RIGHTS STUFF

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Woman Loses Sexual Harassment Lawsuit

Emma Reza began working at a Costco warehouse in Chicago in November, 2010. All Costco employees receive a copy of the company's employee agreement, which includes its policy on discrimination and harassment. The policy gives employees a number of options concerning whom to contact to report harassment and discrimination. It says "You are required to report all harassment, discrimination, retaliation or other inappropriate behavior as soon as possible."

After leaving employment with Costco due to a workplace injury, Reza filed a sexual harassment complaint against the company. She alleged that her supervisor, Brian Thomas, made unwelcome physical contact with her on about five occasions.

- In April, 2011, she brought a letter to Thomas that described problems she had with two female supervisors. At the end of the meeting, she reached out her hand to him. He took her hand in his and rubbed it for a few seconds. He said he liked her. She did not complain.
- A few weeks later, she was working on the floor. Thomas placed his hands on her shoulders for a few seconds and smiled at her. She did not complain.
- A few weeks later, she was working at the cash register. He placed his hands on her shoulders and walked her to his office, three or four steps away. When they got to his office, he grabbed her shoulders and maneuvered her to a chair. She told him his touching her was "unethical."
- Shortly thereafter, she complained to him again about a female supervisor. She did not think Thomas was being sympathetic to her concerns. She threatened to go over his head to Human Resources. He gave her a "sarcastic smile," put his hand on her shoulder and told her to relax. He told her to be careful. He then touched each of her breasts for a second or two. She did not complain.
- After her workplace injury, when she no longer worked for the company, she returned to the worksite, trying to find a witness to the incident when Thomas had touched her breasts. Thomas approached her from behind and rubbed her back and shoulder for a second or two. He asked her when she would return to work. She angrily told him not to touch her again.

She also alleged that Thomas had repeatedly said he liked her, and asked her personal questions about what wine she liked, what was her favorite color and when did she meet her husband. She said that at first, she did not believe these questions were sexual in nature, but upon later reflection, she did.

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Sexual Harassment Lawsuit (continued from page 1)

Reza never reported any of these incidents to Costco while she was an employee there, unless telling Thomas twice to stop would be considered reporting. She told a co-worker about the incidents, but only after her injury, when she had stopped working at Costco. The first time Costco management heard about the allegations was when she filed her complaint. She said her husband did try to report the situation to Costco's Human Resources Department, but refused to leave contact information, so no one was able to return his call.

The Illinois Department of Human Rights gave Reza a right to sue letter, and she sued Costco. moved for summary judgment, meaning Reza had not presented enough evidence to continue with the lawsuit, and won.

The Court said that "while perhaps boorish, Thomas only touched Plaintiff's body four times, once on the hand, two on her shoulders and once on her breasts. Her other complaints involve rather isolated comments such as he 'liked her,' the type of wine she preferred and her favorite color. If she had felt these actions were truly offensive to her, she would have complained to someone other than Thomas . . . . She was aware of the correct procedure to be followed because she acknowledged receiving and reading the reporting requirements contained in the agreement, which she utilized when she complained to Thomas about the racial hostility of another Costco employee."

The Court found that Thomas' alleged behavior was "neither subjectively hostile to Reza nor objectively hostile under Title VII law."

The case is Reza v. Costco Wholesale Corporation, 2014 WL 492212 (N.D. Ill 2014). If you have any questions about sexual harassment, or employment discrimination in general, please contact the BHRC.

The FMLA and Reassignment

C. Michael Allen began working for Walmart in 2007 and became a store manager in 2008. By 2009, he was on a performance review plan. His work performance did not improve and in 2010, he met with supervisors. They advised him to consider his family and to look at other career opportunities.

A month later, Allen sent an email to his supervisor that described recent stressful experiences in his personal life. He wrote, "I feel that it would benefit me and the company if I considered taking another position in the company." He suggested shift manager would be a good fit "to continue my development and provide me with the necessary time to devote to my family. I hope that you will consider my request for reassignment." This email was sent on October 8, 2010.

Allen's request for reassignment was still in progress on November 4, 2010, when he applied for and was granted leave under the Family and Medical Leave Act (FMLA). He returned to work on January 25, but as an assistant manager, not as a store manager. The FMLA requires employers to return employees to the same or equivalent position when they come back to work after a leave. He sued, unsuccessfully.

The Court found that Allen had requested reassignment before he went on FMLA leave, and thus Walmart had a legitimate, non-discriminatory reason for not returning him to his store manager job. The fact that his request for reassignment was still in progress when he asked to go on FMLA leave did not mean that the store could ignore his request. Nothing in the FMLA requires employers to permit rescission of a request for reassignment.

The case is Allen v. Walmart Stores, 2014 WL 1977047 (E.D. MI 2014).

HUD Announces Settlement in Deaf Discrimination Case

Testers posing as rental applicants who are deaf or hard of hearing called landords to ask about apartments in Austin, Texas, using the Internet Protocol Relay System. The system allows people who have hearing impairments to use computer text to communicate with hearing people.

According to the testers, agents of Bell Partners, a landlord in Austin, hung up on testers using the relay system or sent their calls directly to voice mail. But when testers didn't use the relay system, agents answered the calls. When testers using the relay system were able to talk to Bell Partner agents, the agents allegedly quoted higher rental prices and failed to offer the same specials and amenities they offered to testers who didn't use the system. Agents also allegedly failed to follow up with testers using the relay system.

Dave Ziaya, acting assistant secretary for Housing and Urban Development (HUD's) Fair Housing and Equal Opportunity Division, said "Testing exposes housing discrimination that might otherwise go undetected. The Fair Housing Act protects all potential renters, including those who are deaf or hard of hearing. HUD will continue to enforce the law to ensure that no one is denied housing because they have a disability."

Under the terms of the settlement, Bell Partners will pay $175,000 to the National Fair Housing Alliance, which provided the testers. Bell will also provide fair housing training to both newly-hired and current employees. The training will cover the use of assistive technology for deaf and hard of hearing individuals, including telecommunications relay systems.

HUD recently released a series of videos in American Sign Language with English captioning that provide fair housing information. The videos are available on HUD's web site.

If you feel you have been discriminated against in housing, employment or public accommodations, please contact the BHRC.

Status-Blind Harassment

At the Bloomington Human Rights Commission, we often get calls from people we can't help because their issues don't fall under the jurisdiction of the Bloomington Human Rights Ordinance. Our ordinance prohibits discrimination in employment, public accommodations and housing on the basis of race, sex, religion, color, ancestry, national origin, disability, sexual orientation or gender identity.

But what if you are a white Christian male and your boss, also a white Christian male, is harassing you at work? What if he treats everyone like that, regardless of their sex, race, or other legally protected categories? Such a boss is sometimes called an equal opportunity offender - he treats everyone badly, regardless of their sex or race, so he is not engaging in illegal discrimination. He is not violating fair employment laws.

One term for this type of behavior is "status-blind harassment." The boss is not picking on people because of their legally-protected status but because apparently he is simply a bully. Currently, no law outlaws such behavior, although ten states (not including Indiana) have considered legislative proposals that would address the issue.

Harassment, whether it's based on a legally protected category or not, can lead to unfortunate consequences. A bullied employee is unlikely to do her best work or to stay very long. She's unlikely to speak well of her employer, which can hurt recruitment. And in extreme cases, bullied employees have retaliated by engaging in workplace violence.

It's important that employers implement policies against workplace harassment, regardless of its motivation. Companies should have an effective grievance policy in place, and make sure all employees are aware of it.

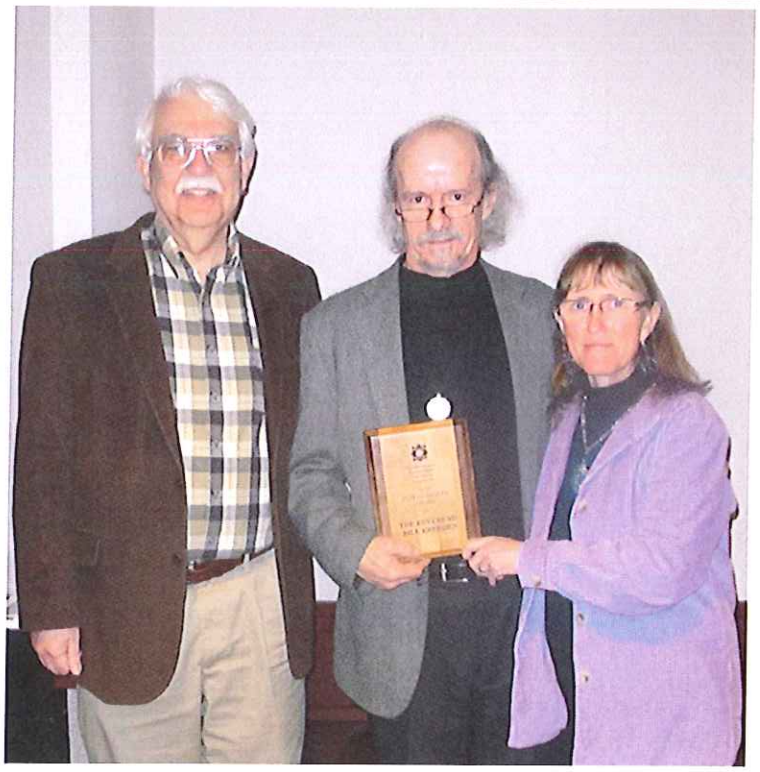
Is Trypanophobia a Disability Under the ADA?

A pharmacist began working for Rite Aid Corp beginning in 1997. In 2011, Rite Aid decided that all pharmacists had to undergo immunization training so that they could administer flu shots. The pharmacist explained to Rite Aid that he has trypanophobia, a fear of needles. He provided a note from his doctor affirming his condition, and said that he could not undergo the required training or administer flu shots. He asked that he be exempted from the training requirement as an accommodation under the Americans with Disabilities Act (ADA), noting that there are always other employees available who could administer shots.

Rite Aid decided that this condition was not a disability under the ADA. It said that administering shots was an essential job duty of a pharmacist, but apparently this duty was not listed on any job description. When the pharmacist refused to undergo the training, Rite Aid fired him. He sued under the ADA. In January of this year, a jury awarded him $485,633 in back pay, $1,227,188 in front pay and $900,000 in other damages.

The judge in the case seemed to see the question of whether trypanophobia is a disability to be a question of fact for the jury to decide, although most courts would see it as a question of law for the judge to decide.

Rite Aid announced it will appeal.



Byron Bangert, Chair of the BHRC, awards the Rev. Bill Breeden the 2015 Human Rights award at the Council Chambers in City Hall on March 4, 2015. Present also is Glenda Breeden, Bill's wife.