC's finest moments in its ongoing efforts to combat discrimination, especially discrimination against vulnerable and historically underserved populations. The fact that the jury rendered its largest verdict ever obtained by the EEOC says volumes about the severity of the violation and it illustrates this agency's resolve to vindicate the rights of all discrimination victims."

(Article based on "Iowa Jury Returns Record \$240 million judgment in ADA Abuse Case," by Michael Muskal, published in the Los Angeles Times on May 1, 2013.)

Employers Should Consider Providing Interpreters for Applicants

Shakirra Thomas applied for a team member position at Toys "R" Us. She is deaf and communicates by using American Sign Language, reading lips and taking notes. The store contacted her and asked her to attend a group interview. Her mother called the store, told them that Thomas is deaf and asked that it provide a sign language interpreter at the group meeting. Toys "R" Us told the mother that Thomas would have to provide her own interpreter, so her mother went to the group meeting and interpreted for her.

The store refused to hire Thomas, even though she was allegedly qualified for the job and able to perform required duties, with or without a reasonable accommodation.

Thomas sued, and the U.S. Equal Employment Opportunity Commission (EEOC) recently announced that the case had been settled. Toys "R" Us will pay Thomas \$35,000, train its supervisors on the Americans with Disabilities Act (ADA) and post a notice about the lawsuit at the workplace.

It is not clear from the EEOC press release how often Thomas would need an interpreter at the workplace. Providing a full-time interpreter might not be a reasonable, or affordable, accommodation for many employers. But many deaf people are able to communicate effectively on a one-to-one basis and need interpreters only for certain settings, such as group meetings. Providing an interpreter from time to time would be a reasonable accommodation for many employers.



Men (and One Woman) Win Sex Discrimination Case

People sometimes think that fair employment laws are limited in the type of protection they offer. They may think that only women may win a case alleging sex discrimination, that only members of minority groups may win a case of race discrimination, etc. In some cases, this is true - only people who are 40 or over may win a case of age discrimination and only people who meet the legal definition of having a disability may win a case alleging disability discrimination. But a recent EEOC (Equal Employment Opportunity Commission) case showed that men, indeed, may win a case alleging sex discrimination.

It's Just Lunch USA, LLC, is a company based in Hallandale Beach, Florida, that provides matchmaking services nationwide.

According to the complaint, It's Just Lunch refused to hire men as dating directors and inside sales representatives. The complaint said that the company fired its human resources director when she opposed its sex-based hiring practices.

The EEOC investigated and attempted to settle the matter, but when it could not negotiate a settlement, it sued in federal court. Recently, the parties reached a settlement. Under the terms of the settlement, It's Just Lunch will pay the former human resources director \$130,369; the rest of the \$900,000 settlement will go into a fund for qualified male job applicants who were not considered by the company. It's Just Lunch also agreed to implement a detailed applicant tracking

system, provide training to managers, human resources personnel and employees and provide quarterly hiring reports to the EEOC for three years.

The director of the EEOC's Miami District Office, Malcolm Medley, said, "Employers cannot refuse to hire applicants based on unfounded sex stereotypes. Moreover, employees who raise legitimate concerns about their employer's employment practices must be able to raise those concerns without fear of unlawful

*Look for the BHRC
float in the 4th of July
parade!*

Employer May Be Required to Provide Automatic Door Opener

Scott Conant worked for Orion Energy Systems, Inc., a company based in Manitowoc, Wisconsin. When his ability to walk became impaired and he had to use a wheelchair for mobility, he asked that Orion install an automatic door opener. Orion did not install a door opener and Conant was later fired.

Conant filed a complaint with the Equal Employment Opportunity Commission (EEOC), alleging that Orion had discriminated against him on the basis of his disability, in violation of the

Americans with Disabilities Act (ADA). Under the ADA, covered employers are required to provide reasonable accommodations to qualified employees with disabilities.

The EEOC recently announced that it was suing Orion on Conant's behalf. John Hendrickson, regional attorney for the EEOC's Chicago District, said, "Doors to meaningful employment must remain open for persons with disabilities. Here, the doors were shut in Mr. Conant's face both literally and figuratively.

The EEOC is here to make sure those doors stay open for people wrongly and illegally denied opportunities because of disabilities."

What is a reasonable accommodation is determined on a case-by-case basis. Under the law, Orion would not have to provide automatic door openers if the cost of doing so was prohibitive, given the company's resources, or if there were another, equally effective way of making sure Conant could enter and leave the building.



EEOC Settles Lawsuit Against U-Haul

The Equal Employment Opportunity Commission (EEOC) recently announced that it had reached a settlement in a race discrimination lawsuit against U-Haul International, Inc. According to the lawsuit, eight African American employees at U-Haul were subjected to racial slurs and other racially offensive comments by their white supervisor, the shop manager. The EEOC said the manager regularly used the "N" word and other derogatory slurs when talking to his black employees. When one of the men com-

plained about the race discrimination, according to the EEOC, he was terminated.

Under the terms of the settlement, U-Haul will pay the men \$750,000. It also will maintain an anti-discrimination policy at its worksite, will provide mandatory training to all employees in Tennessee and will provide written reports to the EEOC regarding future race discrimination or racial harassment complaints by employees.

David Lopez, general counsel for the EEOC, said, "We are pleased we were able to settle this lawsuit. This is the EEOC's latest case in our ongoing efforts to eradicate racial harassment from the workplace. Employers must take prompt and effective action when complaints are made, and must remember that retaliation against a complaining employee is illegal. We commend U-Haul for agreeing to policies and procedures to protect its employees in the workplace."

50 Ways to State Your Gender Identification

Until recently, people filling out forms for employment, doctors and the like typically had only two choices to identify their gender or sex: male or female. That is changing.

Facebook recently announced that it is now offering users 50 different possibilities and permutations of gender identification. In the gender category under basic information, the drop-down box now includes such choices as non-binary, intersex, neutrois, androgynous, agender, gender questioning, gender fluid, gender variant, genderqueer and neither. (To save you a computer search: According to Google and Wikipedia, neutrois

means neutral or genderless. Androgynous means a combination of masculine and feminine characteristics. Agender means without gender. Gender questioning means you are still exploring your gender identity or you may be adverse to using a label to define yourself. Gender fluid means you move between genders or have a fluctuating gender identity. Gender variant is a behavior or gender expression that does not conform to dominant gender norms of male or female. And gender queer is a catchall category for gender identities other than man and women.)

If you are someone who identifies with your societally-

recognized gender, the term for you is "cisgender." This term is used by people who work in related fields but apparently has not yet spread to wider use.

So far the 50 choices are available only to English users of Facebook. Some of the terms don't, yet anyway, have equivalents in other languages.

Such choices have not expanded only on Facebook. In Australia, people now have three options when choosing their gender for passport purposes: male, female or X. The X option is meant to be used by people who are transgender as well as people who are intersex, meaning having both male and female characteristics.