

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BRADLEY A. ANKNEY,	§	
	§	CIVIL DIVISION
Plaintiff,	§	
	§	
v.	§	NO. GD-13-005851
	§	
ALLEGHENY INTERMEDIATE	§	
UNIT,	§	
Defendant.	§	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

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BRADLEY A. ANKNEY,

Plaintiff,

v.

**ALLEGHENY INTERMEDIATE
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CIVIL DIVISION

NO. GD-13-005851

COMPLAINT

Introduction

Plaintiff Bradley A. Ankney has worked for the past twelve years as a math instructor for the Allegheny Intermediate Unit (“AIU”), teaching students who are clients of the Office of Children, Youth and Families and the Juvenile Court of Allegheny County. Like many other employees of the AIU, Ankney is in a committed relationship. He and his partner of fifteen years share a home, have two dogs, travel together, and provide mutual caring and support to one another. But because Ankney and his partner are both men, Ankney is unable to take advantage of the many benefits that the AIU provides to its employees with opposite-sex partners, including health insurance for employees’ spouses and time off to care for a spouse who is sick. That is because those benefits are conditioned on marriage, and Pennsylvania does not recognize marriages between people of the same sex.

The AIU’s decision to condition these employment benefits on marriage – a legal union that is out of reach for gays and lesbians in Pennsylvania – discriminates against employees on the basis of their sexual orientation and sex. That discrimination violates the Allegheny County Human Relations Act, an ordinance enacted by the County in 2009 that protects individuals from

sexual orientation discrimination, and the Pennsylvania Equal Rights Amendment, which prohibits discrimination on the basis of sex. Ankney brings this suit under the Allegheny County Human Relations Act and the Pennsylvania Equal Rights Amendment for declaratory and injunctive relief. Specifically, Ankney seeks a permanent injunction ordering the AIU to provide the same benefits to employees who are in committed same-sex relationships as it provides to employees who are married. Ankney also seeks all relief to which he is entitled under the Allegheny County Human Relations Act and the Pennsylvania Equal Rights Amendment.

Parties

1. The Plaintiff is Bradley A. Ankney (“Ankney”), an adult individual, a United States citizen, and a resident of Pittsburgh, Allegheny County, Pennsylvania.
2. The Defendant is Allegheny Intermediate Unit (“AIU”), which has administrative offices at 475 East Waterfront Drive, Homestead, Allegheny County, Pennsylvania.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931.
4. This Court has personal jurisdiction over AIU as it is located in the Commonwealth of Pennsylvania.
5. Venue is proper in this County pursuant to Pa.R.Civ.P. 1006 and 2179 as AIU, at all relevant times, maintained its administrative offices in this County and the cause of action here at issue arose in this County.

Factual and Procedural Background

6. AIU, according to its website (<http://www.aiu3.net>), is part of Pennsylvania's public education system and is one of 29 Intermediate Units created in 1970 by the Pennsylvania

State General Assembly to provide specialized educational services to Allegheny County's 42 suburban school districts and five vocational/technical schools.

7. Ankney has been employed by AIU for the past approximately 12 years.
8. Ankney currently teaches Pre-Algebra, Algebra, Algebra II, and Geometry to 7th through 12th grade students at the AIU's Regional Educational Support Center ("RESC") – North, located in McKees Rocks, Pennsylvania.
9. AIU's RESCs are, per its website, "alternative schools that provide instruction and school counseling to students (grades 7-12) who are temporarily excluded from their school or in transition from another school or placement."
10. For the past approximately 15 years, Ankney has been in a committed domestic relationship with another man. He and his domestic partner, whose name is being omitted for privacy purposes, maintain a joint bank account, joint utility bills, and jointly own their home. Ankney's domestic partner is a named beneficiary on Ankney's life insurance policy.
11. AIU provides fringe benefits, such as health insurance benefits, to the opposite sex spouses and families of married AIU employees who are otherwise similarly situated to Ankney. In addition to health insurance benefits, other such benefits include:
 - (a) Sick leave for the employee's "immediate family" (defined as "parent, children, sibling, spouse, grandparent, and grandchildren") (see Art. XI, §§ 2, 6, of the July 1, 2010 Collective Bargaining Agreement between the AIU and the Alternative Education Association, hereinafter referred to as the "CBA");
 - (b) Personal leave for the reason of the "Marriage of the Employee or Member of the Immediate Family" (CBA at Art. XI, § 3);

(c) Bereavement leave of up to five (5) days for the reason of the “death in the employee’s immediate family” (defined as “parent, children, sibling, spouse, grandparent, and grandchildren”) compared to bereavement leave of up to four (4) days for the reason of the “death in the employee’s family” (which includes “any person with whom the employee has made his/her home”), and further, bereavement leave of up to two (2) days for the death of a “near relative” (defined to include a “first cousin, aunt, uncle, niece, nephew, brother-in-law, and sister-in-law”) (CBA at Art. XI, § 6);

(d) Family and Medical Leave (“FMLA”), which limits FMLA leave to rights under the federal FMLA and therefore does not protect employees with same-sex domestic partners (CBA at Art. XI, § 18);

(e) Reimbursement for health coverage provided elsewhere (CBA at Art. XII, § 1(C));

(f) Dental insurance which includes “family” coverage (CBA at Art. XII, § 2);

(g) Vision insurance which includes “family” coverage (CBA at Art. XII, § 3);
and

(h) Retiree health care coverage, which is extended to an employee’s “spouse” for up to seven (7) years in the event of the employee’s death (CBA at Art. XII, § 8).

12. The AIU has deliberately chosen to not provide such benefits to the same-sex committed domestic partners of its employees such as Ankney.

13. If Ankney were an employee of Allegheny County, Ankney's domestic partner would be eligible for the County's benefits (*see* <http://www.alleghenycounty.us/hr/healthbenefits/domesticpartner.pdf>).
14. Because his domestic partner is excluded from participating in Ankney's AIU-provided health insurance benefits, Ankney and his domestic partner, who works part time for another employer, have been forced to pay high health insurance premiums for the domestic partner's coverage, which coverage also affords lesser benefits and higher deductibles than does the health insurance benefit the AIU provides for its employees and their opposite-sex spouses and their families.
15. According to its website, AIU has a "Nondiscrimination Equal Employment Opportunity Policy" which states, in pertinent part: "It is the policy of the Allegheny Intermediate Unit Board not to discriminate on the basis of race, sex, religious creed, color, sexual orientation, national origin, ancestry, age, disability, or limited English proficiency, in its educational programs, services, facilities, activities, or employment policies.... An open and equitable personnel system will be established and maintained.... Any employee, who believes they have been discriminated against, may file a complaint of discrimination...."
16. In regard to the provision of health insurance and other fringe benefits to its employees, and as explained in this Complaint, AIU violates its own Nondiscrimination Equal Employment Opportunity Policy.
17. By an e-mail dated October 24, 2012, Ankney wrote to Janet Breiding, a member of AIU's Human Resources Staff, that he "would like to get my partner [name omitted for privacy purposes] on my health insurance if possible, does the AIU offer Domestic Partner benefits for its employees?"

18. On October 24, 2012, Breiding responded to Ankney, writing in an e-mail that “the AIU does not offer Domestic Partner benefits.”
19. On October 24, 2012, Ankney, via e-mail, asked Breiding, “I would like to know why not?”
20. Breiding replied via e-mail the same day that the AIU’s “insurance is purchased through the Allegheny County Schools Health Insurance Consortium [“ACSHIC”] and they currently do not have Domestic Partner benefits.”
21. Ankney then spoke with Diana Gregorakis of the ACSHIC and learned the ACSHIC *does* in fact offer domestic partner benefits, and it does so for *five* other Consortium members.
22. On information and belief, the following are the ACSHIC members which, unlike AIU, do offer same-sex domestic partner health insurance benefits: Upper St Clair School District, Keystone Oaks School District, Allegheny Valley School District, Steel Center Area Vocational Technical School, West Mifflin School District, Fox Chapel School District, and the Community College of Allegheny County.
23. Ankney related to Breiding via e-mail, also on October 24, 2012, what he had learned from Diana Gregorakis of the ACSHIC and asked Breiding to whom he should address the question, “Will the AIU offer domestic partner benefits to its employees?,” so he “could find out if I could get my partner on my benefits as other districts are doing in our county.” Breiding responded to Ankney’s e-mail later that day, “I would say address it to Dr. Hippert.”
24. By e-mail dated November 2, 2012, Ankney wrote to Linda B. Hippert, Ed.D., the AIU’s Executive Director, recounting his e-mail discussion with Breiding and asking, “My question is would the AIU be willing to explore offering domestic partner benefits to its employees?”

25. By e-mail dated November 6, 2012, Dr. Hippert replied to Ankney, writing that the question (of offering domestic partner benefits) was brought up by Ankney's labor union, the Alternative Education Association, but the AIU would not agree to provide such benefits: "This question was brought up during AEP negotiations and was not, at the time, agreed upon relative to any change in benefits offered in the contract. Presently, this is not a policy that is being reviewed organization wide."
26. Ankney then asked his labor union representative about this issue, and was told the AIU would not consider offering in contract negotiations health insurance benefits to the same sex domestic partners of AIU employees.
27. On November 19, 2012, Ankney filed a complaint against the AIU with the Allegheny County Human Relations Commission, alleging AIU had violated the Allegheny County Human Relations Ordinance, Chapter 215, Article V, § 215-32, which makes it "an unlawful employment practice for an employer to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment because of the individual's...sexual orientation...."
28. By letter dated January 3, 2013 (attached as Exhibit A), the Allegheny County Human Relations Commission dismissed Ankney's complaint on the stated basis "the allegations contained in your complaint do not meet the definition of discrimination as identified in The Allegheny County code [stet] at V § 215-31 (F)."
29. On March 19, 2013, Ankney, through counsel, provided to AIU a detailed, five-page demand letter (attached as Exhibit B), urging AIU "to allow AIU employees, including Mr. Ankney, to access all benefits for their same-sex partners to which they would be eligible were they married."

30. To preserve his claims under the Ordinance, on April 1, 2013, Ankney initiated this suit by filing a Praecipe for Writ of Summons, service of which was formally accepted by counsel for the AIU on April 8, 2013. Thus, this action has been timely filed under Section 215-37 of the Allegheny County Human Relations Ordinance, as having been filed within 180 days after the alleged act of discrimination and, under Section 215-38 of the Ordinance, as having been filed within 100 consecutive calendar days after the date of notice from the Allegheny County Human Relations Commission's closing the complaint.
31. By letter dated April 25, 2013 (attached as Exhibit C), AIU, through counsel, responded to Ankney's demand letter, in pertinent part, stating that "the Board of Directors has decided not to provide same-sex benefits to committed partners at this time."
32. Ankney would be eligible to add his spouse to his AIU-sponsored health insurance plan if he were married.
33. Couples of the same sex are not eligible to be married under Pennsylvania law. 23 Pa. Cons. Stat. § 1102 (defining marriage as between "one man and one woman").
34. Because Ankney and his domestic partner are not eligible to be married in Pennsylvania, Ankney cannot avail himself of many of the benefits of his employment, including spousal health insurance coverage, because of his sexual orientation.

The Allegheny County Human Relations Ordinance

35. The Allegheny County Human Relations Ordinance (hereinafter "the Ordinance") was enacted by the Allegheny County Council on July 1, 2009, and approved by then-County Executive Dan Onorato on July 6, 2009.
36. The purpose of the Ordinance is to ensure that "all persons regardless of race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression,

sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and use of public accommodation facilities.” § 215-30.

37. Under Section 215-31 of the Ordinance, entitled “Definitions,” “Discrimination” is defined in subparagraph F, in pertinent part, as “any exclusion, denial, intimidation, coercion, difference or segregation in treatment as defined under the terms of this Article, and shall include but not be limited to such treatment in hiring, referring for hire, promoting, training...because of protected class based upon...sex, gender identity or expression, sexual orientation....”

38. “Employer” is defined in subparagraph H of Section 215-31 of the Ordinance as “any person who employs four (4) or more employees, exclusive of the parents, spouse or children of such person, including the County of Allegheny, its departments, boards, commissions and authorities, any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization.”

39. AIU meets the Ordinance’s definition of an “Employer.”

40. “Protected class” is defined in subparagraph V of Section 215-31 of the Ordinance as “any person legally protected from discrimination based upon...sex, gender identity or expression, sexual orientation, disability, marital status, familial status....”

41. Ankney is a member of the “Protected class,” as defined in the Ordinance.

42. “Sexual Orientation” is defined in subparagraph V of Section 215-31 of the Ordinance as “male or female homosexuality, heterosexuality and bisexuality, by preference, practice or as perceived by others, whether or not such perception is accurate.”

43. Ankeny is a homosexual and thus falls within the Ordinance's ambit as to "Sexual Orientation."
44. Section 215-32 of the Ordinance, entitled, "Unlawful Employment Practices," provides in pertinent part that it "shall be an unlawful employment practice for an employer to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment because of the individual's...sex, gender identity or expression, sexual orientation, disability, marital status, familial status...." This Section provides it shall also be unlawful "...[f]or any employer to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual nor independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract."
45. AIU's policies and/or practices in its provision, and intentional non-provision, of health insurance and other fringe benefits to employees with same-sex domestic partners, as described in this Complaint, plainly falls within the Ordinance's definition of "Unlawful Employment Practices."
46. Section §215-38 of the Ordinance, entitled, "Enforcement, Judicial Review and Penalty," provides in pertinent part in subparagraph C, entitled, "Enforcement by Private Person," that "[i]f the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate."

47. Section 215-38 of the Ordinance further empowers this Court to award attorney's fees and costs to the prevailing plaintiff upon a finding that a defendant has engaged or is engaging in "any unlawful discriminatory practice as defined in this Article...."

**First Cause of Action:
Employment Discrimination in Violation of
the Allegheny County Human Relations Ordinance**

48. Paragraphs 1 through 47 are incorporated herein by reference as though fully set forth.

49. AIU's refusal to provide health insurance and other employment benefits to the same-sex domestic partners of its employees such as Ankney, while providing such benefits to the spouses and families of its employees, treats same-sex couples differently from opposite-sex couples and has a disparate adverse impact on gays and lesbians in violation of the Ordinance.

50. Although Ankney would be entitled to add his spouse to his AIU-sponsored health insurance plan, he cannot add his domestic partner to his insurance plan because Ankney and his domestic partner are the same sex and are thus not permitted to marry under Pennsylvania law. By conditioning eligibility for health insurance benefits on marriage, AIU treats same-sex couples differently from opposite-sex couples, in violation of the Ordinance.

51. AIU's policy and/or practice of restricting participation in its health insurance plan and other fringe benefits to employees and their spouses also has a discriminatory impact on AIU's gay and lesbian employees. Limiting employment benefits to employees' spouses adversely impacts lesbians and gay men by using a criterion for eligibility which is predicated upon heterosexuality. Because marriage is legal only between opposite-sex partners, and employment benefits for domestic partners are derived only through

marriage, lesbians and gay men are disparately impacted in that they are effectively excluded from certain benefits of their employment.

52. Accordingly, Plaintiff Bradley A. Ankney respectfully prays for judgment from this Court encompassing the following:

- a. A declaratory judgment that AIU has violated the Ordinance through its refusal to provide health insurance and other fringe benefits to Ankney and similarly situated same-sex domestic partners of its employees when such benefits are offered to married employees and their families;
- b. An injunction requiring AIU to forthwith provide health insurance and other fringe benefits to Ankney and similarly situated same-sex domestic partners of its employees in the same manner as such benefits are offered to married employees and their families;
- c. A permanent injunction enjoining AIU from discriminating in the future against Ankney and similarly situated employees who have same-sex domestic partners in the provision of health insurance and other fringe benefits versus the health insurance and other fringe benefits AIU offers to its married employees and their families;
- d. An award to Ankney of actual damages in the amount of the additional premiums and portions of claims and deductibles Ankney and/or his domestic partner have been forced to incur due to AIU's denial of health insurance and other fringe benefits to them;
- e. Awarding Ankney his costs and attorney's fees;
- f. Awarding Ankney post-judgment interest at the highest lawful rate.

- g. Such other and further relief, special and general, legal and equitable, which the Court deems just and appropriate in the circumstances.

**Second Cause of Action:
Sex Discrimination in Violation of
the Pennsylvania Equal Rights Amendment**

53. Paragraphs 1 through 52 are incorporated herein by reference as though fully set forth.
54. The Pennsylvania Equal Rights Amendment provides that “[e]quality of rights under the law shall not be denied ... because of the sex of the individual.” PA. CONST. art. 1, § 28.
55. AIU’s refusal to provide health insurance and other fringe benefits to its gay and lesbian employees who are in committed domestic partnerships such as Ankney, while offering such to married employees and their families, discriminates on the basis of sex in violation of the Pennsylvania Equal Rights Amendment, in that it treats same-sex couples differently from opposite-sex couples and has a disparate adverse impact on gays and lesbians, and thus unlawfully discriminates against employees on the basis of gender in violation of Article 1, Section 28 of the Pennsylvania Constitution.
56. Limiting participation in the AIU sponsored health insurance plan and other fringe benefits to married couples creates a sex-based classification, as Pennsylvania law defines marriage as between one man and one woman.
57. The AIU denies benefits to a male employee with a male partner while offering them to a female employee with a male partner.
58. Thus, the AIU determines an individual employee’s eligibility for dependent health benefits and other employment benefits based on his or her sex.
59. Accordingly, Plaintiff Bradley A. Ankney respectfully prays for judgment from this Court encompassing the following:

- a. A declaratory judgment that AIU has violated the Pennsylvania Equal Rights Amendment through its refusal to provide health insurance and other fringe benefits to Ankney and similarly-situated same-sex domestic partners of its employees when such benefits are offered to married employees and their families;
- b. An injunction requiring AIU to forthwith provide health insurance and other fringe benefits to Ankney and similarly-situated same-sex domestic partners of its employees in the same manner as such benefits are offered to the opposite-sex spouses of married employees;
- c. A permanent injunction enjoining the AIU in the future from discriminating against Ankney and similarly-situated employees who have same-sex domestic partners in the provision of health insurance and other fringe benefits versus the health insurance and other fringe benefits that AIU offers to its married employees and their families;
- d. Such other and further relief, special and general, legal and equitable, which the Court deems just and appropriate in the circumstances.

Date: August 20, 2013

Respectfully submitted,

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