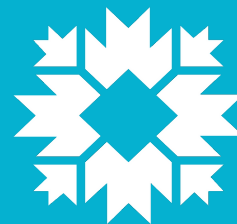


# RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

## Remove Snow and Improve Accessibility



**T**he Bloomington Municipal Code requires businesses and homeowners to remove snow within 24 hours of snowfall. And the Americans with Disabilities Act requires business to remove snow to maintain accessibility to their stores and offices. A few tips for businesses:

--Don't pile snow on access aisles. People with disabilities need the access aisles to get into your business.

--And don't pile snow on curb cuts, either.

--Clear sidewalks to a width of at least 36 inches so that people using wheelchairs can use the sidewalk.

--Be sure to clear snow from ramps as well as sidewalks. It's best to clear ramps first; everyone can use ramps to access your business, but not everyone can use stairs. And if you pretreat sidewalks or steps, be sure to pretreat ramps as well.

--Don't use doormats with deep piles; people using wheelchairs can't always navigate over them.

--Have some wipes available for people to clean salt off the paws of customers' service animals or the tires of their wheelchairs.

*(Article based on Quick Tips for Small Businesses, published by the Great Plains ADA Center.)*

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# Man Loses Sex Discrimination Complaint

**G**H is a Catholic man. He began working for Cook Canton in 2010 as an assembler in the catheter production department and was promoted to group leader in 2012. After his promotion, coworkers complained about his “hostile, aggressive and inappropriate conduct” towards them.

According to his coworkers, GH yelled at an employee for asking him if he wanted to sign a congratulatory wedding card for a gay coworker. He allegedly said, “I can’t believe you signed that gay marriage card; how can you condone that?” The employee said she felt bullied by and frightened of him. She had already signed the card but scribbled over her name because of his behavior.

A coworker said that when she asked GH what five-year wedding anniversary gift he was going to choose from Cook Canton’s options for employees celebrating wedding anniversaries, he yelled at her. He said that he “did not care about material things” and “faith and family was all he needed.” The same employee said GH frequently discussed his personal religious beliefs at work and called his coworkers “sinners.”

Management talked to him about his behavior and told him he needed to behave in a courteous and respectful manner towards his coworkers. They told him he could not retaliate against anyone who had complained about him.

The next day, GH confronted one of the coworkers who had complained about him and told her he was going to “get [her] back.” Again, management talked to him and reminded him he could not retaliate against employees.

Cook Canton gave GH a formal written warning and demoted him from group leader, based on his insubordination and on the complaints from coworkers. According to the court, even after the warning and demotion, coworkers continued to report that GH treated them in “an aggressive and inappropriate manner.” When his supervisor tried to coach GH about being more respectful at work, he said his coworkers simply did not like him.

Then management received complaints that GH had used homophobic, offensive and sexist language towards coworkers or their relatives, including calling coworkers a “fat heifer,” a “f\_g” and

a “picklelicker.” He also referred to three employees as the “white trash triangle.” GH’s response to management was that he didn’t know why his coworkers didn’t like him. He said they were “just jealous of what I have and who I am.” Cook Canton decided to terminate GH. He sued, alleging discrimination on the basis of sex and religion, and lost.

GH said that Cook Canton had received complaints about a female supervisor not treating employees respectfully but did not terminate her. Cook Canton did demote and coach her, and after that, Cook Canton did not receive any more complaints from coworkers about her. She was not similarly situated to GH. GH dropped his religious discrimination complaint.

Cook Canton won its motion for summary judgment.

*The case is Henseler v. Cook Canton, LLC, 2021 WL 3639880 (D.C. Ill 2021). If you have questions about fair employment practices, please contact the BHRC.*

## RIGHTS STUFF’S MISSION

*The purpose of Rights Stuff is to provide information about civil rights litigation as a way to encourage adherence to best practices for landlords, providers of public accommodations and employers. We do this by publishing relevant and timely articles from around the country. Please see the reports in this issue to learn more.*

# What Does “Shall” Mean?

In legalese, the word “shall” is typically used in the imperative sense. If a law says someone “shall” do something, they typically *must* do that thing. But as a recent case points out, this is not always true.

In January, 2017, Darrin Bowman met with a landlord named Betty Jo Wilkening to inquire about renting a home she had advertised for rent. He told her that he would have his minor children, aged 8 and 15, living with him on weekends. She told him that she did not want children residing in the unit. She did not allow him to complete a rental application.

A week later, a friend of Bowman’s, a single person without children, looked at the home. It was still available, and Wilkening encouraged her to complete a rental application.

Bowman filed a complaint alleging discrimination in housing on the basis of familial status with the Indiana Civil Rights Commission (ICRC). On July 21, 2017, after conducting an investigation, the ICRC found there was reasonable cause to believe that Wilkening had violated the Indiana Fair Housing Act (IFHA) by discriminating against Bowman in housing on the basis of familial status.

Wilkening elected to have the merits of the complaint tried before a court judge instead of one of the ICRC’s administrative law judges. In court, she argued that since the ICRC had not made its determination of reasonable cause within 100 days after the complaint was filed, as state law seemed to



require, the judge should dismiss the case. The judge agreed and ordered the ICRC to pay Wilkening’s attorney’s fees, \$51,572. The ICRC appealed, and won.

State law says that “The commission *shall* determine based on the facts whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The commission shall make the determination . . . not later than one hundred days after the complaint is filed unless it is impracticable to make the determination or the commission has approved a conciliation agreement relating to the complaint.” IC 22-9.5-6-8, emphasis added.

The court said that in this context, the use of the word “shall” did not

mean the complainant would lose his case if the ICRC did not make its decision within 100 days. The law did not provide for any adverse consequences if the ICRC missed the deadline.

The use of the qualifier “unless” in the law “provides an obvious hedge to be used by [the ICRC] when necessary.” And interpreting the deadline as mandatory would not further the essence of the law’s purpose, which is to assure fair housing practices in Indiana. The court reversed the trial court’s decision and remanded the case for a new trial.

*The case is Wilson v. Wilkening, 175 NE 3rd 1169 (IN Ct App 2021). If you have questions about fair housing, please contact the BHRC.*

# Nominations for Human Rights Award to Close Next Month

The deadline to nominate an individual or group for the Human Rights Award is quickly approaching.

The deadline is 5 p.m. Friday, February 11, 2022.

The Human Rights Award recognizes an individual or group that has made specific, significant contributions to improving civil rights, human relations, or civility in our community.

The Bloomington Human Rights Commission (BHRC) especially welcomes nominations demonstrating success in ensuring rights to equal access to housing, employment or education; in ensuring equal access to community life for people with disabilities; and of people or organizations who have done exemplary work and

advocacy in increasing civility in our community.

Past recipients of the award include PRIDE, Bloomington Police Department's Downtown Resource Officers, Bloomington High School North, Bloomington United, New Leaf/New Life, Charlie Dupree and Virginia Hall, Clarence and Frances Gilliam, the Council for Community Accessibility, Congressman Frank McCloskey, WFHB Community Radio, Doug Bauder, Lillian Casillas, Hellen Harrell, Cindy Stone, and the Rev. Bill Breeden.

The mission of the BHRC is to protect human rights in Bloomington. The HRC is designed to enforce Bloomington's Human Rights Ordinance in a fair and timely manner, to educate community members about their rights and

responsibilities under various civil rights laws, to raise awareness on all human rights issues, to ensure that contractors and subcontractors on City jobs pay employees applicable common wages, to ensure that the City, as an employer, governmental entity and provider of public accommodations, complies with the Americans with Disabilities Act (ADA), and to provide the community with information about the ADA.

More information about the BHRC is available at <https://bloomington.in.gov/boards/human-rights>. Nomination forms for the Human Rights Award are available at the website or from the Bloomington Human Rights Commission, by phone at 812-349-3426 or by email at [human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov).

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## US Issues First Passport with 'X' Gender Marker

In November, the United States issued its first passport with an "X" gender marker, acknowledging the rights of people who do not identify as male or female. The passport was issued to Dana Zzyym, a military veteran who is intersex. In 2015, Lambda Legal filed a lawsuit on Zzyym's behalf, and won in court.

The State Department said that it would expand the gender-neutral option to all applicants next year

after it updates its policies and U.S. citizenship certificates for children born abroad. It said it was working with other government agencies to "ensure as smooth a travel experience as possible for all passport holders, regardless of their gender identity."

Zzyym said, "In the long run, I started this lawsuit to get legal recognition for intersex and nonbinary people, and I did this for the future. For intersex kids to

be able to say, 'Hey, I happen to be a human being who happens to be intersex.'"

More than a half-dozen countries have adopted similar policies, and about 20 states in the U.S. allow an "X" gender designation on driver's licenses.

*(Article based on "U.S. Issues First Passport with 'X' Gender Marker," by Christine Hauser, published in The New York Times on November 4, 2021, page D3.)*