RIGHTS STUFF

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What Constitutes "Opposition to Discrimination?"

Luis Collazo began working for Bristol-Myers in Puerto Rico as a scientist in 1995. In 2003, Diana Hiraldo, a scientist who worked under his supervision, told him that she felt sexually harassed by a co-worker, Eric Acevedo. She said that Acevedo was making "comments against her person," following her, asking other employees what she was doing and frequently calling her to ask what she was working on. She said that the situation made her husband very uncomfortable. And she said that she had overheard Acevedo criticizing her work to others, saying she did not deserve the work accolades she had received.

When Collazo heard these complaints, he remembered that he had seen Acevedo stare at Hiraldo, "undressing her with his eyes" and looking at her with "elevator eyes." He remembered that he had once heard Acevedo tell Hiraldo's husband that his wife was not giving him anything to eat, which he believed had a sexual overtone.

Collazo talked to Acevedo about Hiraldo's complaint. He apologized for criticizing her work performance, but said he wanted to talk to his supervisor about the other allegations. Collazo organized a meeting with HR that he attended along with Hiraldo and Acevedo. After Hiraldo left, Collazo told HR that this was a "serious case, a serious case where this girl alleges that she is being sexually harassed by this guy." Two days later, Hiraldo told Collazo that she had not heard from HR, so he set up another meeting.

Nine days later, Bristol-Myers terminated Collazo, allegedly because of communication and performance issues as well as a company reorganization. Collazo sued, saying the company's real reasons for firing him were because he had opposed discrimination in the workplace and because he tried to obtain documentation he thought the FDA needed. The Court dismissed the FDA lawsuit because he had not provided the documentation to the FDA and thus was not protected by the relevant law.

But the Court of Appeals agreed with Collazo that Bristol-Myers should not have won summary judgment at the trial level. The Court said that Collazo's actions were sufficient to show that he had opposed behavior that he believed was sexual harassment, and that his belief was not unreasonable. The fact that the company investigated the allegations and found they did not amount to illegal sexual harassment did not make Collazo's belief unreasonable.

Bristol-Myers argued that Collazo's conduct was not protected "because it was done in furtherance of his supervisory responsibilities." The company said that an employee who is doing what his employer requires him to do is acting in furtherance of the

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Valeri Haughton

Beth Applegate

Pete Giordano

Mayor
Mark Kruzan

Corporation Counsel
Margie Rice

BHRC
PO BOX 100
Bloomington, IN 47402
812.349.3429
human.rights@bloomington.in.gov

Occupancy Rule Constitutes Discrimination in Housing on the Basis of Familial Status

Mardea Caulcrick-Grimes and Ernest Grimes rented a one-bedroom apartment from Briarwood Meadows. In February, 2012, Caulcrick-Grimes gave birth to Janjay Grimes, and the three continued to share the one-bedroom apartment. All three slept in the single bedroom, which was about 150 square feet. The property manager told the family that they would have to move to a two-bedroom apartment or move out of the complex, basing this decision on their understanding that the one bedroom was too small for three people under the state building code. Or they could stay for six months if they paid a premium rental fee.

They sued, alleging discrimination in housing on the basis of familial status. The Court found that Briarwood did not intend to discriminate against families, and believed its decision was correct based on its understanding of the law. They had been told by the state that for a bedroom to house three people, it had to be at least 170 square feet. The law provides as follows:

"Every bedroom occupied by one person shall contain at least 70 square feet of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant thereof." A former building administrator said that the rule meant a bedroom had to be at least 170 square feet to house three people, but the Court said that reading was wrong. "This section is crystal clear. The first portion of the sentence governs space requirement when one person occupies a bedroom; at least 70 square feet. The second portion of the sentence governs square footage required when more than one person occupies a single bedroom; at least 50 square feet per person, i.e., at least 150 square feet for three persons. It cannot be read any other way."

The Grimes family won their motion for summary judgment, and the Court said it would hold a hearing on damages.

The case is Rhode Island Commission for Human Rights v. Graul, 2015 WL 4868904 (R.I. D.Ct 2015).

Clothing Store Settles Pregnancy Discrimination Lawsuit

Kevin & J Company is an Atlanta-based company that sells retail clothing and apparel in the south. The store hired Jenny Thosychangh as a customer associate. Two days after she was hired, she was fired, immediately after she told her store manager that she was pregnant.

Federal law prohibits employers from discriminating against applicants or employees because of pregnancy, and so Thosychangh filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC tried to negotiate a settlement without going to trial but was unable to do so. But after the EEOC filed a lawsuit, Kevin & J agreed to settle the matter.

Under the terms of the settlement, Kevin & J will pay Thosychangh $15,000, maintain a nondiscrimination policy, train its employees about their rights to fair employment and post a notice about nondiscrimination.

Faye A. Williams, regional attorney for the EEOC, said, "Pregnancy discrimination is a serious problem that continues to be all too present in the American workplace. Employers cannot discharge female workers based on discriminatory stereotypes about pregnancy, and the EEOC will continue to work to combat this type of blatant bias."

Department of Justice Settles Lawsuit Against Kung Fu Saloon Restaurant and Bar

The U.S. Department of Justice announced in June that it had reached a settlement resolving allegations of race, color and/or national origin discrimination with the owners of Kung Fu Saloon, a bar and restaurant in Texas.

The complaint alleged that the business engaged in a pattern or practice of discriminating against African American and Asian American patrons because of their race, color and/or national origin. Allegedly, the business repeatedly denied African American patrons entry into the restaurant based on its dress code, but allowed similarly-attired white patrons to enter. And the business allegedly engaged in other actions to limit the number of African American and Asian American patrons. Such actions could well be a violation of Title II of the U.S. Civil Rights Act of 1964.

According to news reports, the restaurant allowed white patrons wearing shorts and flip-flops to enter, but not African Americans wearing similar clothes. Restaurant employees were told to limit the number of "ghetto-sounding blacks and thick-accented Asians." When one African American man complained, he was told that the restaurant could decide whom they would let in and whom they would keep out.

Under the terms of the settlement, the restaurant agreed to comply with the federal law in the future by not discriminating, to enforce its dress code in a non-discriminatory fashion and to conduct monitoring to make sure its employees are complying with the law.

It is perfectly legal, of course, for businesses to have dress codes, but they have to enforce those dress codes in a non-discriminatory fashion.

In announcing the agreement, John R. Parker, Acting U.S. Attorney for the Northern District of Texas, said "This settlement resolves serious allegations of racial and national origin discrimination at Kung Fu Saloon locations in Texas, and it should make clear that any illegal discrimination in places of public accommodation will not be tolerated."

Title II authorizes only injunctive relief to change policies and practices to remedy customer discrimination. It does not allow for financial damages.

If you have questions about discrimination in public accommodations, please contact the BHRC.

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employer's interest, not asserting rights adverse to the company. But it was not part of Collazo's job to handle sexual harassment complaints; he was stepping outside of his normal employment role when he advocated on behalf of Hiraldo.

The company also argued that the elimination of Collazo's position was merely part of its reorganization. But no one else was fired because of the reorganization. Bristol-Myers presented no documentation preceding his termination that discussed eliminating any jobs.

And the company argued that Collazo had work performance problems. But he had never been written up or even verbally warned about his job performance. Indeed, he had glowing evaluations and had won several "President's Awards" for outstanding contributions to particular scientific projects.

The case is Collazo v. Bristol-Myers Squibb Manufacturing, Inc., 617 F.3d 39 (1st Cir. 2010).

New Protected Categories Added to Bloomington Human Rights Ordinance

In September, the Bloomington Common Council unanimously approved several amendments to the Bloomington Human Rights Ordinance.

The amendments do the following:

-add veteran status as a fully protected category, meaning that an individual who believes he was treated differently in employment, housing or public accommodations because of his status as a veteran may file a complaint with the BHRC. The BHRC will be able to investigate that complaint with full enforcement powers.

-add housing status as a quasi-protected category, meaning that an individual who believes she was treated differently in employment, housing or public accommodations because she was perceived to be a person experiencing homelessness may file a complaint with the BHRC. The BHRC will not have full enforcement powers in this type of complaint, because housing status is not a protected category in the Indiana Civil Rights Law. But we will do everything we can to encourage voluntary investigations and mediations.

-require covered contractors to include sexual orientation, gender identity, veteran status and housing status as protected categories in their affirmative action plans, which they must submit to the BHRC to be eligible to bid on covered City projects.

The BHRC thanks the members of the Common Council for their support of these amendments, as well as Mayor Mark Kruzan for his approval of the amendments and the many community members who helped turn the idea into reality.

Florida Court Settles Discrimination Complaint Filed By Blind Attorney

A blind attorney asked the Orange County Clerk of Courts in Florida to provide documents to him in an accessible format so that he could use screen reader technology. Repeatedly, the Court failed to provide this accommodation, so either an assistant had to read the documents and exhibits to the attorney, or the defendant's attorney had to provide the documents to him in an accessible format.

The Court said it spent a year investigating how best to provide this accommodation, meeting with advocates for blind people and talking to other clerks. Even so, it did not provide the attorney with the documents he needed in a format he could read.

The attorney filed a complaint with the United States Department of Justice (DOJ), which enforces the Americans with Disabilities Act (ADA). The DOJ recently announced a settlement. Under the terms of the settlement, the Court will do the following:

- Provide documents to people in an accessible format upon request, at no additional charge;
- Implement a policy on providing reasonable accommodations upon request;
- Train its staff on the ADA; and
- Pay the attorney $10,000 in damages.

The ADA requires covered entities, including governmental services such as courts, to provide reasonable accommodations to people with disabilities.