

RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

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BHRC and Chamber of Commerce Co-Sponsor Fair Employment Workshop



In March, Bloomington Human Rights Commission Director Barbara E. McKinney spoke with approximately 25 Chamber of Commerce members for a Fair Employment Workshop. That workshop included information about best hiring practices and how to get a diversified workforce.

This event was one of four events sponsored and made possible in

part with a grant from the Lilly Lead Forward Grant Program, provided by Independent Colleges of Indiana, Inc. (ICI), in cooperation with the Lilly Scholars Network through a grant provided by Lilly Endowment, Inc.

The BHRC received \$2,500 from the grant program to fund a speaker series culminating in a trash clean-up day.

BHRC

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Court Says Woman Was Fired For Behavior, not Disability

A woman we will call ML worked as a middle school physical education teacher in Ohio from 2000 until February, 2019. In the winter of 2018, she was shoveling snow when she said she had a “deeply religious event.” She said she lost consciousness and was lifted up and carried eight to ten feet away by a supernatural power, and that “God entered her body.” She said she had immediate relief from her chronic back pain, and believed that God wanted her to share her experience with others.

When ML returned to school, she shared her experiences with her students. She told them, “I’m not preaching God. I’m telling you my story.” She told her principal that she might need to host a staff meeting to inform others about her experience, and said the only way to keep her pain away was to keep talking about her experience. That night, she sent long emails to two students about her visions and gave one student advice about problems with her mother, based on her visions. And ML told the principal that the school was “going to make national news,” which concerned the principal as she felt schools tend to make national news only after school shootings. The next day, the principal talked to the superintendent about the issue.

The superintendent put ML on paid administrative leave and told her she could not communicate with students or school employees while on leave. If she did, she could be fired. After being suspended, ML said on Facebook that she knew that her story would soon be in the national news and that people should not judge her. The sheriff did a wellness check after seeing the post and concluded she was not a threat.

The school hired a psychologist to determine ML’s fitness to return to duty, and ML hired her own because she did not trust the school’s psychologist. Her own psychologist said ML was “grandiose, and mood is very elevated. Her associations are loose. Insight into problems appears to be poor. Judgement appears to be poor.” She said ML had a risk of bipolar disorder or schizophrenia, and recommended medication and psychotherapy. The school’s psychologist said he did not think she was able to perform the essential duties of a teacher, with or without accommodations, based on her breakdown in her ability “to think logically and coherently.”

While on leave, ML continued to communicate privately with some students on Facebook. She told the students not to trust teachers or the principal, and that the students did not have to do what teachers told them to do. She concluded, “I dearly love you. Have they told you they love you?” In a later message, she asked a student to do her a favor “on the down low,” and get as many students and parents as possible to express support for her at school board meetings.

The school terminated ML’s employment, and she sued, alleging discrimination in employment on the basis of disability. She lost, both at trial and on appeal.

The court said that the school had presented sufficient evidence to establish that it had terminated ML’s employment because of her behavior. It had a policy forbidding teachers from sharing their religious beliefs with students, and ML violated it. It had told her not to communicate with students while she was on leave, and she repeatedly violated that policy. ML said the school could have placed her on extended leave so she could seek treatment instead of firing her, but she committed misconduct while on paid leave. The court said that ML could not demonstrate that her disability, and not her misconduct, was the reason for her termination.

The case is Lockhart v. Marietta City Schools, 2021 WL 4810172 (6th Cir. 2021). If you have questions about fair employment, 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.

Landlord's Practices May Violate Fair Housing Laws

Clover Group owns apartment units in six states. Many of their complexes are specifically designed for people who are 55 or older

According to tenants who sued Clover Group, they have a practice of first-come, first-served parking, and typically don't have reserved or designated parking. They do grant a reasonable accommodation for tenants with disabilities, providing them with designated parking, but only if they pay \$350 and provide medical documentation, even if their disability is obvious.

They also charge \$15-\$25 a month more for units on the first floor, or units on upper floors near the elevator.

One tenant had difficulty breathing and could walk only a

few feet without help. She said she had to park near the main entrance of the building and asked for a designated parking spot. She was told that they have too many residents with disabilities and not enough spaces. But they would give her an assigned parking space for \$350. She could not afford that. She said she has suffered physical difficulties because she has to walk long distances. She also paid \$15 a month more for her first floor apartment near an elevator. A fair housing group asked Clover Group to waive that fee for her, but they did not change their policy.

Another tenant with disabilities also was denied a parking space near her unit. She fell in the parking lot while trying to step onto a sidewalk which didn't have a curb cut and had to go to urgent care. She had to pay \$25

extra rent each month for her first-floor unit.

CNY Fair Housing, Inc. sued Clover Group on behalf of its tenants with disabilities. Clover Group argued that the case should be dismissed because the Fair Housing Act does not require "economic accommodations." The court disagreed, saying the requested accommodation (waiving the fees for nearby parking spaces and for first-floor or elevator units) was directly related to the tenants' disabilities. The court denied Clover Group's motion for summary judgement, and the case will now go to trial unless settled.

The case is CNY Fair Housing, Inc., v. Welltower, Inc., 2022 WL 595695 (N.D. NY 2022). If you have questions about fair housing, please contact the BHRC.



DOJ Says That Drug Court Policies Violate ADA

In February, the Department of Justice (DOJ) released a finding that the drug courts in the Unified Judicial System of Pennsylvania violated the Americans with Disabilities Act (ADA).

Drug courts allow people with addiction issues to plead guilty to criminal charges and then be sentenced to drug court instead of incarcerated. Once accepted, the participants have to comply with program requirements, which can include frequent drug testing, engaging in treatment and reporting regularly to the drug court and to their probation officer.

Some addicts use prescribed methadone, naltrexone and buprenorphine to help end their dependency on illegal drugs. Methadone and buprenorphine diminish the effects of physical dependency on opioids, such as withdrawal symptoms and cravings, by activating the same opioid receptors in the brain targeted by prescription or illicit opioids without producing euphoria. And naltrexone treats opioid use disorder (OUD) by

blocking opioid receptors and thereby preventing any opioid from producing euphoria or pain relief. The DOJ says that these medications are safe and effective when taken as prescribed. According to the DOJ, these medications can help people stop using more dangerous drugs and have a more normal life.

But the drug courts required participants to be “completely clean” of any “opiate based treatment medication.” According to the DOJ, court officials voiced opinions about drugs such as methadone “rooted in stereotypes and myths about medications for OUD rather than in science. They expressed fears about how and why individuals could use or overuse their prescribed medications that displayed a misunderstanding of how the medications work. And they repeatedly suggested that they saw medication as a short-term solution for OUD, not something that could appropriately be part of an individual’s treatment indefinitely.”



The DOJ asked the drug courts to take a number of corrective measures, including revising policies so they prohibit discrimination on the basis of disability, identifying an ADA coordinator, updating its ADA complaint process, educating staff about the ADA, paying compensatory damages to people who were injured by the “completely clean” policy and providing regular written status reports. If they don’t, the DOJ said they will consider taking appropriate legal action.

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

**The next BHRC meeting will take place at 5:30 p.m.
April 25, 2022, in McCloskey Room 135, in Shower’s City Hall
and online. Visit our website or Facebook page for the most up-
to-date meeting information.**