

# RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

## City Water Fees May Violate Fair Housing Laws

**S**eattle House developed an apartment complex in Delaware, Ohio that included 240 residential apartments and a club house. They had to pay \$1,917,883 to the city for permits to tap into its water and sewage lines.

The city claims that it charges these fees to defray the cost of new developments' use of the city's water and sewer system. Seattle House argued that the fees were arbitrary. It said that after a year, the city reviews its estimates for non-residential properties. If its estimates were inaccurate, it issues refunds to the non-residential property owners. But it did not do the same for residential property owners.

Seattle House sued the city, alleging that the arbitrary fees add significant expenses to affordable housing projects in a city that had a severe shortage of affordable housing. Seattle House argued that "the lack of affordable housing has disproportionately impacted racial minorities whose incomes are less than their white counterparts."



Delaware argued that Seattle House did not have standing to sue because it had not suffered an "injury in fact." The court disagreed, saying that Seattle House's argument that it had to pay unfair fees caused a financial injury was sufficient to give it standing to sue.

Delaware lost its motion for summary judgment and now the case will proceed to trial if not settled.

*The case is Seattle House v. City of Delaware, Ohio, 2021 WL 3284742 (S.D. Ohio 2021). If you have questions about fair housing, please contact the BHRC.*

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# Court Rules that Certification is Not Required for Service Animals

**A**t the BHRC, we often are asked by landlords and providers of public accommodation if they may refuse service dogs if the service dog is not certified. We've always said that the answer is no, based on the language of the Americans with Disabilities Act (ADA) and Department of Justice (DOJ) regulations. Recently, the 9th Circuit Court of Appeals agreed.

C.L. is a woman with psychiatric disorders. She acquired a dog named Aspen, a 16-pound bichon-poodle mix, and trained Aspen to perform several tasks for her, including waking her from nightmares, grounding her in the present, alerting her when people are approaching, going ahead of her at corners and letting her know if anyone was approaching and alerting her for medication, among other tasks. She attended a two-day seminar at the Little Angels Service Dogs facility in San Diego, but for financial reasons, she was not able to go through all of the required training so that Little Angels could provide Aspen with a service animal certificate.

C.L. sought inpatient treatment at Del Amo's National Treatment Center. Del Amo said that Aspen could not accompany C.L. during treatment, saying that Aspen's presence at the center would interfere with her therapy by allowing her to rely on Aspen rather than learning coping skills. C.L. sued.

At trial, C.L. testified about the training she had given Aspen.

Katie Gonzales, an expert in the training of service dogs, testified that even though Aspen was not a certified service dog, C.L. had successfully trained Aspen as her service dog. The trial judge found in favor of Del Amo, saying that C.L.'s testimony had not shown Aspen was a service dog. The judge did not seem to doubt her credibility but said her testimony was not sufficient. C.L. appealed, and won.

The court of appeals said that the ADA prohibits certification requirements for qualifying service dogs for three reasons:

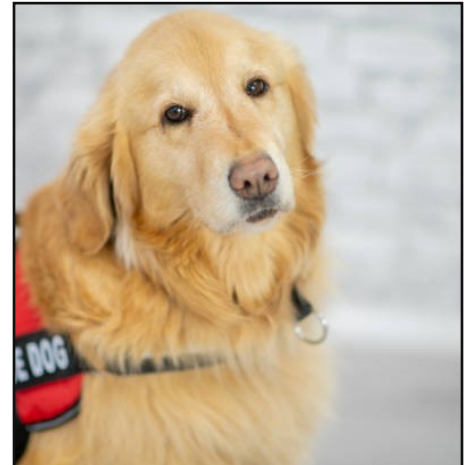
— The ADA defines a service dog functionally, without reference to specific training requirements.

— DOJ regulations have consistently rejected a formal certification requirement.

— And allowing a person with a disability to self-train a service animal furthers the stated goals of the ADA, as other training could be prohibitively expensive.

The court noted that the DOJ has consistently said that a service animal "must be individually trained to perform tasks related to an individual's disability, but the animal need not be formally certified. The test is a functional one: can the dog consistently help the person with a disability meet the challenges of life by assisting in the person's activities of daily living?"

The court of appeals remanded the case to the trial court to determine that if C.L.'s personal testimony, along with Gonzalez's



expert testimony, was sufficient to show that Aspen was "more likely than not" a qualified service animal.

*The case is C.L. v. Del Amo Hospital, Inc., 992 F.3d 901 (9th Cir. 2021). If you have questions about the ADA, 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.*

# Transgender Man Loses Lawsuit

**E**lijah Olivarez is a transgender man who began working for T-Mobile as a retail sales associate in 2015. In early 2016, he complained to the company that a coworker had made demeaning comments about his transgender status. He said that in retaliation for his having complained, his hours were cut for three months.

In September, 2017, Olivarez stopped coming to work so he could undergo egg preservation and a hysterectomy. The next month, he asked for leave from September to December; some of his leave would be retroactive.

The company granted him unpaid leave from September 23 to December 17. It granted him paid medical leave from December 17 to December 31. It also granted him additional unpaid leave to February 18, 2018, but it denied his request for additional, indefinite leave in March, 2018. The company fired him on April 27, 2018, and he sued, alleging discrimination in employment on the basis of gender identity. He lost.

The court noted that Olivarez did not offer any proof that any non-transgender employee with a similar job and supervisor, who engaged in the same conduct as

he did, received more favorable treatment than he did. In other words, he provided no evidence that non-transgender employees were allowed to take six months of leave and then were granted additional, indefinite leave. The court said his allegations that in 2016, a supervisor made inappropriate comments to him, and then T-Mobile retaliated against him for complaining, were outside of the statute of limitations.

*The case is Olivarez v. T-Mobile USA, Inc., 2021 WL 1945680 (5th Cir. 2021). If you have questions about fair employment law, please contact the BHRC.*

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## Woman Rejected for Promotion for Being Too “Motherly”

**V**irginia Duncan was a female sales manager at a Harley-Davidson dealership in Florida.

The dealership was owned by Cigar City Motors. She applied for a general manager position at its Tampa dealership but was denied the promotion.

She sued, accusing Harley-Davidson of sex discrimination. The evidence at trial showed Cigar City Motors had five Harley-Davidson dealerships in Florida and had never promoted a female employee to a general manager position. Several general managers testified that

Duncan was qualified for the promotion, but that Cigar City thought she was too “motherly” for the job.

After hearing testimony, a jury returned a unanimous verdict finding that Cigar City had been motivated by gender bias in denying Duncan the promotion. The jury awarded her \$500,000 in punitive damages.

Robert E. Weisberg, regional attorney of the EEOC’s Miami District Office, said that the decision showed that the automotive industry is not exempt from federal laws which prohibit



sex discrimination in the workplace. He said, “It’s time for the ‘good old boy’ method of selecting general managers for their dealerships to be retired.”

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



# EEOC Sues Florida Applebee's



**T**he U.S. Equal Employment Opportunity Commission (EEOC) announced in a press release that it had filed a lawsuit against an Applebee's restaurant in Florida, alleging that the restaurant had discriminated against a Black employee on the basis of race and sexual orientation.

According to the lawsuit, the restaurant "was permeated with racial and homophobic slurs." Employees used anti-gay and racist epithets towards a Black employee, who was a line cook. They also wore Confederate flag paraphernalia. He complained; management told him to "ignore it." Then the restaurant

drastically cut his hours and he was forced to quit because of his treatment.

Evangeline Hawthorne, the EEOC Tampa field office director, said, "When an employer learns about discrimination in the workplace, it must take prompt action designed to stop the behavior. All too often, however, we see employers making a bad situation worse by retaliating against the victim rather than taking steps to stop the harassment. The EEOC will hold employers accountable for their actions."

*If you are an employer, or an employee, who has questions about your rights and responsibilities under fair employment laws, please contact the BHRC.*

## Join us at our next meeting

The next BHRC meeting will take place at 5:30 p.m. on September 27.

For more info, visit [bloomington.in.gov/boards/human-rights](http://bloomington.in.gov/boards/human-rights).