



# RIGHTS STUFF

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## Fair Labor Initiative Continues to Grow

In late 2014, the BHRC launched its Fair Labor Initiative. FLI asks restaurant managers and owners to sign a Fair Labor Practices Compliance Agreement, confirming that they comply with all applicable fair labor laws. By doing so, the managers and owners are acknowledging that they believe all employees should be treated fairly and that complying with applicable laws is good for business. In return, the restaurant owners receive a Fair Labor Initiative decal that they can display at their entrance, letting the public know of their commitment to their employees.

So far the following restaurants have signed the agreement:

Baked of Bloomington  
Bloomington Bagel Company (all locations)  
Bloomington Brewing Company  
Bloomington Sandwich Company  
Buffalouie's  
Chik-fil-A (East)  
Chocolate Moose  
Community Kitchen of Monroe County  
DeAngelo's  
Esan Thai Restaurant  
Feast  
I.U. Art Museum/Angles Café  
Laughing Planet  
Lennie's Restaurant  
Little Tibet  
Mailibu Grill  
Michael's Uptown Café  
Nick's English Hut  
Pourhouse Café  
Runcible Spoon  
Samira

Scholars Inn Downtown  
Scholars Inn East Side Bakehouse  
Scholars Inn Gourmet Café and Wine Bar  
Scholars Inn Bakery  
Scotty's Brewhouse  
Soma Coffeehouse (both locations)  
Subway (six locations)  
Sweet Grass  
Taste of India  
The Owlery  
Village Deli

Many thanks to these restaurants for signing on to our program.

Look for the decal when you are deciding where to eat, and if you don't see it, consider asking your restaurant owner why he or she does not have one on display.



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## Minister Loses Complaint Against Church

The Reverend Steven Matthies was called to the office of designated pastor for First Presbyterian in Decatur County, Indiana. He signed a three-year contract with the church on October 18, 2010. The contract covered his salary, housing and other benefits, including five weeks of vacation a year.

In 2012, the relationship between the church and Matthies deteriorated. The church said he was neglecting his pastoral duties by failing to make himself available for counseling services, missing appointments with parishioners and refusing to keep the ruling elders informed about his whereabouts and activities. The church said he abandoned his duties in June and July, 2012; he said he was on approved vacation.

In late July, 2012 the Presbytery (the regional governing body) attempted to resolve the differences between the elders

and Matthies, but they were unsuccessful. In August, the church informed Matthies that he was fired and that they would work with him to negotiate a fair severance package. He declined that offer and sued, asking for compensation for unpaid wages, including unpaid vacation time.

The trial court granted summary judgment to the church, saying that to resolve the dispute between the parties would require the court "to interpret and apply religious doctrine or ecclesiastical law," which it could not do without violating the First Amendment. The Court of Appeals agreed. The Court said that to address the competing claims "would require a court to inquire into the religious doctrine of the Presbyterian Church and its polity." A court would have to determine what the duties of a pastor called to serve a local Session (the ruling elders) and congregation entail and then decide whether the pastor's

conduct met such standards. Essentially, the court would have to second-guess, in this case, "the Presbytery as to its determination that Reverend Matthies's pastor relationship was detrimental to the spiritual health of the church. Indeed, the court's inquiry would necessarily require it to delve into church doctrine to pass judgment on whether Reverend Matthies was fit to serve as pastor of First Presbyterian and whether the pastoral services he claimed to have provided were sufficient to meet the standards set forth by the Presbyterian Church. It is in this vein that this court has held that the First Amendment 'proscribes intervention by secular courts into any employment decision made by religious organizations based on religious doctrines or beliefs.'" (Citation omitted.)

The case is Matthies v. First Presbyterian Church of Greensburg, Indiana, Inc., 28 N.E. 3d 1108 (Ct. App. IN ).

## Taxi Cab Discrimination Case Settled

Zane Birnie is a blind man who uses a service animal. He was denied service by a taxi cab driver. The cab driver admitted she refused to provide him service, but said she did not know he was blind and did not know his dog was a service animal.

Birnie filed a complaint with the Department of Justice, which was recently settled. Under the terms of the settlement agreement, the driver agreed not to refuse service to people in the future because they have a service animal and not to charge fees for transporting service animals. She will also participate in training, adopt a non-discrimination policy and pay

Birnie and the U.S government \$1000 each.

The settlement agreement notes that taxi cab drivers have the right to exclude service animals from cabs if the animal is out of control and the animal's handler does not take effective action to control it, or if the animal is not housebroken.



## Another Court Finds Sexual Orientation Discrimination to Be a Form of Sex Discrimination

Frederic Deneffe is a certified passenger airline pilot, cargo airline pilot and pilot instructor. He is also a gay man. He had more than 2300 hours of flight time when he was hired by SkyWest to be a first officer in 2011. SkyWest gave him additional training and he began flying for the company in October of 2011.

He said that during many of his flights, he heard pilots insinuating that male flight attendants were gay, referring to them all as "Susie." One pilot called the male flight attendants "the little faggots who bring us our coffee." When a flight had only male attendants, the male pilots would make comments such as "I am not getting laid this trip" and "I will make sure I double lock my room." They frequently made disparaging comments about gay men in general, such as "Freddie Mercy was so talented, it's such a shame he was gay."

The other male pilots also regularly engaged in banter about their heterosexual exploits in front of Deneffe. One of them sent Deneffe texts detailing his recent sexual experiences with a woman. Deneffe stayed quiet during these discussions.

Deneffe did not talk about his sexual orientation with the other male pilots, but he did talk about it with a female, lesbian pilot. He also listed his male partner as his beneficiary for his flight privileges

with Skywest. He took one or two flights a month with his partner, which was witnessed by the other pilots.

No one complained about his job performance during his first six months with SkyWest. His six-month review revealed no problems with his work. In May 2012, he was waiting in the flight crew lounge as required. Schedulers called him to ask him to report for a flight, but he said his phone did not ring, and he missed the flight. The incident was noted in his personnel records. He planned to appeal that notation.

The next month, a chief pilot called Deneffe in to the office and said he was being terminated because the company was "not happy" with his work. When he asked why, he was told about some criticism of his work in his first six months, more than a year earlier. He was told "It was our decision" without any additional explanation.

Deneffe applied for other pilot jobs. He learned that when SkyWest sent prospective employers a copy of his flight records, they included a document noting that he had been terminated for "inability" and that he was "ineligible for rehire." Not surprisingly, he did not get another job offer. He then sued

SkyWest, alleging discrimination on the basis of sexual orientation, arguably a form of sex discrimination, in violation of federal law.

Many courts recently have begun deciding that discrimination on the basis of sexual orientation or gender identity is a form of sex discrimination. Sex discrimination in employment is explicitly prohibited by federal fair employment laws, but the laws do not mention sexual orientation or gender identity. The Court said that arguably, SkyWest penalized Deneffe for not conforming to gender-based stereotypes. He did not participate in the male braggodocio about their sexual exploits with women, did not joke about gays and designated his male partner as his beneficiary. Based on that, the Court said that Deneffe had stated a plausible claim of sex discrimination.

SkyWest argued that it was not illegal retaliation to include information about Deneffe's termination with his flight records, because the law prohibits retaliation against employees for filing complaints, and Deneffe was no longer an employee. The Court did not agree, and denied SkyWest's motion to dismiss the case. The case is Deneffe v. SkyWest, Inc., 2015 WL 2265373 (D. Col. D. Ct 2015).



## Nazi Past in New York State Lingers

Yaphank is a small community in New York. Before World War II, a Nazi summer camp held parades with American flags and swastika banners. Streets were named after Adolf Hitler and Joseph Goebbels. The streets have long since been renamed, and the parades no longer include swastikas. But a clause in the bylaws still says that all homeowners have to be primarily "of German extraction."

Philip Kneer and his wife Patricia Flynn-Kneer bought a home in the community years ago and are now trying to sell it. They are suing the German American Settlement

League, which owns the land under their house, saying that the bylaws violate the Fair Housing Act. They object not only to the "German extraction requirement" but also the rules that prohibit them from advertising their home in the open market or even putting up a "for sale" sign.

During World War II, the FBI seized the land from the league, but returned it to them after the war was over. The restrictive covenants have persisted ever since, although the current league president says that they no longer ask prospective buyers about

their ethnic backgrounds. The only events in the community relating to Germany are annual parties in a clubhouse, such as Oktoberfest.

The league president says the league cannot afford to defend the lawsuit, as it relies on small membership dues to operate. He denied that discrimination was the motivation for the lawsuit, saying that Kneer and Flynn-Kneer "are just bitter because they couldn't get the price they wanted for their home."

(Article based on "Nazi Past of Long Island Hamlet Persists in a Rule for Home Buyers," by Nicholas Casey, The New York Times, region section, published October 19, 2015.)

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## One Comment Isn't Enough to Win a Discrimination Complaint

Rovella Johnson began working for the Philadelphia Housing Authority (PHA) in 2010 as a management trainee. At the time, she was 41. She worked for PHA for 28 months, and during that time, was disciplined five times. Her offenses included exhibiting threatening behavior or engaging in a violent act on PHA property, taking a PHA cart to get her hair cut, failing to attend a grievance hearing for a tenant, being absent without leave for a day and taking an excessive number of sick days. Her supervisors also said she made numerous mistakes in her tenant files.

In August, 2012, she was being considered for a promotion from management trainee to asset manager. Management reviewed her files and decided not to recommend her for a promotion. PHA placed Johnson on a work performance plan and eventually fired her. She sued, alleging age discrimination. Her claim was based on her allegation that she had asked a former supervisor why PHA was promoting younger employees and not her. Johnson said the former supervisor "pretty much told me that upper management was trying to get out some of the old dogs and you know, just steer things in a different direction."

The Court held that one hearsay comment, made by someone who had no role in the promotion and termination decisions, was not enough to compel it to find in Johnson's favor. Johnson also claimed that no one ever told her they were unhappy with her work performance, but PHA's documentation rebutted her claim. PHA provided legitimate, non-discriminatory reasons for not promoting Johnson and then for terminating her. And there was no evidence that PHA replaced Johnson with a younger employee, or with anyone.