October 2007

One Lincoln

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City of Lincoln Commission on Human Rights News

How Much Did You Say You Make?

Employer's cannot forbid employees from discussing wages.

Some employers have policies that discourage or forbid employees from discussing their wages or salaries with other employees. Some even require that new employees sign documents stating the employee will not discuss his or her wages with other employees.

While often employers put such policies in place to avoid controversy over differing wages, most of these policies are illegal.

The National Labor Relations Board reaffirmed this in the recent case of Snook v. Harris (The National Labor Relations Board Division of Judges, Atlanta Branch Office, Case 16-CA-22865). Dr. Murray A. Snook, the owner of the Medical Center of Georgetown, Texas, had in place a rule in its employee handbook which stated: "Salary figures are confidential and should not be discussed with others. The physicians and office manager will evaluate your performance at regular intervals. Should you receive a bonus, the amount is confidential and should not be discussed with others. Discussion of bonus amounts with others is grounds for dismissal."

Ms. Sheryl Harris worked for the Medical Center from July 2001 until April 2003, in the billing department, collecting overdue payments and doing patient insurance verifications. On April

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Nominations Sought for Human Rights Award

The Lincoln Commission on Human Rights (LCHR) is now accepting nominations for the 2007 Gerald Henderson Human Rights Award. The award was established in 2000 to recognize outstanding achievements in furthering human rights and relations in the City of Lincoln. In 2003, the award was renamed to honor and remember Mr. Henderson, first director of the LCHR and a long-time civil rights activist. The award will be presented in November.

Nominations are due by 4:30 p.m., Friday, October 12. Individuals can get the nomination forms four ways:

- Calling the Commission at 441-7625 or 441-8398 (TDD).
- Send an e-mail to mkniep@lincoln.ne.gov.
- Print a form from the City Web site, lincoln.ne.gov (keyword: rights).
- Visit LCHR during regular business hours at 440 S. 8th St.

Completed forms can be dropped off at LCHR, faxed to 441-6937 or mailed to LCHR, 440 S. 8th St., Lincoln, NE 68508. Those who submitted nominations in past years are encouraged to re-submit the entries.

Nominees will be judged on their achievements in improving human rights based on activities implemented, services performed or programs operated in the City of Lincoln. Previous winners include: Dan Williams; Cecilia Olivarez Huerta; José Soto and the Division of Affirmative Action, Equity and Diversity at Southeast Community College; Milo Mumgaard and the Nebraska Appleseed Center for Law in the Public Interest, Inc.; Judi M. gaiashkibos, Nebraska Indian Commission; and Florine Joseph.

The Human Rights Commission is the primary City agency responsible for the investigation of discrimination complaints brought by individuals. LCHR serves as the civil rights law enforcement agency for Lincoln. The Commission also provides community education and technical assistance in order for people to know and understand their rights and responsibilities under the law.

Lincoln Commission On Human Rights

How Much Did You Say You Make?

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25, 2003, Harris delivered payroll checks to three employees. While they were visiting, one of the employees opened her payroll envelope and discovered an unexplained increase in the amount of her check. Ms. Harris suggested that she speak with one of the doctors about that which she did and reported back that employees had been given a pay raise. According to Harris, another employee looked at her pay check and confirmed she had received a pay raise. When Harris looked at hers, she had not received a pay raise. Some more calling and questioning by Ms. Harris of other employees confirmed others had received pay raises. Harris then called the Billing Officer to ascertain if employees had received pay raises. The Billing Officer wanted to know how she knew about the raises and she basically told them what had occurred.

The next time that Ms. Harris worked at the Medical Center she was terminated by Dr. Snook for violating the Medical Center's policy against talking about wages with a co-worker.

The administrative law judge ruled in favor of Ms. Harris and found that the "sole reason for Harris' discharge was she discussed wage rates and pay raises with her co-workers in violation of the Medical Center's published policy prohibiting such discussions. The judge determined that other reasons given by the Medical Center for her termination were simply post hoc rationalizations. It was also determined that the Medical Center's published rule prohibiting employees from discussing wages and bonuses violated the Act. As it had been established, Harris was discharged as a direct consequence of her discussing wages, and that her discharge violated Section 8(a)1 of the Act.

The National Labor Relations Act protects employees' rights to engage in protected concerted activities with or without a union, which are usually group activities attempting to improve working conditions, such as wages and benefits. Examples of such protected activities include:

a) Two or more employees addressing their employer about improving their working condition and pay.

b) One employee speaking to his/her employer on behalf of him/herself and one or more co-workers about improving workplace conditions.

c) Two or more employees discussing pay or other work related issues with each other.

In other words, rules which prohibit employees from discussing wages and bonuses violate Section 8(a)1 of the National Labor Relations Act unless there is business justification for the rule.

For more information contact the LCHR at 441-8691.

Our Mission

The administration of the Lincoln Commission on Human Rights supports the enforcement of all provisions of Title 11 of the Lincoln Municipal Code. To receive, settle, conciliate, investigate, issue findings, hold public hearings on complaints alleging discrimination based on race, color, religion, sex, disability, national origin, familial status, age, ancestry, marital status, and retaliation.

To perform functions and activities with community groups, businesses, schools, and governmental entities for the purpose of promoting understanding between races, cultures, and sexes, and to work to eliminate inequalities and sources of inter-racial friction.

Review all City of Lincoln procurement bids and awards in excess of $10,000.

Review DBE (Disadvantaged Business Enterprises) program of minority and women-owned businesses and maintain directory.

Our Goals

To eliminate and prevent all forms of illegal discrimination, to assure and foster equal opportunity for all citizens of the City, and to act in all matters within its jurisdiction.

Do Landlords Still Discriminate?

"It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." Fair Housing Act, 42 USC. §3601.

The Fair Housing Act (FHA) was passed in 1968 and makes it unlawful to "refuse to....rent after the making of a bona fide offer, or to refuse to negotiate for the...rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, sex, religion and national origin."

The FHA also bans such discrimination in "the terms, conditions, or privileges of...rental of a dwelling, or in the provision of services or facilities in connection therewith" and makes it unlawful to represent to anyone because of race, color, sex, religion, and national origin "that any dwelling is not available for inspection....or rental when such dwelling is in fact so available."

In 1988 the Fair Housing Act was amended to include coverage based on disability and familial status, and also strengthened the ability to enforce the FHA by eliminating the punitive damage cap, lengthening the statute of limitations, making attorney's fees easier to obtain and establishing an expedited administrative complaint procedure that could result in injunctive relief and civil penalties.

"...thousands of paired tests...in 2000 show that in rental tests, whites are favored over blacks 21.6% of the time and over Hispanics 25.7% of the time."

The FHA has prohibited discrimination in housing for nearly forty years; however, studies conducted by the Department of Housing & Urban Development (HUD), based on thousands of paired tests in dozens of metropolitan areas in 2000 show that in rental tests, whites are favored over blacks 21.6% of the time and over Hispanics 25.7% of the time. Similar studies conducted in 1977 and 1989 are not significantly different than the results in the 2000 study.

With the forty year anniversary of the Fair Housing Act approaching, it begs the question, "Why do landlords still discriminate?" In a recent *John Marshall Law Review* article, Professor Robert G. Schwemm, University of Kentucky College of Law, attempts to address this question.

In his in-depth article comparing housing discrimination as a "disease" and the passage of the Fair Housing Act as a supposed "cure", he points out that the problem of housing discrimination, specifically on the bases of race and national origin, has gone on unchanged. Professor Schwemm discusses possible reasons why landlords still discriminate, citing social scientist studies suggesting the causes could include: landlords' personal prejudice; landlords' perception that their white customers are prejudiced against minorities; and landlords' stereotypes about what minority and white customers want or can afford. "But why have these 'causes' - particularly agent-prejudice - not faded over time or been curbed more by the Nation's fair housing laws?" asks Professor Schwemm. He concedes that "we know very little" about this subject, which makes it difficult to know what policies will be effective in reducing such discrimination, but it would appear that increased fair housing litigation is not getting the job done.

Professor Schwemm goes on to state, "It is

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You Want to Know

Questions & Answers Regarding Employment & Fair Housing Issues

Q: Can a daycare provider refuse to accept a child with diabetes or certain health problems?

A: No. A daycare provider may not refuse service to a child with a disability unless they can show it would cause an undue hardship on the business.

Q: If a landlord fails to follow the proper legal procedures in evicting me from my apartment, is this discrimination?

A: Generally this would be a violation of the Nebraska Landlord Tenant Act; however, in some situations it could be discrimination if it is happening based on your race, national origin, disability, etc.

Q: If an employee provides an unrestricted Social Security Card and a valid Government ID or Drivers License at the time of hire, can an employer ask for more documentation showing you are legally able to work?

A: No. If a person provides the documents required by the IRS to show proof he or she can legally work in the United States, an employer cannot ask for additional documents such as a work permit or a green card simply because you are foreign-born.

If you have a question you would like answered in regard to possible discrimination as it affects employment, fair housing or public accommodation, you can email them to mkniep@lincoln.ne.gov or mail them to LCHR, Attn: Margie, 440 S. 8th Street, Ste. 101, Lincoln, NE 68508.

Do Landlords Still Discriminate?

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important - as a fair housing matter - to constantly oppose negative media portrayals of racial minorities and to offer positive alternative images. Similarly pointing out the benefits of interracial associations must be part of our advocacy, which particularly means supporting integrated communities and opposing residential segregation, both through FHA suits and other means."

In conclusion, Professor Schwemm writes, "Race and national origin discrimination in rental housing remains at alarmingly high levels, virtually unchanged from thirty years ago and apparently unaffected by decades of litigation under the Fair Housing Act. This 'disease' has continued unabated even as the 1988 Fair Housing Amendments Act gave the FHA the most powerful enforcement scheme among the nation's civil rights laws and led to thousands more claims and tens of millions of dollars more in monetary relief.

The unmistakable conclusion from this record is that the deterrent value of FHA litigation for rental discrimination has been minimal and that something else must be tried if we are serious about providing equal opportunity to the next generation of Americans, a generation that will include an unprecedented number of minority renters."

Hostile Work Environment Can Be Created by Sexist – Not Just Sexual – Remarks

Reprinted from CCH Labor Law Reports – Employment Practices – July 6, 2007 Issue

A supervisor's repeated remarks to a female employee, although mostly sexist rather than sexual, were severe and pervasive enough to support a hostile work environment claim, ruled the Seventh Circuit Court of Appeals. Moreover, the supervisor's harassing conduct and retaliatory actions, in light of her employer's failure to intervene, were enough to avoid summary judgment on the employee's constructive discharge claim. (Boumehdi v. Plastag Holdings, LLC, 7th Cir. 89 EPD ¶42,845).

Offensive and retaliatory conduct. The employee was a "feeder" who assisted a press operator when she was assigned a new supervisor. According to the employee, her supervisor told her at least five times during a several-month period that women did not belong in the press room and that women think they know everything. Her supervisor made at least eighteen sexist or sexual remarks over the course of less than a year and made similar comments "very often."

In February 2003, the employee complained to her human resources director about her supervisor's offensive conduct and thereafter periodically updated him as the conduct continued and became retaliatory. After observing the employee leave human resources when she complained in February, her supervisor asked if she was complaining about him and warned that if "[she] didn't watch it, [she'd] be scrubbing the floors and doing the toilets." On at least one other occasion, when she was leaving human resources, her supervisor commented that she was complaining about him again.

At the end of February or early March, the employee's paycheck was short, and when she attempted to speak with her supervisor, he refused to talk to her. In March or April, her supervisor changed her schedule such that she earned less money each week. Her supervisor gave her the worst rating of her career in her March performance review, and, as a result, she received no annual raise. When confronted about the review, her supervisor told the employee that "women don't belong in the pressroom" and "they think they know everything." He told her she better stop complaining about him.

Although the employee continued to complain to her human resources director about her

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About the LCHR

What does the Lincoln Commission on Human Rights (LCHR) do?

The LCHR investigates complaints of discrimination within Lincoln that involves housing, employment, or discrimination in services provided to the public.

What is discrimination?

Illegal discrimination is to have an adverse action taken against you or being treated differently based on a protected class (i.e.: race, color, national origin, sex, religion, disability, age, marital status and familial status).

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Lori Lopez Urdiales
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Hostile Work Environment & Sexual Remarks

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supervisor's harassment and retaliatory activity, her paychecks continued to be short and she did not believe that human resources was responsive to her complaints. She resigned in 2003. She filed a lawsuit that included claims of sexual harassment and constructive discharge. A district court entered summary judgment for her employer on all of her claims.

Sexually hostile work environment. The district court had agreed with her employer's assertion that her supervisor's comments were not severe or pervasive enough to be objectively offensive since "they were not 'unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.' "

The Seventh Circuit reversed. "[O]ur precedent does not limit hostile environment claims to situations in which the harassment was based on sexual desire," the circuit court noted. Further, decisions in the First, Sixth and Eighth Circuits "have recognized that comments evincing anti-female animus can support a hostile environment claim," wrote the court. Two district court cases in the Seventh Circuit reached a similar conclusion. Thus, her supervisor's alleged anti-female comments were severe enough to support the employee's hostile environment claim.

There was also sufficient evidence the harassment was pervasive enough to survive summary judgment. There was "no magic number of incidents" to establish a hostile environment claim, but a reasonable jury could conclude that the alleged eighteen or more sexist or sexual remarks and similar comments made "very often" by her supervisor were pervasive enough to create a hostile work environment, concluded the court.

Constructive discharge. To establish her constructive discharge claim, the employee was required to prove her working conditions were so intolerable as to force a reasonable person to resign. Since generally an employee is expected to remain employed while seeking redress, working conditions must be more egregious than the high standard set for hostile environment claims in order to support a constructive discharge claim, explained the Seventh Circuit. The primary rationale behind this heightened standard is to allow an employer to address a situation before it causes an employee to resign. But, an employee is not expected to remain if her personal safety is compromised while the employer tries to remedy the problem, noted the court.

Here, the employee did not allege that continued employment would jeopardize her safety. Rather, she alleged a repeated pattern of offensive conduct by her supervisor, retaliatory actions following her complaints to human resources and her employer's failure to respond despite her repeated complaints. "Just as an employee has a duty, where reasonable, to mitigate damages and to wait for the employer to intervene, an employer has a duty to prevent the kind of treatment [the employee] endured," wrote the court. Despite the employer's numerous opportunities to respond, the employee's complaints "fell on deaf ears." A jury could conclude that a reasonable person in the employee's position had no alternative but to quit. Thus, summary judgment was reversed.

Receive your own issue of ***One Lincoln*** by sending your email address to mkniep@lincoln.ne.gov. You may also access this issue and all current issues on our website at www.lincoln.ne.gov/city/mayor/human/index.htm

We Get Calls

Recently a woman called saying she was referred to us by a local agency for the purpose of obtaining a lawyer referral for handling a civil right's case. I explained that we investigate complaints involving possible discrimination occurring in housing, employment and public accommodation within the City of Lincoln.

"Is that all?" she asked. Curious, I asked the nature of the problem. She explained that it involved the police, her son and a traffic stop.

I explained that we didn't have jurisdiction over law enforcement and encouraged her to call the Lincoln Police Department's Internal Affairs Division (441-7222) and/or the Mayor's office for making a complaint (441-7511).

"Even if it occurred in Hastings?" came the response. Oh. I assured her that even the Hasting's Police Department would have an Internal Affairs Division and that she could also contact the Hasting's Mayor's office.

This happens quite often. Most of the time the first question out of my mouth is "Where did this occur?" or "Did this happen in Lincoln's City limits?" Since the caller stated at the outset that she was referred by a local agency, I wrongly assumed the issue occurred within Lincoln.

The City of Lincoln Human Rights Commission has jurisdiction over discrimination complaints within Lincoln City limits; whether it be someone employed at a business in Lincoln, living in a house or apartment in Lincoln, or making use of public accommodations (restaurants, bars, theatres, etc.) in Lincoln. We do not have jurisdiction to investigate complaints against local law enforcement, other city agencies, state universities, or government agencies. Nor are we allowed to make attorney referrals.

On the flip side, if someone calls your agency in error and states they were referred by us, please let us know by calling at 441-7624 or emailing us at mkniep@lincoln.ne.gov. We all know how frustrating it can be for callers to be sent from agency to agency only to be told, "sorry, we can't help you."

Interested in Serving LCHR?

The Lincoln Commission on Human Rights has two positions to fill on our Board of Commissioners beginning in January of 2008.

Commissioners are appointed for 3-year terms, meet monthly - usually on the last Thursday of the month, and make the final determination on the outcome of discrimination complaints.

If you are interested in serving as a Commissioner and would like more information, contact our office at 441-7624.

You may also complete and submit an application located at http://www.lincoln.ne.gov/city/mayor/comtf.htm and select "Appointment Application", or contact us and we will mail or email an application to you.

HISTORICALLY UNDERUTILIZED BUSINESS DIRECTORY

Did you know the LCHR provided a directory of women and minority-owned businesses in Lancaster County? It is available on the website at HUB Directory. On our website there is also a questionnaire for businesses wishing to be added to the directory located under the **Historically Underutilized Business** link.

Civil Right's Training Held in Kansas City

More than 120 staff and commissioners attended the annual Regional Executive Council on Civil Rights (RECCR) training held in Kansas City, Missouri, August 22 – 24, 2007.

This year's training conference included the history of the Civil Right's Movement, legal updates from the U.S. Department of Housing and Urban Development and the U.S. Equal Employment Opportunity Commission, a discussion on the culture of poverty and the hidden rules of class, what is necessary for a cause finding, assessing damages in housing and employment cases, assessing reasonable accommodations, managing a civil rights agency, new community outreach methods, and fair housing and immigration issues.
Keynote speaker for the conference was Myrtle Wilson, Region VII Director, Office of Fair Housing and Urban Development. RECCR was originally incorporated in the State of Iowa in 1981 with the intent of addressing human rights concerns and responsibilities in the four Midwestern states of Iowa, Nebraska, Kansas and Missouri. Specifically, RECCR disseminates information, plans and conducts training programs, and assists member and nonmember agencies in the field of human rights.

On Wednesday night a retirement reception was held for several individuals who have recently retired: Donna Cavitte, Louise Lorenz, Rehelio Samuel, Michael Bates, Thomas Barta, and Allen Martin. These people and their expertise will be greatly missed.

Larry Williams serves as President of RECCR.

Editorial Policy:
One Lincoln is a publication of the Lincoln Commission on Human Rights. Materials appearing in this publication shall be in accordance with the purposes, and goals of the LCHR. One Lincoln will be published on a quarterly basis in January, April, July and October.

Criteria for Publication:
Submissions by community groups and individuals are welcome. Deadlines are the first of the month preceding the month of publication. Articles are subject to editing, with the author's compliance. Specific opinions expressed are not necessarily the opinions held by LHRC employees or its Commissioners.

One Lincoln

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Human Rights Commission
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Jurisdiction:

The City of Lincoln Human Rights Commission has jurisdiction to investigate alleged discrimination complaints in the areas of employment, housing, and public accommodation occurring within Lincoln's city limits. We do not have jurisdiction to investigate alleged discrimination complaints involving City, County and State Government employees, offices or facilities, or state universities.

Resources:

- ***Discrimination complaints outside of Lincoln City limits*:** Nebraska Equal Opportunity Commission—402-471-2024 or the regional Equal Opportunity Commission office in Denver, Colorado (800) 669-4000
- ***City employment complaints***—Affirmative Action (402) 441-3871
- ***City agency complaints***—City Ombudsman/Mayor's Office (402) 441-7511
- ***University of Nebraska-Lincoln employment complaints*** — UNL Affirmative Action (402) 472-3417
- ***Lincoln Police Department complaints***—Internal Affairs Division (402) 441-7204, Citizen Advisory Board (402) 441-6351, or Mayor's office (402) 441-7511
- ***Jail complaints, not including the State Penitentiary***—Jail Standards Division of the Nebraska Crime Commission (402) 471-3988
- ***State Penitentiary***—Ombudsman at the State office for Corrections (402) 471-2035
- ***Landlord-Tenant disputes***—Lincoln Action Program Specialist (402) 471-4515
- ***Complaints about legal matters***—County Attorney (402) 441-7321, Southeast Nebraska Legal Services (402) 435-2161, Nebraska Attorney General (402) 471-2682, or Nebraska State Bar Association (402) 475-7091
- ***Advocacy Services for people with disabilities***—League of Human Dignity (402) 441-7891 or Nebraska Advocacy Services (402) 474-3183.