

City of Lincoln Commission on Human Rights News

The ADA Celebrates 17 Years

Americans with Disabilities Act Helps Millions

On July 26, 2007, the 17th anniversary of the signing of the Americans with Disabilities Act (ADA) will be celebrated across the country. According to the 2006 U.S. Census, there are approximately 51.2 million Americans with disabilities protected by this law, signed into law by President George W. Bush.

The ADA prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who: Has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Need Help Making Sense of Discrimination Laws?

We're Here for You.

We provide free assistance and training to large or small businesses in understanding the discrimination laws and creating Human Resources' policies to help you avoid liability issues. Call us at 441-7625 for more information.

Buoyed by the civil rights and antiwar movements of the 1960s, and the feminist movement of the 1970s, disability leaders held sit-ins in federal buildings, blocked inaccessible buses from moving, drafted legislation, and protested in the streets. Like the broader civil rights movements which preceded it, the disability civil rights movement had its own heroes and champions, including Ed Roberts, Gini Laurie (grandmother of the independent living movement), and Justin Dart (father of the Americans with Disabilities Act) to name just a few.

Supreme Court Rulings You Need to Know

Retaliation

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, national origin, religion and sex, but also prohibits retaliation against an employee for complaining about discrimination. On June 22, 2006, the Supreme Court decided a case that gives broader protection to employees against retaliation.

The 9-0 decision by the Court provides a clearer definition of the type of retaliation that is against the law stating that any "materially adverse" employment action that "might have dissuaded a reasonable worker" from complaining about discrimination will count as unlawful retaliation.

The decision upheld a finding of retaliation by Burlington Northern & Santa Fe Railroad against a female maintenance worker who had

complained about sexual harassment. After she made a complaint about her immediate supervisor's inappropriate sexual remarks, she was placed on a 37 day unpaid suspension, and was no longer allowed to operate a forklift.

Although the employee was reinstated with back pay after filing a grievance with the Union, the fact that she was suspended at all, coupled with the assignment of less desirable job duties, is enough to "dissuade a reasonable worker" from complaining about discrimination.

Equal Pay

In a more recent decision, the Supreme Court ruled on a case involving unequal pay based on sex. On May 29, 2007, the Court in a 5-4 decision, ruled that employees may not bring suit under Title VII of the Civil Rights Act of 1964 unless they

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Lincoln Commission On
HUMAN RIGHTS

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.

Tips for Hiring Teens

As many Nebraska employers hire teens during the summer, it's time to double-check federal and state regulations for such employment.

The U. S. Department of Labor (DOL) provides compliance assistance materials including posters, fact sheets and guidelines at www.youthrules.dol.gov, the site which can be used for both training and orientation purposes.

At the job orientation, it is a good idea to obtain signed checklists from teens verifying their awareness of any equipment that is off limits and what hours they may work. Although DOL does not require work permits, Nebraska state law requires employers to have an employment certificate for each 14- or 15-year-old employed.

Nebraska law also requires two lists of all youth employed in the building or at the location, one placed on file and the other posted near the principal entrance of the building where the youth are employed. Checking these requirements now can avoid problems for both the employer and the teens employed. Remember to have all teen workers provided with safety instructions during orientation.

Supreme Court Rulings

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have filed a formal complaint with the U.S. Equal Employment Opportunity Commission (EEOC) within 180 days after their pay was set. The Court rejected the view of the EEOC that each paycheck that reflects the initial discrimination is itself a discriminatory act that resets the clock on the 180 day period.

The case involved a nearly twenty-year female employee of Goodyear Tire & Rubber Company who was the only female manager among 15 men and was being paid less than any of her male colleagues, including those with less seniority. Her salary was initially the same as that of her male colleagues, but over time, as she received smaller raises, a substantial disparity grew. By the time she filed suit in 1998, her salary fell short by as much as 40%. She learned of the pay disparity later in her career, but not within 180 days from her filing a discrimination complaint with the EEOC. The Court refused to consider the pay decisions prior to the 180 day deadline, therefore, finding in favor of the company.

Justice Ruth Bader Ginsburg dissented from the majority opinion citing secrecy about salaries in most workplaces which prevents employees from learning about pay disparities within 180 days of when they are set. She also noted that even a small disparity "will expand exponentially over an employee's working life if raises are set as a percentage of pay." Also in her dissent, Justice Ginsburg invited Congress to overturn the decision. Within hours, Senator Clinton announced her intention to submit such a bill.



One Lincoln

Addressing Discrimination In Lincoln

A City TV 5 monthly program addressing issues relating to discrimination as it affects Lincoln's citizens. July's program features attorneys Kathleen Neary & Mark Fahleson discussing employment discrimination issues.

Program times are Mondays, 12:30 p.m.; Wednesdays, 4:30 p.m.; Thursdays, 6 p.m.; and Sundays, 12:30 a.m. or view the current or past shows online through Video on Demand at:
<http://www.lincoln.ne.gov/city/mayor/cic/5citytv/video.htm> - select Lincoln Commission on Human Rights.



Larry Williams, Director
Lincoln Commission on
Human Rights

Our Goal, Our Mission-Fair Treatment for All

The Lincoln Commission on Human Rights (LCHR) has a long and historic presence in the City of Lincoln.

LCHR has been in existence since 1969. As the chief law enforcement agency for civil rights, we are charged with

investigating complaints of discrimination in this community in an equitable and fair manner.

As a staff we attempt to maintain impartiality and fairness with all parties who are involved in discrimination complaints and to insure fairness during an investigation.

Those who are charged with discriminatory acts are often taken a back when they receive a complaint, the time required to respond, and the expense involved. Many who are alleged to have acted in a discriminatory manner often believe that the complaint is baseless and frivolous, yet they are required to respond by our City ordinance. In addition to the cost and time, it can exact a physical and physiological toll. Not many people want to be accused of violating civil rights laws.

But on the other hand, many Complainants feel just as strongly and suffer the same consequences. In filing a complaint, which they have the right to do, they are fervently stating that they believe that they have been treated in a discriminatory manner.

We fully understand these concerns.

These can be competing interests which we, as LCHR, try to balance. We must be fair to all parties. That is our mission and goal and overall, I believe we have been successful.

Outside of jurisdictional concerns, timeliness and basis for the complaint, LCHR is required to take and investigate a complaint when it is filed.

We cannot tell a potential Complainant they can't file if these minimum requirements are met and we believe there is cause to investigate. However, we do have the latitude to limit the scope of our investigation if the evidence or the Complainant's

actions indicate that they are not being truthful. We fully understand that, in some instances, Complainants take advantage of this investigatory process as a means of retaliation against the business or organization. If that is the case and the evidence indicates such, I can assure our community, our investigation is closed immediately. We are not in the business of wasting anyone's time. On the other hand, if there is some indication of discrimination, the investigation continues.

Our purpose is to enforce our civil rights laws. But, we are also here to assist all residents, businesses, housing providers, organizations, agencies and others in how to avoid discriminatory acts and behaviors which may violate the law. We want all to be aware of our civil rights laws, their intent, their practical application, and even more importantly, how to avoid acts of discrimination.

"We must be fair to all parties. That is our mission and goal and overall, I believe we have been successful."

That is one of the main reasons LCHR believes strongly in education and outreach. Yes,

we enforce the law, but we also facilitate or sponsor numerous presentations, the publication of this newsletter, sponsorship of conferences, airing of our monthly television program, quarterly outreach sessions in all of our public high schools and having a vast array of publications in English and other languages. We want to make sure everyone is aware of their rights.

During 2006 we conducted 88 outreach sessions which were attended by more than 3,600 people. In my mind, that is a remarkable number for the size of our agency. Additionally, even more community residents were impacted through our procedural processes of conciliation and pre-determination settlements.

There will always be some who are patently bigoted, racist, sexist and no matter what we do, how we do it, or what we provide, they will continue to be such. We as the Commissioners and Staff of LCHR promise to continue to enforce the law, to provide educational opportunities for all and to make Lincoln an even better place to live. Please join us in the effort and make our City, the best it can be.

You Want to Know

Questions & Answers Regarding Employment & Fair Housing Issues

- Q:** An individual who has severe arthritis in her legs and back works as a Cashier at a convenience store. Due to her disability, this person asks for the accommodation that a stool be provided so she can sit behind the register when ringing up customers. The store owner denies this accommodation and states that she must stand so she can adequately wait on customers. Is this discrimination?
- A:** Yes. If someone who has a substantially limiting impairment requests a "reasonable accommodation" from their employer and the employer is unable to show that this request would pose an "undue hardship" on the business, then the employer is required by law to provide the accommodation.
- Q:** A female is working at a pet store where she frequently has to change a litter box. Once the employer finds out that the employee is pregnant, the employer terminates the employee based on fears that changing the litter will cause a health concern. Is this discrimination?
- A:** Yes. Unfounded or assumed fears about someone's ability to do their job or health risks involved with the job could be evidence of pregnancy discrimination.
- Q:** Your employer has an "English Only" rule where you must speak English at all times while at work, including during your breaks. Is this discrimination?
- A:** Yes. An employer may not impose an "English Only" rule unless there is a legitimate business reason such as safety or communication with the public. It is against the law to require employees to speak English at all times especially during break periods.

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.

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 (ie: race, color, national origin, sex, religion, disability, age, marital status and familial status).

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EEOC Issues New Guidance on Work/Family Balance and Promotes Employer Best Practices

The U.S. Equal Employment Opportunity Commission (EEOC) has issued new guidance on how agency-enforced laws apply to workers with caregiving responsibilities.

The new guidance has been issued as a proactive measure to address an emerging discrimination issue in the 21st century workplace. The document, *Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, provides examples under which discrimination against a working parent or other caregiver may constitute unlawful disparate treatment under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 (ADA).

The guidance notes that changing workplace demographics, including women's increased participation in the labor force, have created the potential for greater discrimination against working parents and others with caregiving responsibilities, such as eldercare – all of which may vary by gender, race or ethnicity.

"With this new guidance, the Commission is clarifying how the federal EEO laws apply to employees who struggle to balance work and family," said agency Vice Chair Leslie E. Silverman. "Fortunately, many employers have recognized employees' need to balance work and family, and have responded in very positive and creative ways."

The guidance, available online at www.eeoc.gov/policy/docs/caregiving.html along with a question and answer fact sheet, states that the information is not intended to create a new protected category, but rather to illustrate circumstances in which stereotyping or other forms of disparate treatment may violate Title VII or the prohibition under the ADA against discrimination based on a worker's association with an individual with a disability.

A wide range of circumstances are highlighted in the guidance, including: sex-based stereotyping and subjective decision making regarding working mothers; assumptions about pregnant workers; discrimination against working fathers and

women of color; stereotyping based on association with an individual with a disability; and hostile work environments affecting caregivers.

The guidance is intended to assist employers, employees, and EEOC staff alike.

Commissioner Stuart J. Ishimaru said, "This guidance recognizes the connection between parenthood, especially motherhood, and employment discrimination. An employer may violate Title VII when it takes actions or limits opportunities for employees because of beliefs that the employer has about mothers and caretakers that are linked to sex."

Donna Klein, president and founder of Corporate Voices for Working Families, during a public meeting held in May by EEOC to explore employer best practices needed to achieve work/family balance, discussed a series of reports issued by her organization on job flexibility for lower-wage workers and highlighted several Fortune 500 companies that have implemented best practices in this area.

"As companies realize the financial benefits of focusing on the needs of lower-wage workers, more and more companies are making the effort

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You may also access this
issue and all current issues
on our website at
[www.lincoln.ne.gov/city/
mayor/human/index.htm](http://www.lincoln.ne.gov/city/mayor/human/index.htm)

HUD Debars Omaha Landlord for Violating the Fair Housing Act

Section 8 landlord made unwelcome sexual advances to female renters

The U.S. Department of Housing and Urban Development announced on June 11 that it debarred John Koch, an Omaha, NE, landlord from doing business with the federal government for three years for making unwanted sexual advances toward female residents of his rental properties and also making unwanted advances toward female rental applicants.

The debarment is based on a civil judgment entered against Koch following a jury trial in the U.S. District Court for the District of Nebraska.

The court found that Koch, who manages several Section 8 properties, violated the Fair Housing Act by engaging in an illegal pattern and practice of housing discrimination over a ten-year period. During that period, Koch subjected numerous female tenants and prospective female tenants to severe, pervasive, and unwanted verbal and physical sexual advances.

The court awarded the aggrieved women \$16,967 in actual damages and \$49,185 in punitive damages. Additionally, the District Court imposed a civil money penalty of \$40,000 against Koch.

Debarment is intended to assure HUD that a participant in its programs who has acted irresponsibly is disqualified from continued participation. HUD's Departmental Enforcement Center found that this judgment was sufficient grounds to debar Koch from doing business with the Federal government.

HUD's brief in support of Koch's debarment contends that he used tenancies partly financed by Federal payments to take advantage of low-income women, and the Department could not be assured that "its funds are being spent properly or that the public is being adequately protected."

"HUD will not tolerate landlords who prey on women, especially landlords who receive federal subsidies," said Stephen Hollingshead, who is the Senior Advisor to HUD Secretary Alphonso Jackson, and the Deputy Assistant Secretary for Enforcement. "This debarment sends a clear message to all landlords that we will take action against anyone who engages in this type of illegal and offensive conduct."



EEOC Issues New Guidance on Work/Family Balance

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and reaping the long-term reward of work/life policies and programs," Klein said. The benefits to employers, she said, include boosting productivity, reducing staff turnover, increasing employee commitment to the organization, and reducing absenteeism due to child care and other issues.

Horacio D. Rozanski, vice president and chief personnel officer of global consulting firm Booz Allen Hamilton, said "by necessity or choice" many women often "take off-ramps and side routes from the traditional career path and have a hard time maintaining continuous, cumulative lockstep employment – which is a necessary condition for success within the confines of the linear white male competitive model."

Rozanski, a member of the Hidden Brain Drain

Task Force, which is comprised of 35 international corporations representing more than 2.5 million employees in 152 countries, said: "The current model of work is at a turning point. With jobs and careers becoming more extreme by the minute, rethinking the old model has huge potential to burnish companies' competitive edge and restore hope and greater productivity to women's lives."

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.

Sexual Orientation Discrimination Bill Killed

LB475, a legislative bill which would have prohibited workplace discrimination based on sexual orientation, died after several hours of debate by legislators May 22.

Introduced by Omaha Sen. Ernie Chambers, floor debate on the bill lasted several hours spanning two days, but was postponed indefinitely by a motion made by Sen. Phil Erdman which effectively killed the bill for the 2007 Session.

Current classes protected under employment were created by several pieces of federal legislation including Title VII of the Civil Rights Act of 1964, which made it illegal to discriminate in the workplace based on race, color, religion, sex, national origin or retaliation. The Age Discrimination in Employment Act for individuals over 40 was added in 1967 and disability covered with Title I of the Americans with Disabilities Act of

1990 (see front page article on the ADA).

As well as the federal laws, Nebraska also has legislation in the Nebraska Fair Employment Practices Act, Nebraska Equal Pay Act, and the Nebraska Age Discrimination in Employment Act – the latter just recently revisited and retooled by the Legislature.

Several nearby states have existing legislation which includes sexual orientation and/or gender identity as protected classes: Colorado, Iowa, Illinois, and Minnesota. Other states with current legislation include: Vermont, Washington, New York, New Jersey, Minnesota, California, Florida, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, Rhode Island, and Wisconsin. The District of Columbia also passed legislation making sexual orientation a protected class.

2007 Fair Housing Award Winner Names Nebraska Health & Human Services in Discrimination Suit

High Plains Community Development Corporation (High Plains CDC), winner of the 2007 Fair Housing Award presented yearly by the Lincoln Commission on Human Rights, is suing the Nebraska Health and Human Services System (HHS).

Led by Executive Director Marguerite Vey-Miller, High Plains CDC also named Chadron mobile home owners Terry Hinn, Marilyn (Hinn) Hays and Hinn's Mobile Homes in the suit. The lawsuit alleges the owners discriminated against Native renters by allowing them to live in decrepit housing.

According to reports from the *Lincoln Journal Star*, in addition to the mobile homes' poor exteriors, the lawsuit claims many of the homes are overcrowded, infested with rats and snakes, and contain substandard plumbing, including water pipes attached to units by garden hoses.

High Plains CDC - a nonprofit group that receives private and federal funding - filed its lawsuit June 12th in U.S. District Court in Lincoln.

The lawsuit seeks an injunction ordering HHSS to cease alleged discriminatory enforcement

practices and seeks unspecified damages from Hinn, Hays and Hinn's Mobile Homes.

According to the suit, health officials have refused to enforce the law despite repeated reports from their own inspectors that showed serious deficiencies in the homes. The suit claims that those officials refused to enforce the law because most of the mobile homes' renters have been Native people.

Defendant Marilyn Hays told the *Journal Star* that she knows the homes are in poor condition, but blames it on vandals and renters who abuse the properties, leaving the owners with thousands of dollars in repairs.

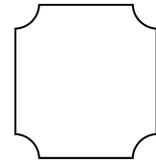
Editorial Policy:

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.

**City of Lincoln
Human Rights Commission
440 S. 8th Street, Ste. 101
Lincoln, NE 68508
213**



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, universities or colleges.

- 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.