



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

May 2016

Volume 201

Indefinite Leave Not a Reasonable Accommodation

Penelope Minter worked for the District of Columbia's chief medical examiner. She suffered from sarcoidosis and related sarcoid arthritis, and said this condition made it hard for her to work 40 hours a week. In September, 2006, she asked her supervisor if she could work a reduced schedule to accommodate her disability. While the office's Americans with Disabilities Act coordinator, Sharlene Williams, was exploring possible accommodations, Minter slipped and sustained a serious injury.

In December, Minter met with Williams again. Minter said that at this meeting, Williams said a reduced schedule would not be a reasonable accommodation. But she also asked for medical records "so that she could decide."

Minter missed several weeks of work in December and January because of her September injury, and stopped coming to work in February. From February to May, the office sent her several letters requesting medical documentation, but she didn't respond. In June, they sent her a letter saying that she had to either report to duty or provide medical documentation of her injury. If she did neither, she would be fired.

On June 19, 2007, Minter faxed a letter from her doctor to her employer. The doctor's letter said that Minter had been "totally disabled" since her September injury and that she would be "indefinitely disabled." But Minter said she "hoped"

to return to work by September, 2007. The office was not willing to retain Minter on such uncertain terms and terminated her employment. She sued, alleging that the office had refused to accommodate her disability and retaliated against her for having requested an accommodation. She lost, both at the trial court and appeal court levels.

Minter argued that the office refused to provide her requested accommodation of a reduced schedule in December. But she testified that Williams had asked for medical documentation to help her make her decision, and Minter did not provide that documentation, or any documentation, until June. The employer was trying to engage in the interactive process required by the ADA.

She also argued that the office refused her requested accommodation a second time, when in June it declined to grant her an extended leave. But the Court noted that in June, Minter was "no longer a qualified person with a disability" because there was no evidence that she could do her job, with or without an accommodation. She had not worked for three months. Her doctor said she would have a disability "indefinitely." Minter said she "hoped" she could return to work in three months, but provided no evidence to support her hope.

(continued on page 3)

BHRC Staff

*Barbara E. McKinney,
Director*

*Barbara Toddy,
Secretary*

Commission Members

Byron Bangert, Chair

*William Morris,
Vice Chair*

*Carolyn Calloway-
Thomas, Secretary*

Valeri Haughton-Motley

Drew Larabee

Beth Applegate

Pete Giordano

Mayor

John Hamilton

Corporation Counsel

Philippa Guthrie

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



Use of Testers Leads to Lawsuit Against Landlord

Access Living of Metropolitan Chicago conducts tests on housing providers to see if they comply with fair housing laws. In 2013, Access Living sent testers to see if Best Rents in Chicago treated people with and without disabilities similarly.

A tester without a disability called Best Rents and spoke to a person named Bill. She asked Bill if a three-bedroom apartment advertised in the Chicago Reader was still available and he said yes. Bill asked how many people would be living there; the caller said just her and her husband. He asked why they wanted a three-bedroom apartment; she said she wanted a guest room and an office. He told her where she could find a video of the apartment on-line and told her about an upcoming showing.

A few hours later, a tester who is deaf called Best Rents, using the IP Relay that allows people with hearing impairments to communicate via telephone and an operator. She asked about the availability and rental price of the advertised apartment. Bill said, "It's all online, it's \$850 a month. It's very, very clear." She asked about security deposits. He said, "There is no security. I'm in a meeting right now. Have her go on-line." He then hung

up. The deaf tester called back three times in the next two days, leaving voice mail messages each time asking what utilities were included in the rent and adding, "I'm deaf, so please e-mail me." Bill sent her an e-mail that said, "There are no utilities included with the apartment. We don't have any apartments that are set up for a handicapped person so none of our apartments are handicapped safe. Thanks for your interest."

Not surprisingly, Access Living sued. Best Rents tried to get the lawsuit thrown out by saying that Access Living should have tried to conciliate the matter before going to court. While there is a requirement that the Equal Employment Opportunity Commission try to conciliate matters before filing employment discrimination lawsuits, there is no such requirement for private entities filing housing discrimination lawsuits. Best Rents said such a requirement could be read from the "spirit of the law," but cited no case law or statutory law in support of its argument. Best Rents also complained that the lawsuit was filed only three days before the statute of limitations expired, but that is not a basis for getting a case dismissed.

The Fair Housing Act prohibits making any statement relating to the sale or rental of housing that indicates any preference, limitation or discrimination based on protected categories such as disability. The Court said that there was sufficient evidence for a jury to find that Best Rents and Bill had indicated a preference not to rent to people with disabilities.

The Court noted that Best Rents offered to show the apartment to the caller without a disability and made no such offer to the deaf caller. Best Rents hung up on the deaf caller and did not hang up on the caller without a disability. And Best Rents' e-mail message said the apartment was inappropriate for a person with a disability. For all these reasons, Best Rents' motion to dismiss the case was denied, and the matter will either go to a jury or be settled.

The case is [Access Living of Metropolitan Chicago v. Bill Prewitt, d/b/a Best Rents](#), 2015 WL 3962392 (N.D. Illinois 2015). If you have questions about fair housing, please call the BHRC.



Does FMLA Entitle Employees to Vacation Time?

The federal Family and Medical Leave Act (FMLA) requires covered employers to allow employees up to 12 weeks of leave a year to deal with their serious medical issues, or their family members' serious medical issues.

Patrick Hurley worked for Kent of Naples. After working for the company for seven years, he sent his supervisor an e-mail with the subject line "vacation schedule." He attached a schedule listing eleven weeks of vacation over the next two years. His supervisor denied the request and suggested a meeting to discuss it further. Hurley responded by saying that his e-mail "was not a request it was a schedule" and claimed that he had been advised by medical care professionals to take time off work.

The next day, after a discussion, Kent of Naples fired Hurley. It is disputed whether Hurley mentioned at the meeting that he has depression and needed a medical leave. Kent said Hurley

was fired for insubordination and poor performance; Hurley said he was fired for asserting his rights under the FMLA. He sued and lost.

In his lawsuit, Hurley never alleged that he was unable to work or was incapacitated. His doctor said that although he signed a form after Hurley was fired saying that Hurley had been treated for depression, he never said that Hurley needed to take eleven weeks off in the next two years because of his condition. Hurley said that he and his wife picked the schedule without any input from a doctor. He scheduled his proposed leave dates to overlap with holiday weekends. He did not have any medical treatment scheduled during his leave, but said he would schedule such treatment later. He said he viewed normal vacation activities, such as visiting the Grand Canyon, as things that would help him get better.

The Court said that Hurley's request for leave did not qualify as FMLA leave. He had to

have a qualifying reason to request the time off, not a potentially qualifying reason. As the Court noted, "the FMLA does not extend its potent protection to any leave that is medically beneficial leave simply because the employee has a chronic health condition. Rather, the FMLA only protects leave for 'any period of incapacity or treatment for such incapacity due to a chronic serious health condition.'" Hurley admitted his requested leave was not for a period of incapacity. Nor was it for treatment for such incapacity.

The case is Hurley v. Kent of Naples, Inc., 746 F.3d 1161 (11th Cir. 2014).



Indefinite Leave Not a Reasonable Accommodation

(continued from page 1)

Minter said that by terminating her, the office had retaliated against her for requesting an accommodation. The Court found the employer's explanation for the termination - that she had effectively abandoned her job - to be legitimate and nondiscrimina-

tory. Minter questioned their credibility, noting that the office had sometimes said she was fired for not providing medical documentation and sometimes said she was fired for not reporting to work. But the Court

did not find the two explanations to be contradictory.

The case is Minter v. District of Columbia, 809 F.3d 66 (D.C. Ct. App. 2015).



California Council For the Blind Sues AMC Entertainment

In February, the California Council for the Blind filed a class action lawsuit against AMC Entertainment, which operates movie theaters in 33 states. According to the lawsuit, AMC fails to make its movie services accessible to blind individuals by providing the proper audio description equipment or by making sure the equipment works is adequately maintained and programmed. This equipment provides an audio track containing descriptions of the visual elements of the film and is synchronized with the film's audio track.

The lawsuit says that the Council's attorneys had received reports of more than 50 instances

in which blind and low vision people in California experienced difficulty and/or had been unable to use the audio description technology at AMC theaters due to the company's failure to maintain and train staff on the use of the equipment. According to the Council, this is a violation of the Americans with Disabilities Act, in that the theaters, places of public accommodation, are not accessible to people with visual impairments.

The Council alleges that when blind customers ask AMC staff for an audio description device, they are often instead given a device for people who are hard of hearing. Getting the correct

device can require talking to management, making the blind customer late for the movie she wants to see. Or sometimes, the customer is given a device programmed for a different movie; going back to the staff member to get the correct device means the customer misses part of the movie.

The lawsuit is seeking an injunction requiring AMC to make sure it maintains its equipment and provides the proper equipment to customers upon request. It is also seeking legal fees, costs and damages. Lawsuits give only one side of the matter.

Claims Against Greyhound May Now Be Filed

If you are a person with a disability who traveled or attempted to travel by Greyhound between February 8, 2013 and February 8, 2016, and if you feel that Greyhound discriminated against you on the basis of your disability, you may now file a claim through the U.S. Department of Justice. Examples of discriminatory treatment might include Greyhound's failure to make disability-related accommodations for you or its failure to provide accessible transportation or related services.

To file a claim on-line, go to

www.dojivgreyhoundsettlement.com. You may file a claim via telephone by calling the claims administrator at 844-502-5953 or TTY, 800-659-2656. Both numbers are toll-free. Or you may send a claim via the post office, U.S. Greyhound Claims Administrator, c/o Class Action Administration LLC, PO Box 6878, Broomfield, CO 80021. If you can't fill out the form because of your disability, the Claims Administrator will assist you.

The claim form must be submitted by no later than

November 20, 2016. To learn more about the lawsuit against Greyhound and the settlement that established the claims process, visit www.ada.gov.

