

Ohio Attorney General's Civil Rights Reporter

Highlighting Civil Rights Issues and Case Law



Spring 2015

Landlords Receive Fair Housing Training

Understanding housing laws can be challenging, and to help landlords navigate the regulations and avoid claims of unlawful discrimination, the Ohio Attorney General's Civil Rights Section recently conducted fair housing training in Akron, Marietta, St. Clairsville, and Springfield.

The trainings were free, two-hour seminars designed to help small business landlords understand how to comply with state and federal fair housing laws. More than 90 landlords attended.

Attendees received guidance on issues such as:

- How to lawfully advertise vacancies in the newspaper or social media.
- What type of information may be requested from a prospective tenant.
- Whether housing opportunities can be limited to people engaged in the oil and gas industries.
- Who is responsible for making a property physically accessible.
- Where to find information about zoning and other occupancy issues.



The trainings also covered the role of the Ohio Civil Rights Commission in investigating alleged violations of the laws, enforcement through the Ohio Attorney General's Office, and a landlord's rights during this process.

Additional training may be scheduled, and those who want to learn more or request training should contact the Ohio Attorney General's Civil Rights Section by calling 614-466-7900, or emailing Lori.Anthony@OhioAttorneyGeneral.gov.

Save the Date: Sixth Annual Civil Rights Hall of Fame (Oct. 15, 2015)

The Ohio Civil Rights Commission is seeking nominations for its Sixth Annual Civil Rights Hall of Fame, which is set for Oct. 15, 2015. Do you know an Ohioan who has contributed to the civil rights cause? Contact the Ohio Civil Rights Commission to [submit a nomination](#).

An Interview with Commissioner Tom Roberts

Q & A – Tom Roberts, Commissioner of the Ohio Civil Rights Commission and former state legislator

On deciding matters before the Commission

In order to make a decision as a Commissioner, you need to put yourself in the shoes of the individuals that appear before you. The more you understand what people are saying, the better the decisions you will make as a Commissioner.

The Commission is a valuable tool that saves the state a great deal of money. It can be used by anybody who has been discriminated against. People who come to the Commission get a fair hearing, get their issue aired, and get justice.

Employees and employers who come to the Commission are going to have to continue dealing with each other because discrimination has to stop and the employment relationship has to continue. We must mend fences and have a meeting of the minds because many times it's just a matter of having people talk – understanding and talking. It's critical to not only resolve the problem, but to have a plan to make sure things don't happen again. You have to put something in place to make sure you don't continue to find yourself fixing it.

The Commission's trainings are a source of pride. We can say to an employer, if you want to change the behavior in your institution, we can help you do that.

On the Community Policing Task Force

Governor Kasich selected me to be part of a community policing task force. My tenure as a public servant, my service with the Commission, and my long association with the NAACP made me a natural fit for the task force.

The task force is made up of law enforcement, the legal community, state agencies, legislators, members of congress, and community leaders. The purpose of the task force is to hear from the public and experts on issues related to policing and the community, specifically the African-American community. The task force held public hearings throughout the state and gathered testimony from numerous groups on how to improve police/community relations. The message that the task force received was loud and clear - we need to work on police training, community relations between police officers and the communities they serve.

This task force is a model for other states. In order to be a model, though, we will need to make powerful recommendations that can change behaviors and change systems. Buy-in from the community is critical because many of the elements are broken and need to be fixed, or not working in the best interest of the people. The time is right for America to embrace change because what is happening in Ohio isn't an isolated situation. Across the country, every state in the union has its own situation. Ohio can be a leader, if we do the right things.

On civil rights issues having an impact on Ohioans

Housing discrimination is an area that impacts too many Ohioans. The American Dream is to own a home. The last thing you would want is to not be allowed to purchase a home or not be allowed to live where you want to live. The most challenging cases involve disabilities because it can be difficult to find the right accommodation.

Affirmative action in education is going to be a significant issue in Ohio and the nation in the next few years. The U.S. Supreme Court is dealing with affirmative action issues that will determine how the nation deals with education.

The most important case before the Commission was a Cincinnati case where there was a sign on a swimming pool that read: "For Whites Only." You know, that says to me in 2014, wow, that's still going on, and it's going on in Ohio. That stuck out as a terrible one.

On how his experience as a legislator aids in his role as a Commissioner

My 21 years of experience in the Ohio legislature has prepared me well for service on the Commission. The most important skill that I learned from my time as a legislator was that there is no such thing as a dumb question. As a Commissioner, you have to be able to probe an issue, unwrap it, and find out what's going on. You have to ask the tough questions because many people won't ask those questions.

The Tom Roberts File

Current position: Commissioner of the Ohio Civil Rights Commission since 2008
Member of Governor Kasich's Community Policing Task Force

Previous service: Ohio State Representative from 1986 to 2000

State Senator from 2001 to 2009

Continuous service: Lifelong member of the NAACP
Sinclair Ohio Fellows since 1997

Recent Commission Decisions: Pregnancy Discrimination, Retaliation, and Race Discrimination

In several recent decisions, the Ohio Civil Rights Commission addressed pregnancy discrimination, retaliation, and race discrimination.

Christina Sims v. Westside Family Practice Inc. (Feb. 21, 2014)

Christina Sims worked at Westside Family Practice as a medical assistant. When she told her office manager that she was pregnant, she was terminated the same day. The office manager said if she had known that Sims was pregnant, she never would have hired her in the first place.

At the hearing, the employer argued that Sims was instructed to get a doctor's note explaining her work restrictions and that she failed to return to work. According to Sims, the office manager became upset when she announced she was pregnant and she was told to clock out and not return. Sims' testimony was supported by her time card, which corroborated her version of the events. The Administrative Law Judge concluded that Sims was more credible.

Based on these facts, the Commission determined that Sims was fired because of her pregnancy. The Commission issued a cease-and-desist order and awarded her back pay.

Raven Black-Halicki v. International Brotherhood of Teamsters, Local 377 (May 30, 2014)*

Raven Black-Halicki has been in the construction industry since the early 1990s, working primarily on road projects in Northeast Ohio. She is a member of the International Brotherhood of Teamsters, Local 377, in the Youngstown area. She complained that she was sexually harassed by several of her male crew workers. When her hours were cut for complaining, she filed charges with the Ohio Civil Rights Commission.

At the hearing, the union argued that it was the economic downturn, and not her harassment complaints, that resulted in her drop off of job referrals. Halicki countered with business records that showed other union members receiving more job referrals. The Administrative Law Judge determined that the union's business agent was not credible. A tape recording of the union business agent chastising Halicki for complaining about him supported Halicki's testimony.

Ultimately, the Commission found that Halicki was retaliated against for complaining about discrimination. The Commission issued a cease-and-desist order and awarded back pay.

Marlow Stallworth v. Wal-Mart Stores East, L.P. (Aug. 15, 2014)*

Marlow Stallworth worked for Wal-Mart for almost 15 years as a stocker. While he consistently maintained positive relationships with his colleagues, one manager thought he was lazy, mouthy, and compared him to a monkey. This same manager was described by other employees and vendors as singling out this employee because of his race. Stallworth was fired less than four months after this manager became his supervisor.

At the hearing, the employer argued that Stallworth abandoned his job by failing to report for three consecutive shifts. Stallworth testified that he was fired and repeatedly told he could not come back to work. The Administrative Law Judge determined that the employer's assertion that Stallworth abandoned his job was not credible. In making this credibility determination, the Administrative Law Judge noted that Stallworth's phone records showed that he

repeatedly called his employer requesting to return to work. The Administrative Law Judge also noted that several Caucasian employees who engaged in similar misconduct were not discharged.

Based on these facts, the Commission found that Stallworth was fired because of his race. The Commission issued a cease-and-desist order and awarded back pay.

*These cases are currently being appealed.

Are Some Discrimination Cases Dismissed Too Quickly?

Several recent cases brought under Ohio's employment discrimination statute, Chapter R.C. 4112, have been reversed on appeal.

Employers who succeeded in getting dismissals of the discrimination cases filed against them were subsequently reversed by Ohio courts of appeal in the cases of *Dukes v. Associated Materials LLC*; *Skidmore v. National Bronze & Metals (Ohio) Inc.*; and *Toman v. Humility of Mary Health Partners*.

Question: Are trial courts too quick to dismiss employment discrimination cases on pre-trial motions for summary judgment?

Quick Answer: Several recent cases brought under Ohio's employment discrimination statute, Chapter R.C. 4112, have been reversed on appeal on grounds that there were disputed issues of material fact that should have been resolved in favor of the employee and against the employer.

[Dukes v. Associated Materials, LLC](#), 2014-Ohio-4322 (9th Dist. 2014)

[Skidmore v. National Bronze & Metals \(Ohio\) Inc.](#), 2014-Ohio-4423 (9th Dist. 2014)

[Toman v. Humility of Mary Health Partners](#), 2014-Ohio-4417 (7th Dist. 2014)

Facts in *Dukes*: De'Wayne L. Dukes Sr., an African-American man, was working through a temporary personnel agency. The agency had him working several manufacturing lines for the employer. Some began at 3:30 p.m. and others at 4:30 p.m. When Dukes was assigned a line that began at 3:30 p.m., he asked for a 15-minute adjustment to his start time due to childcare issues. The employer refused and offered instead to find him a different position, but was unable to do so. As a result, Dukes accumulated attendance points for tardiness and the employer claimed just cause for his termination, disputing Duke's allegation that the attendance points were pretext for race discrimination.

Facts in *Skidmore*: Robert Skidmore was terminated two days after a pallet full of scrap metal was taken by a man with a pick-up truck who drove off with the materials while Skidmore attempted to call a manager to verify the man's authority to take them. The employer asserted the reason for the firing was Skidmore's violation of a company security policy requiring that all delivery drivers have identification. The employer argued Skidmore was terminated for being grossly negligent. Skidmore alleged the employer was motivated by his age.

Facts in *Toman*: When Penny Toman was hired, she was pregnant. Her employer had a policy that an employee was not eligible for any leave until after the employee had at least 90 days of continuous employment and had successfully completed an orientation period. Toman delivered her baby on July 14, but her 90 days of continuous employment would not be satisfied until July 20. Toman alleged she was told on July 12 she would be terminated if she delivered before July 20. The employer alleged Toman was informed only that she had no available leave time prior to July 20. The trial court inferred that Toman knew about the 90-day policy, that she was not eligible for leave, and so failed to return to work. Toman alleged her termination was based on sex, and her being pregnant.

Importance: Disputed issues of fact or inferences are to be construed in favor of the non-moving party. When the trial court fails to do so and dismisses the case, its decision may be reversed and the matter remanded to the trial

court for further proceedings, on grounds that the reasons given for the terminations may prove to be pretext for discrimination based on race, age, or sex, as happened in these cases:

Dukes: In response to the employer's summary judgment, Dukes provided an affidavit from a supervisor of another line who had an employee on second shift whose wife worked first shift and who would wait in the parking lot with the children until his wife had finished her shift, causing him to be frequently tardy. This employee had his start time modified, although he was still late for work on occasion. The appellate court, viewing the facts in Dukes' favor determined, but for his race, if Dukes had received a modified start time, the number of attendance points he had accumulated would not have provided a basis for his termination.

Skidmore: In response to the employer's summary judgment, Skidmore submitted affidavits from multiple people who asserted that the employer's security provisions were not enforced. Although none of the affidavits were from employees who worked in the metals room, there was no evidence presented that the security provisions that were the basis for his discharge were confined to the metals room. The appellate court, viewing the facts in Skidmore's favor, determined that the employer had not satisfied the grossly negligent claim. But for his age, the employer might have accepted Skidmore's claim that he believed the pick-up truck with the load of scrap metal was boxed in when he attempted to call a manager to verify the driver's authority to take the scrap, disputing the grossly negligent claim. Further, Skidmore had offered to reimburse the employer for the lost scrap, making the incident harmless to the employer.

Toman: The Court of Appeals held the trial court was obligated to interpret material allegations and reasonable inferences in favor of Toman. In this case, the trial court could reasonably have inferred that Toman would not have been terminated for violating the 90 day rule but for her pregnancy.