



RIGHTS STUFF

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Eating Disorder Clinic May Not Impose Special Conditions on Patients Because They Have HIV

Susan Gibson has HIV, an impairment that substantially limits some of her major life activities, including the functions of her immune system. Thus, she is considered to be a person with a disability and protected against discrimination under the Americans with Disabilities Act (ADA).

In November, 2010, Gibson contacted the Castlewood Treatment Center, seeking admission to its eating disorder treatment program. Castlewood told her they had a waiting list for admission and it would take three months before she could be admitted.

In January, 2011, Castlewood's vice president of finance found out that Gibson had HIV. He talked to the medical staff, who told him they could care for her. But Castlewood did not proceed with the admission process for Gibson, according to the Department of Justice (DOJ). Instead, they delayed the process. Castlewood's executive director allegedly told the medical staff, "We hope to delay it long enough so she will go somewhere else." He told the intake coordinator to "be vague" when talking to Gibson.

The intake coordinator talked to Gibson several times, saying that the payment agreement was causing a delay in getting her admitted and encouraging her to seek treatment elsewhere. The delay continued for four months. In May, Castlewood told her that they would

not accept her due to her HIV status, as they did not accept clients with high risk communicable diseases.

Gibson's attorney wrote a letter demanding that Castlewood admit her to its program. They agreed in July, provided that she go to a hospital for all blood draws during her treatment, including the weekly lab tests that Castlewood requires. All other patients had their blood drawn at the Castlewood clinic.

Standard medical practice is to use universal precautions when handling any bodily fluid, including wearing rubber gloves. No additional precautions are necessary when drawing blood from a patient with HIV.

Gibson declined to be admitted on these grounds and was admitted to a different treatment center a few weeks later. She filed a complaint with the DOJ alleging that the seven-month delay in her treatment caused her health to worsen. She lost weight which put her at high risk of a heart attack, and said she suffered stress, anxiety, depression and general emotional distress.

Castlewood denied it discriminated against Gibson, saying that when it offered her admission in July on the condition that she have all blood

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Are Undocumented Workers Entitled to Fair Labor Law Protections?

Karen Alvarez worked for Burlington Graphic Systems, Inc., for nearly ten years as a printing press operator. She saw a doctor on October 27, 2011, and was told she needed surgery to remove a glass fragment from her face. She had the operation on November 8 and returned to work on November 15. The next day, she was fired, allegedly for being late too many times. She filed a complaint under Wisconsin's version of the Family and Medical Leave Act (FMLA).

The state indicated it would rule in her favor, and Burlington rehired her before a hearing was scheduled. Burlington treated her as a "new hire" and required her to provide documentation of her eligibility to work in the US (sometimes called the I-9 requirements). Alvarez could not provide the documentation because she is an undocumented individual, and so Burlington fired her a few days later.

Once Burlington fired Alvarez, she proceeded with her state

FMLA claim, seeking back pay from the time she was fired on November 16 until March 19, when she was rehired. She did not seek reinstatement. After an administrative hearing, Wisconsin found that Burlington had violated the state FMLA when it terminated Alvarez for taking time off work for her serious health condition. It told Burlington it had to follow the FMLA in the future, but declined to award back pay because Alvarez had not been legally authorized to work in the US.

The matter went to court. The Court said that the state FMLA "does not limit its application based on an individual's immigration status. The Wisconsin FMLA applies to Alvarez as an employee."

Burlington argued that Alvarez was not entitled to FMLA leave or to employment because of her undocumented status. The Court said simply, "Burlington is wrong. The fact that undocumented workers have no right to contin-

ued employment, just as at-will employees have no right to continued employment, does not mean that employers are free to ignore employment laws. Once employed, employees (regardless of immigration status) have the right to take medical leave for the period during which a serious health condition renders them unable to perform their employment duties."

The Court said that adopting Burlington's interpretation of the law would create an incentive for employers to hire undocumented individuals so they could fire the employees if they needed time off for health reasons. The Court said that it did not think that was what the legislature intended.

The case is Burlington Graphic Systems, Inc. v. Department of Workforce Development, Equal Rights Division, 859 NW 2d 446 (WI Ct. App. 2014).

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draws done at a hospital, it was offering her "full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations offered" by the clinic. Nevertheless, it agreed to enter into a settlement agreement with the DOJ and Gibson.

Under the terms of the settlement, Castlewood will implement a policy of not discriminating on the basis of disability, train its employees on the policy, incorporate its policy into its training manuals, pay Gibson \$115,000 and a civil penalty of \$25,000 to the DOJ and notify the

department if it receives further complaints of discrimination on the basis of a communicable disease.

If you have questions about your rights and responsibilities under the ADA, please contact the BHRC.



Appellate Court Overturns \$4 Million Fee Award Against EEOC

The U.S. Equal Employment Opportunity Commission (EEOC) sued CRST Van Expedited, LLC in 2007, alleging that the trucking company was responsible for severe and pervasive sexual harassment in its new driver training program. The District Court dismissed the claims of more than 150 women for whom the EEOC was advocating. EEOC appealed and the two parties settled one of the many claims. The District Court awarded CRST \$4 million in fees and costs, finding that the other EEOC cases were without merit.

But in late 2014, the Eighth Circuit Court of Appeals reversed some of the findings of the District Court. The lower court's finding was based in part on its conclusion that the EEOC

argument that the company had engaged in a pattern-or-practice of sexual harassment was not well-founded, but the Appeals Court found that the EEOC had not made such an argument. The District Court had dismissed 76 of the claims based on the alleged failure of the EEOC to satisfy its duty to try to resolve matters without going to court, but the Court of Appeals said such dismissals do not constitute a ruling on the merits, making them ineligible for an award of attorney's fees.

And the Court of Appeals found the lower court was in error when it did not individually analyze each of the claims of sexual harassment. Instead, it just summarily found all of the remaining claims to be "frivolous, unreason-

able, or groundless." The Court of Appeals remanded the case back to the District Court to make individual assessments on the merits of each of the remaining cases. Thus, a case that began in 2007 continues for at least a little while longer.

After the earlier District Court rulings, the EEOC was criticized by lawyers and politicians for its actions. The EEOC's regional attorney in Chicago, John Hendrickson, said, "As anyone who has followed the CRST litigation knows, the agency has absorbed its share of criticism about the case even though the proceedings were ongoing. Today's decision [by the Court of Appeals] illustrates the perils of rendering premature judgments and counsels a more measured approach."

PALS Announces 2015 Date for Mane Event

People & Animal Learning Services, Inc. (PALS) invites the community to its annual fundraiser, the PALS Mane Event, on June 12, 2015 at 6 p.m. in Indiana University's Alumni Hall. The Derby-themed evening will begin with a beer and wine tasting courtesy of local beer and wine vendors, accompanied by live music and a silent auction. Dinner and a live auction hosted by auctioneer Wendy Miller of CM Benefit Auctions will follow.

All proceeds from the event support PALS programs and allow the organization to provide its unique therapeutic services to

those in need, regardless of financial circumstances. Tickets are \$65 and guests must be 21 years or older with a valid ID to attend. Derby attire is encouraged. For additional event information, please contact PALS at ManeEvent@palstherapy.org, 812.336.2798 ext. 18 or visit www.palstherapy.org/maneevent. PALS is currently seeking donated items, packages and experiences for the event's live and silent auctions. If you would like to donate an auction item, please contact Jenny Lynn Vidas at jennylynn@palstherapy.org. PALS is a Bloomington nonprofit organization providing therapeutic

equine activities for individuals with disabilities, veterans and at-risk youth. Since 2000, PALS has provided nearly 11,000 therapeutic program and service hours, various educational programs and camp opportunities designed to improve the lives of hundreds of children, adults and seniors in the South Central Indiana community.





BHRC Announces Essay and Art Winners

Each year the BHRC sponsors an essay and art contest for local students. This year marks the 24th annual contest and its theme was "A Lesson I Learned From Someone Different From Me."

A ceremony honoring the award winners was held on April 2 at City Hall, where Mayor Mark Kruzan presented the students' prizes. (See picture below.)

The essay winners at the younger student level were first place, Zoey Burchenson, University; second place, Alaska Laster, Childs and third place, Ben Jaffe, Rogers. The essay winners at the older elementary level were first

place, Younwoo Shin, University; second place, Macy Shepard, University and third place, Bill Zhenyu Nie, University.

The art winners at the younger student level were first place, Nora LoPilato, Nola Somers Glenn, Mona Livingstong and Ruby Williams, Templeton and second place, Colin Morre, Childs. The older student art winners were first place, Childs fifth grade students in Ms. Schlegel and Ms. Carpenter's class; second place, Talinaiya Bao, University and third place, Emily Lucy Backs, University. The BHRC congratulates these students.

Judges for this year's entries were Carolyn Calloway-Thomas, Birk Billingsley, Michael Molenda and Barbara E. McKinney. Many thanks to this year's donors, Optiks, Aver's Pizza and the Ryder Film Series.

The essay contest is another effort by the BHRC to raise awareness on all human rights issues in the community. The Bloomington Human Rights Commission is designed to enforce Bloomington's Human Rights Ordinance in a fair and timely manner and educate community members about their rights and responsibilities under various civil rights laws, among other duties.

