



RIGHTS STUFF

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Woman's Religious Discrimination Case Advances in Court

Fozyai Huri began working for the Circuit Court of Cook County in 2000. She wore a hijab, a scarf that covers her hair but not her face, to work each day. From 2002 until 2010, she worked as a child care attendant under the supervision of Sylvia McCullum. Huri is Muslim; McCullum is Christian.

Huri said McCullum treated her badly from the start. She said that McCullum didn't even introduce herself to Huri during her first two weeks of employment. McCullum repeatedly told Huri that various employees, including a colleague, the chief judge and herself, were "Good Christians." In 2009, McCullum told a coworker to work with "a good Christian" and not with Huri, who was "evil." She asked several child care workers to hold hands and say a prayer "in the name of Jesus Christ."

According to Huri, McCullum falsely criticized her, made false misconduct allegations against her, subjected her to different rules, screamed at her and subjected her to greater scrutiny than other employees.

When Huri filed internal complaints against McCullum, McCullum told her that the chief judge's office was uninterested in and tired of her complaints. Then she allegedly made more false allegations against Huri.

In 2010, Huri was transferred to the court reporter's office. There, she was allegedly subjected to additional

mistreatment by her new supervisors. They didn't let her have 24-hour access to the office other employees had. They didn't allow Huri's daughter to wait in the lobby; the children of other employees could wait in the lobby or in the offices. They would not allow her to have non-work items in her office; other employees could. They excluded her from a social gathering at the office, and they did not let her take Islamic religious holidays off. Huri filed more internal complaints, to no effect.

Huri sued, alleging that the court's office had discriminated against her because she is a Muslim Arab. The Trial Court dismissed the case, but a Court of Appeals recently reinstated it. The Court of Appeals said that it was "beyond dispute that Huri engaged in protected activity by filing EEOC charges and making internal complaints. Whether she was subjected to an adverse employment action is also apparent: the litany of malfeasance she alleges - screaming, false disciplinary reports, mistreatment of her daughter, exclusion from social functions, denial of time off, etc. - would certainly cause a reasonable employee to think twice about complaining about discrimination - that's all it takes in the retaliation context." The Court remanded the case for further proceedings. The case is Huri v. Office of the Chief Judge of the Circuit Court of Cook County, 804 F. 3d 826 (7th Cir. 2015).

BHRC Staff

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Valeri Haughton Motley

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



Transgender Boy Wins Restroom Lawsuit

GG is a transgender boy who wants to use the boys' restroom at his high school. School officials were supportive, taking steps to make sure he would be treated as a boy by both teachers and students. He used the boys' restroom for about seven weeks without a problem at the school. But word spread, upset community members contacted the school board, and the school board proposed a policy that would provide that "the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided on alternative appropriate private facility." At the hearings on the proposal, some people repeatedly referred to GG as "she" or "young lady." One person called him a "freak," comparing him to a person who thinks he is a dog and wants to urinate on fire hydrants. Another commenter expressed concerns that non-transgender boys would come to school wearing dresses in

order to gain access to the girls' restroom. The board passed the proposed policy. Once the policy was passed, GG was required to use a single-user unisex restroom, not the boys' restroom.

GG lost at the Trial Court level but this spring, won a victory from the Court of Appeals.

The Trial Court found that GG's sex was female. Thus, requiring him to use the girls' restroom was not sex discrimination. Requiring him to use the unisex restroom was, according to the lower court, "not unduly burdensome and would result in less hardship than requiring other students made uncomfortable by GG's presence in the boys' restroom to themselves use the unisex restrooms."

The Court of Appeals noted that federal regulations make it clear

that it is not sex discrimination for schools to have separate restrooms for boys and girls. But, the Court noted, the regulation "is silent as to how a school should determine whether a transgender individual is a male or female for the purpose of access to sex-segregated restrooms." The U.S. Department of Education's interpretation, determining maleness or femaleness by reference to the person's gender identity, and requiring schools to permit students to use the restroom that corresponds to their gender identity, was worthy of deference, according to the Court. That interpretation would also help schools trying to decide what restroom a person who has undergone sex reassignment surgery should use, or what restroom an intersex person should use. The case is Grimm v. Gloucester County School Board, 822 F. 3d 709 (4th Cir. 2016).

Department of Justice Proposes Rules on Movie Captioning

In July, the U.S. Department of Justice issued proposed rules to help make sure that movie theaters provide closed or open captioning and audio descriptions so that people who are deaf or blind will be able to enjoy movies.

The proposed rule requires movie theaters with digital screens to exhibit movies with closed captions, or if they

prefer, open captions, and with audio descriptions. Theaters would not have to create their own captioning; this will be required only when the movies the theater is showing have these accessibility features.

Theaters will have to have a certain number of individual captioning and audio description devices available to patrons upon request, at no charge. The

number required will vary with the size of the theater. They will have to make sure that their staff knows how to use the devices and will have to provide notice to the public that the devices are available.

The rules, if enacted, will apply only to movie theaters, defined as facilities used primarily for the purpose of showing movies to the public for a fee.



Target Settles Discrimination Lawsuit

Target agreed to pay \$2.8 million to unsuccessful applicants for upper-level positions to settle discrimination complaints. The Equal Employment Opportunity Commission (EEOC) believed that the tests given to these applicants disproportionately screened out applicants based on their race or sex.

Julie Schmid, acting director for the Minneapolis office of the EEOC, said that the tests "were not sufficiently job-related." She said the tests on their face were neutral, but the EEOC's statistical analysis showed an adverse impact on African Americans, Asians and women.

Target had also hired psycholo-

gists to assess applicants, a violation of the Americans with Disabilities Act. Medical exams may be given to applicants only after the employer has made a conditional job offer.

Target said it cooperated fully with the review and noted that the EEOC found that "only a small fraction of the assessments . . . could have been problematic."

Target stopped using these assessments while the investigation was pending. As part of the settlement, Target will better track its testing process and check for impacts based on race, ethnicity and sex, and will share its findings with the EEOC.

The amount of money each unsuccessful applicant will receive will vary based on the consequences to each individual, Schmid said. The EEOC chairwoman, Jenny R. Yang, said, "We applaud Target for taking corrective action to ensure the validity of their hiring practices. This resolution demonstrates the benefits of working with the EEOC and serves as a model for businesses committed to effective and lawful selection procedures."

(Article based on "Target to Pay \$2.8 M to Upper-Level Applicants in EEOC Settlement," by Paul Walsh, Minneapolis Star Tribune, published on-line on 8/ 24/ 2015.)

Is a Website a Place of Public Accommodation?

The Americans with Disabilities Act requires places of public accommodation to be accessible to people with disabilities. The law says that private entities are considered to be public accommodations if their operations affect commerce, giving numerous examples, including places of lodging, restaurants, bars, movie theaters, grocery stores, barber shops, funeral parlors, parks, zoos and day care centers, among many others. Places of public accommodation that existed before the ADA went into effect have to remove barriers to accessibility if it's readily achievable, or affordable, to do so. Buildings constructed since the ADA went into effect are supposed to be built in full compliance with

the ADA.

But what about public accommodations that don't have a place open to the general public, such as Netflix or eBay? The Ninth Circuit Court of Appeals ruled in April, 2015, that since these businesses are not connected to any "actual, physical place" as far as customers are concerned, they are not required to be accessible to people with disabilities. But other courts have said that Netflix is a provider of a public accommodation, as is the American Bar Association and Scibd, a digital library that operates reading subscription services.

The Department of Justice has been working on web accessibility guidelines for years, and argues that the "fact that the regulatory process is not yet complete in no way indicates that web services are not already covered by [the ADA]." The DOJ has provided guidelines (Web Content Accessibility Guidelines 2.0, Levels A and AA) on how to insure that web sites are accessible to people with visual or hearing disabilities, but those guidelines are not yet binding. Businesses are advised to comply with those guidelines until formal regulations are issued by the DOJ.



Chipotle Loses Pregnancy Discrimination Lawsuit

Doris Garcia Hernandez worked for Chipotle Mexican Grill in Washington, D.C. She said that in November, 2011, she told her supervisor that she was pregnant. He then began restricting her access to drinking water, she said. Her lawsuit claimed that whenever she needed to use the restroom, he required her to tell every employee where she was going and to wait for permission to leave her post. He did not require non-pregnant employees to do the same.

In January, 2012, she said she told him days in advance that she needed to leave early for a

medical appointment. He ignored her requests. On the morning of her appointment, he told her she couldn't go. She went anyway, having given him notice of her absence.

The day after Hernandez's doctor's appointment, the supervisor fired her in the lobby, in front of her co-workers. She sued.

In August, 2016, a jury ordered Chipotle to pay Hernandez \$550,000. A company spokesman said "We maintain that Chipotle's actions in this case were legal and appropriate, but we are moving on from this

issue" and not appealing.

After Hernandez filed her lawsuit, the Washington, D.C. City Council passed the Protecting Pregnant Workers Fairness Act, which requires employers to provide pregnant workers with basic accommodations, such as access to drinking water and more frequent bathroom breaks.

(Article based on "Chipotle ordered to pay \$550,000 for discriminating against pregnant worker," by Abha Bhattarai, published on-line by The Washington Post on August 10, 2016.)

BHRC Releases Hate Incidents Report

The BHRC is responsible for gathering data and issuing reports on local hate incidents. The latest report includes 14 incidents from July 2015 through June 2016. The report is available to the public upon request and online at www.bloomington.in.gov/bloomington-human-rights-commission.

As is always the case, the hate incidents described in this report take a variety of forms, including verbal harassment, threats of physical harm, actual physical harm and vandalism. Four of the incidents described verbal slurs,

two described verbal slurs and threats, two described vandalism and six described physical confrontations. While incidents vary in degree of severity, in each case the victim was concerned enough to reach out for help.

The report also addresses the apparent motivations behind each report. Six of the incidents were apparently motivated by racial bias, three by religious bias, four by bias against gays, lesbians or transgender individuals and one by national origin. At least five of the incidents involved intoxicated

individuals.

The BHRC receives its reports from a variety of sources, including the Bloomington Police Department, news reports and individuals. People who are victims of hate incidents are urged to report the incident to the police by calling 911 or to the BHRC by calling 812-349-2429 or e-mailing human.rights@bloomington.in.gov or by going to How to Report a Hate Incident on the City's website and completing the form. The BHRC accepts anonymous reports.