



# RIGHTS STUFF

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## Man Wins Right to Proceed with Disability Lawsuit

Damon Adams began working for Persona, Inc., in 1982. He held various positions, and by the time he was terminated in 2012, was plant manager.

In August of 2012, Persona's CEO and other supervisors met with Adams to discuss some possibly alcohol-related misconduct on his part. The meeting was part of what Persona called a "fact-finding mission" about his job performance. During that meeting, Adams admitted he was dependent on alcohol. The head of human resources advised him to enter treatment and that the company would allow him ten weeks' leave. He was suspended from work, with the understanding that his employment status would be re-evaluated in 30 days, but it might be in a different town. His ten weeks of leave would be covered by his accumulated paid time off.

Adams successfully completed 30 days of treatment on September 12 and on September 28, met with management again. He said he wanted to return to his previous job. Persona management said they were still engaging in their fact-finding mission and were not ready to make a decision. On October 10, Adams was fired.

Adams has a daughter with an autoimmune disorder requiring transfusion treatments every six to eight weeks. She was insured through her father's employment, and her treatment was quite expensive. The year before, the head of human resources told

Persona's employees that their premiums were going up more than 22% in part because "one employee's daughter needed treatment every six to eight weeks and the treatments were expensive." Persona received a report on August 14, the day after Adams entered treatment, saying that Adams was still one of the employees with the highest payout of insurance benefits.

Adams sued, alleging retaliation for having requested an accommodation (the leave for treatment) and discrimination for associating with someone with a disability (his daughter). Persona sought a motion for summary judgment, meaning that there was not enough evidence to require holding a trial. Persona argued that Adams didn't request an accommodation; they told him to get treatment. The Court did not find that compelling. The Court said that Adams' admission that he had a problem with alcohol was, essentially, a request for an accommodation. And Persona fired him while he was still on the ten-week leave that they had provided him to seek treatment, which the Court said was sufficient for it to find retaliation. The Court found there was evidence that Persona knew that Adams' daughter required expensive medical treatment and that was, at least in part, the reason for their premiums going up substantially. That was sufficient reason to go forward with the litigation. The case is *Adams v. Persona*, 2015 WL 5012625 (D. Ct. SD 2015).

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## EEOC Settles Two Religious Discrimination Complaints

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced it had settled two complaints alleging discrimination in employment on the basis of religion in violation of federal fair employment laws.

According to the EEOC, Ozarks Electric refused to allow a woman a day off to attend a Jehovah's Witness convention. When she chose to attend the convention anyway, Ozarks fired her. Under law, employers are required to provide employees with reasonable accommodations so that they may observe their religious beliefs. A day off, scheduled in advance, would typically be a reasonable accommodation, depending upon the circumstances. Ozarks Electric agreed to pay the woman \$95,000, to train its staff on fair employment law and to implement a fair internal complaint procedure.

Voss Lighting has more than 200 employees and specializes in the sale of lighting products. It does business throughout the U.S. When the Oklahoma branch of Voss needed a new operations supervisor, it advertised the vacancy through the website of a church attended by a manager. Edward Wolfe, who did not attend that church, learned of the vacancy and applied. During his first interview, he was asked about his religious beliefs and practices. The supervisor conducting the interview found him to be qualified and Voss Lighting set up a second interview. The majority of the second interview was spent asking Wolfe about his religious activities and beliefs, every church he had attended in recent years, where and when he was "saved" and whether he would have a problem coming to work early to attend Bible study before clocking in. Apparently the interviewer was not happy with Wolfe's truthful answers.

He was not hired. Eventually, Voss hired someone whose religious ideology matched that of the company's leadership.

As Barbara A. Seely, an attorney for the EEOC said, "Refusing to hire a qualified job applicant because his religious beliefs do not comport with those of the employer's leadership is illegal, even if the for-profit company purports to have a religious mission or purpose. The evidence in this case suggested widespread religious discrimination throughout the company, not just its Oklahoma locations. The EEOC is optimistic that the corporate-wide remedial actions agreed to by Voss Lighting will put an end to the role religion plays in its decisions affecting applicants and employees. If not, we will be back in court again." Voss agreed to pay Wolfe \$82,500 and to take corrective action.

## Bloomington Police Department Establishes LGBTQ Liaison Program

In June, the Bloomington Police Department announced the creation of the LGBTQ Liaison Program and the appointment of two veteran sergeants to serve as the department liaisons. The City of Bloomington has the fifth largest per capita population of same-sex households in the United States and is home to Indiana University, which is ranked as

one of the top gay friendly college campuses. The LGBTQ Liaison Program is designed to help foster positive relations and build communication between the LGBTQ community and the police department. The liaisons will work with the LGBTQ community in order to provide resources and address issues or concerns as related to hate crimes or public safety issues.

Chief Michael Diekhoff has appointed Detective Sergeant Dana Cole, a 12-year veteran of BPD and Sergeant David Alley, a 7-year veteran of BPD, to serve as the LGBTQ liaisons. The establishment of the LGBTQ Police Liaison Program continues the department's commitment to representing and serving the diverse Bloomington community.



## Obesity Not Necessarily a Disability

Melvin Morriss applied for a machinist job with BNSF Railway in 2011. BNSF required Morriss to pass a medical exam before he could start working. The exam did not reveal any health issues for Morriss, but did show that he had a body mass index (BMI) of 40.9. BNSF withdrew the job offer because of the health and safety risk associated with Class 3 obesity (BMI of 40 or higher).

Morriss sued BSNF, saying that the company had discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act (ADA). He lost at both the trial court and appellate levels.

The Court of Appeals noted that the ADA regulations define a disability as "any physiological disorder or condition, cosmetic

disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine." The Court said that under the plain language of the regulations, obesity is not a physical impairment unless it is a physiological disorder or condition that affects a major body system. Morriss had no evidence that his obesity was caused by a physiological order; nor did he have any evidence that it was currently causing him any health problems.

Morriss argued that the Equal Employment Opportunity Commission's compliance manual says that severe obesity, meaning body weight more than 100% of the norm, is an impairment under

the ADA. The Court said that the EEOC's definition contradicts the law, and in any even, his body weight is not 100% more than the norm.

He also argued that BNSF regarded him as having a disability, and refusing to hire someone because you regard them as having a disability is also prohibited by the ADA. But he had no evidence that this was how BNSF regarded him. Rather, BNSF regarded him as someone who might in the future pose a health and safety risk. Because he does not currently have a disability as the law defines that term, and because there was no evidence that BNSF regarded him as currently having a disability, the Court found in BNSF's favor.

The case is Morriss v. BNSF Railway Company, 817 F. 3d 1104 (8th Cir. 2016).

## Bill Would Limit "Drive-By" Lawsuits

A bill introduced in the U.S. House of Representatives, the ADA Education and Reform Act of 2015, would prohibit people from sending demand letters about alleged violations of the Americans with Disabilities Act (ADA) unless certain requirements were met. Any such demand letter would have to include a notification that specifies the address of the violation of the property, the specific section of the ADA that allegedly has been violated, whether a request for assistance in removing an architectural

barrier was previously made and whether the barrier was temporary or permanent.

Under the bill, no one could sue alleging an ADA violation at a place of public accommodation unless he or she had first sent a written notice to the owners explaining the alleged barrier and the owners had failed to adequately respond. The Judicial Conference of the United States would have to develop a model program to provide alternative dispute resolutions for these

types of cases. If this bill becomes law, anyone who violated it would be subject to criminal fines.

According to one study, lawsuits alleging violations of Title III of the ADA (the public accommodations section) increased 63 percent from 2013 to 2014. The bill was referred to the House Subcommittee on the Constitution and Civil Justice in November.

## Lowe's Settles Disability Discrimination Cases

In May, 2016, Lowe's agreed to pay \$8.6 million to resolve allegations brought by the Equal Employment Opportunity Commission (EEOC) that it had discriminated against employees with disabilities.

According to the lawsuit, Lowe's terminated employees with disabilities if they needed medical leaves of absences that exceeded the company's maximum leave policy. The Americans with Disabilities Act (ADA) requires employers to provide extended leave in some cases. Under the terms of the settlement, Lowe's will distribute the \$8.6 million settlement to affected former

employees. Lowe's will also retain an ADA consultant to provide employee training, revise policies and develop a system to track accommodation requests.

David Lopez, general counsel for the EEOC, said that "This settlement sends a clear message to employers that policies that limit the amount of leave may violate the ADA when they call for the automatic firing of employees with a disability after they reach a rigid, inflexible leave limit. We hope that our efforts here will encourage employers to voluntarily comply with the ADA."

Karen Cobb, a spokeswoman for Lowe's, said that the company had taken steps to address the ADA concerns. She said Lowe's revised its leave policies in 2010 and has centralized its leave of absence management.

If you worked for a Lowe's store between January 1, 2004 and May 13, 2010, and were fired after taking a maximum leave of absence, you may want to contact the EEOC to pursue a claim.

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



Friends of the BHRC and MCHRC braved the rain to march in the 4th of July parade.