



# RIGHTS STUFF

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## School May Have to Modify Nap Policy to Comply With ADA

Milwaukee Montessori School has a policy saying "Please note that every injury to the head will be treated as serious and young children will not be allowed to nap at school following any injury to the head." The purpose of the policy is to keep children safe, of course, and to protect teachers from having to make the decision as to the severity of a head bump and the possibility of a head injury.

For most students, this policy is likely quite reasonable and sound. But it didn't make sense for a child called M.K. in court documents. M.K. has a genetic condition that affects his neurological and musculoskeletal systems. He has low muscle tone throughout his body, with exaggerated muscle weakness on his right side, and difficulty with balance. He has trouble walking and falls more frequently than other children his age.

He started attending Milwaukee Montessori, which his brother also attends, when he was 18 months old. Each time he fell at school, regardless of the circumstances of the fall, its severity or how he acted after the fall, he was not allowed to take a nap that day.

M.K.'s parents asked the school to make an exception to the no-nap policy for him. They provided documentation from his doctor saying that she was not concerned about his falling from his standing height and said that he could safely be allowed to nap following bumps

to his head as long as he was not demonstrating any signs of a head injury. They explained that the policy might open M.K. up to more serious injury if he was not receiving adequate rest. They offered to sign a release of liability.

The school responded by saying that it could not modify its policy and said that M.K. could no longer attend the school. In response to the parents' specific request for a reasonable accommodation under the Americans with Disabilities Act (ADA), the school said "We assume that you mean Section 504 of the Rehabilitation Act, which applies to students with a disability in schools that receive federal funding. As Milwaukee Montessori School does not receive funding from the federal government, the law does not apply to the school."

The Department of Justice filed a lawsuit against the school, alleging that refusing to modify its policy to accommodate M.K.'s needs is a violation of the ADA. The ADA does apply to providers of public accommodations such as private schools. The lawsuit was recently settled. The school agreed to comply with the ADA, to train its staff on the ADA, to pay \$50,000 to the family and to pay \$5,000 to the U.S. government.

If you have questions about the ADA, please contact the BHRC.

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## Jury Awards Almost \$186 Million in Pregnancy Discrimination Lawsuit

Rosario Juarez had been a store manager for AutoZone for a year when she told her district manager that she was pregnant. His response: "I feel sorry for you. Congratulations." She said that his tone was frustrated and upset, not positive.

After Juarez shared her news, she said her assigned list of tasks doubled. She was required to redo displays that she said did not need to be redone. Juarez continued to meet all of her sales goals, but the district manager kept berating her. She said he repeatedly told her, "You can't handle it. You can't perform under your situation."

A few months later, Juarez was demoted. A year later, she filed a discrimination complaint against the store, and a year after that,

she was fired. She sued, alleging pregnancy and sex discrimination as well as wrongful termination.

At her trial, a former district manager for AutoZone testified that he attended a meeting where executives rejoiced over the expiration of an unrelated settlement agreement that AutoZone promote women and track its efforts. And there was evidence that a district manager was told that "women aren't worth a (expletive) to AutoZone" and was offered a promotion if he fired all of the women in his store. He was allegedly scolded for having hired too many women by a district manager, who asked, "What are we running here, a boutique?"

In November, a jury awarded Juarez \$185 million in punitive damages and \$900,000 in compensatory damages. Federal law

typically caps damages in such cases at \$300,000.

AutoZone is seeking a retrial. A representative said, "We believe this verdict could not be based on evidence or logic, and we plan to proceed with all legal remedies." He said that Juarez was demoted for "managerial disloyalty" and had misplaced \$400 in cash.

(Article based on "Fired Manager is Awarded \$186 million in Pregnancy Bias Suit Against AutoZone," by Debra Cassens Weiss, published at [www.abajournal.com](http://www.abajournal.com) on November 19, 2014, and "Jury Awards Mother More Than \$185 Million in Damages in Pregnancy Discrimination Case Against AutoZone," by Michael Chen, published at [www.10news.com](http://www.10news.com) on November 18, 2014.)

## Woman Sues Planet Fitness for Allowing Transgender Individual to Use Women's Restroom

Early in March, Yvette Cormier complained to Midland, Michigan's Planet Fitness customers and management that she had seen a man in the women's locker room. The individual she saw was a transgender woman. Planet Fitness cancelled Cormier's membership, saying her judgmental behavior was "inappropriate and disruptive to other members." And now Cormier is suing the facility for

more than \$250,000.

Her complaint said that Planet Fitness's inclusive policy is "an invasion of privacy [that] enables sexual harassment and possible criminal activity and endangers women and children." It said that when Planet Fitness allowed a "man" in the women's room, her privacy was invaded, causing her "embarrassment, humiliation, and severe

emotional distress." According to the complaint, Planet Fitness breached its contract with Cormier when it cancelled her membership, causing her "aggravation, annoyance, discomfort, disgrace, feelings of oppression, humiliation, inconvenience, indignation, insult, mental anxiety, mental suffering, mortification, outrage, scorn, shame, sorrow, vexation and worry." The lawsuit is pending.



## Supreme Court Decides Waiting in Security Line Not Part of Paid Work Day

The Bloomington Human Rights Commission has no jurisdiction over wage and hour claims unless there is a discriminatory element. But we often get questions about the issue, so we like to describe recent cases to help our readers understand the current state of the law.

Integrity Staffing Solutions, Inc., provides warehouse staffing to Amazon throughout the country. Their employees retrieve products from the shelves and package them for delivery to Amazon customers. At the end of each work day, Integrity requires its employee to undergo security screening before leaving the warehouse. Employees have to remove items such as wallets, keys and belts from their persons and then pass through metal detectors. Employees are not paid for their time in line waiting to pass through security.

Two employees sued, saying that they spend about 25 minutes each day in line, and should be paid for that time. They said that Integrity could have minimized the amount of time they spent waiting in line by having more lines or by staggering the ends of shifts, but did not. Since the security screening was done to prevent employee theft, it was solely for the benefit of the employer and their customers, and thus the employees should

be paid for that time, according to the employees. They lost at the Trial Court level, won at the Court of Appeals level and lost by a 9-0 decision in the Supreme Court.

Justice Thomas wrote the opinion for the Court. He noted that the Fair Labor Standards Act (FLSA) requires employers to pay employees a minimum wage and to provide overtime compensation. The FLSA did not initially define "work" or "workweek." When questions about interpretation came before the courts, the terms were defined broadly, and the term "work" was read to mean "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." Employers objected to such a broad interpretation, and Congress responded. The FLSA was amended to say that the following activities were not to be considered work that had to be compensated:

--walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform; or

--activities which are preliminary or postliminary to the principal activity or activities, if they occur before or after the time of the employee's workday and the

employee is not doing the principal activity or activities he was hired to do.

Since the amendments, Justice Thomas said, the Court has consistently interpreted the terms "principal activities" to mean "activities which are integral and indispensable parts of the principal activities." If a battery-plant employee has to shower and change clothes after work and before leaving because of the chemicals in the plant, meaning showering was indispensable to the performance of her productive work, then she has to be paid for the time spent showering. If a meat packer employee has to spend time sharpening his knife because dull knives would slow down production, then he has to be paid for the time spent sharpening.

But waiting in security lines is not, according to the Court, integral and indispensable to the warehouse jobs. While it may be true that Integrity could have reduced the amount of time employees spent in lines, doing so is not required. And having to wait in long lines does not make the time in line integral and indispensable parts of the job.

The case is Integrity Staffing Solutions v. Busk, 2014 WL 68859541 (U.S. Supreme Court 2014).



## **Commission on Hispanic and Latino Affairs Seeks Nominees for Awards**

The City of Bloomington Commission on Hispanic and Latino Affairs is seeking nominees for the fifth annual Hispanic and Latino Affairs Awards. The Commission seeks nominations of individuals who have been advocates and role models in the Latino community and who have shown strong qualities, such as leadership, initiative and dedication. The deadline for submission is August 14.

Awards will be given in four categories: the Latino Leader Award, Outstanding Latino High School Senior Award, Community Organization/Agency Award and the Latino Community

Supporter Award. Nominees should be people who, through their contributions, have been influential role models, have served as advocates for services and the rights of Latinos and have shown continuous direct and effective involvement in the Latino community.

Nominations should include the name, address, telephone number and e-mail address of the nominee in addition to the reasons the nominee merits the award. Those submitting nominations also should include their name, address, telephone number and e-mail address. Nomination forms may be completed online

at [www.bloomington.in.gov/chla](http://www.bloomington.in.gov/chla) or may be obtained in the City of Bloomington's Community and Family Resources Department at City Hall, 401 N. Morton St., Ste. 260.

For more information, contact Latino Outreach Coordinator Araceli Gomez-Aldana at 812.349.3860 or [gomez@bloomington.in.gov](mailto:gomez@bloomington.in.gov).



Members and friends of the BHRC and MCHRC marched in the 4th of July parade.