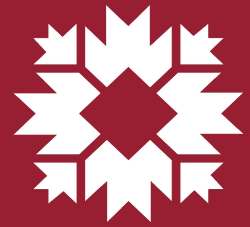


# RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

## EEOC Sues Indiana Company for Alleged ADA Violations



**T**he Equal Employment Opportunity Commission announced in September that it had filed suit against Keystone RV Company, which is based in Goshen, Indiana.

According to the EEOC's press release, a Keystone employee had a disability and needed time off for surgery. Keystone refused to allow the employee any more time off. Instead, it adhered to its strict attendance policy, which says that employees who have seven unexcused attendance occurrences will be fired. Keystone refused to excuse the employee's absences for medical appointments leading to his surgery. It counted the day of his

surgery as a seventh unexcused absence and terminated him.

The EEOC's regional attorney, Kenneth Bird, said that "The ADA requires an employer to provide employees with disabilities reasonable accommodations that will allow them to perform their essential job duties. An employer cannot hide behind its policies, even those concerning attendance, if suspending that policy permits an employee to do his job without any undue burden to his employer."

*Lawsuits give only one side of the story. If you have questions about fair employment practices, including the ADA, please contact the BHRC.*

### **BHRC Staff**

*Barbara E. McKinney,  
Director*

*Nicole DeCriscio Bowe,  
Assistant*

### **Commission Members**

*Ryne Shadday, Chair*

*Erin McAlister, Vice Chair*

*Carolyn Calloway-Thomas,  
Secretary*

*Valeri Haughton-Motley*

*Byron Bangert*

*Pamela Jackson*

*Tonda Radewan*

### **Mayor**

*John Hamilton*

### **Corporation Counsel**

*Beth Cate*

---

**BHRC  
PO BOX 100  
Bloomington, IN 47402**

**812.349.3429**

[human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov)

# Property Manager Agrees to Settle Complaint of Discrimination in Housing

In August, Housing and Urban Development (HUD) announced that it had entered into a consent decree with the property manager of a RV park in Florida.

According to HUD's press release, the property manager sent a letter to a tenant that said he was aware that she was transitioning to being a woman, and telling her to "act as a man, talk as a man and dress as a man to avoid trouble."

Demetria L. McCain, HUD's principal deputy assistant secretary for fair housing and equal opportunity, said, "Housing providers have no place restricting a transgender resident's expression of their gender identity. And, as HUD's consent order makes clear,

HUD will vigorously enforce the Fair Housing Act to protect the rights of LGBTQIA+ individuals and ensure housing providers do not fail to meet their fair housing obligations."

According to the terms of the consent order, the property manager will pay the tenant and her family \$45,000 in damages. It also bars the business and the property manager from future discrimination and requires them to undergo training on fair housing, including training on transgender and gender nonconforming discrimination.

*If you have a question about fair housing, please contact the BHRC.*

---

## Refusing to Allow Job Coach May Violate the ADA

Job coaches specialize in helping people with disabilities to learn and carry out their job duties. They provide one-on-one training tailored to the needs of the employee. They often start by doing a job analysis to identify the job duties. Then they develop a plan to determine how to train the employee to work more and more on her own until she can do her job without assistance.

The Equal Employment Opportunity Commission (EEOC) recently sued a Popeyes restaurant in Gary. According to the EEOC, Popeyes violated the Americans with Disabilities Act (ADA) when it fired a new employee with a learning disability after first refusing to allow her to train for a food-preparation job with a job coach present. The restaurant never scheduled the employee to work.

Before the case went to trial, the EEOC and the restaurant negotiated a settlement. Popeyes will pay \$30,000 to the employee. It also agreed to comply with the ADA in the future, to work with a disability advocacy group for referrals, to train its managers, to post notices of the settlement and to report regularly to the EEOC.

Kenneth L. Bird, EEOC Regional Attorney, said "Individuals with cognitive disabilities deserve full protection under the ADA from job barriers based on mistaken beliefs about their ability to perform safely in the work place. The steps required by this decree will better ensure that applicants and employees with disabilities are not discriminated against and can enjoy the full access to employment intended by the ADA."

*If you have questions about fair employment practices, please contact the BHRC.*

**Don't forget to vote in the  
November 8 election!**

**To find out where you vote,  
go to [www.vote411.org](http://www.vote411.org).**

# Does Moving People Experiencing Homelessness Violate the ADA?

The California Department of Transportation (Caltrans) has “full possession and control of state highways and property acquired for state highway purposes.”

A cluster of homeless encampments was situated along an exit ramp for Interstate 80. Caltrans designated these encampments as level 1, meaning they posed a critical safety concern, and began trying to clear the people out in July, 2020.

Caltrans and local organizations gave the residents six weeks to relocate and began working with them to find other places to stay.

After a notice was posted at the site, a nonprofit group called Where Do We Go Berkeley sued, asking the court for a temporary restraining order to stop Caltrans from clearing the encampments until all residents were given housing.

The district court granted the order.

When all of the previous plaintiffs had found alternatives, Where Do We Go added eleven new plaintiffs. These new plaintiffs were offered a place to stay called Horizon, but they argued that the shelter was inaccessible to them because of their disabilities.

The district court allowed Caltrans to clear only part of its property and said that the plaintiffs were likely to prevail at trial on their ADA complaint.



The court said that Caltrans could not require anyone to leave the camps for six months unless it provided an alternative camp site. The court agreed that the camps created a serious threat to public safety and said that Caltrans could mitigate the harm by reopening a previously cleared Caltrans’ property for the campers’ use.

Caltrans appealed this order, and won. The court of appeals said that the ADA requires governmental entities to provide reasonable accommodations to people with disabilities so that they can participate in governmental programs.

But Caltrans does not provide a camping service to the public on its property. It does not provide housing to individuals. And the ADA does not require

governments to fundamentally alter their programs when making reasonable accommodations.

A six-month delay was a “fundamental alteration of Caltrans’ programs,” according to the court. And the trial court did not have the authority to require Caltrans to reopen a previously cleared property so that it could clear the property on Interstate 80. Caltrans does not offer housing solutions as one of its programs and the ADA does not require that it begin to do so.

*The case is Where Do We Go Berkeley v. California Department of Transportation, 32 E. 4th 852 (9th Cir. 2022). If you have questions about your rights and responsibilities under the Americans with Disabilities Act, please contact the BHRC.*

# Black Couple Wins Right to Keep Pursuing Housing Discrimination Complaint

**T**onca and Terence Watters are a married Black couple. They built a home in Kokomo, Indiana, in an area under the jurisdiction of the Homeowners' Association at Preserve at Bridgewater (HOA).

When they bought their property, Kate Mamaril was the president of the HOA. Her husband, Ed, took over as president in 2015. As soon as the Watters began construction on their home, they had issues with the Mamarils. Ed told them that they were not welcome, called them “a\_\_holes,” asked why “you people” moved here, said he would have them investigated and suggested that they live “somewhere else.”

When the Mamarils' cat roamed the Watters' property, in violation of HOA rules, the Watters eventually called the Humane Society. While a representative of the Humane Society was speaking with Tonca on Tonca's property, Kate approached her and called

her a “Black bitch” and a “Black n\_\_\_\_\_.”

In 2017, the Watters were at a restaurant with their daughter and two grandchildren. According to the lawsuit, the Mamarils pushed them and Kate called the grandchildren “little monkey n\_\_\_\_s.”

The Watters also had disputes with the HOA involving a fence and a pool. They sued, alleging discrimination in housing. They lost at the trial court but recently won a partial victory in the court of appeals.

The Watters had to show that the Mamarils and/or the HOA had interfered with their housing rights on the basis of their race.

The court ruled that the three blatant and racially hostile comments directed to the couple was enough for a jury to conclude that the actions were based on race.

The court said that the record showed that the Mamarils “used racial slurs and epithets against the Watters ever since they first stepped foot into the Preserve. One cannot avoid liability by taking a film reel exhibiting harassment, slicing the reel into individual frames, and presenting them as mere isolated acts.” But there was no proof that the Mamarils were acting on behalf of the HOA when they made their comments, so the court dismissed the race discrimination case against the HOA.

*The case is Watters v. Homeowners' Association at the Preserve at Bridgewater, 2002 WL 4128529 (7th Circ. 2022). If you have questions about fair housing, please contact the BHRC.*

**The BHRC is now accepting nominations for its 2023 Human Rights Award. Nominations are due at the beginning of February.**

**More information and the nomination form can be found at <https://bloomington.in.gov/boards/human-rights>.**