

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Unreasonable Accommodation: Nurse Needed To Sit, Undue Hardship To Employer.

A registered nurse applied, was interviewed and was offered a position in a mental health crisis facility, on condition he could pass a physical exam.

A prospective employer is not categorically barred by Federal law from taking a prospective employee's disability into consideration in the hiring process.

However, the employer must follow the steps laid down by Federal law. The employer may interview an applicant for the required education, job experience and other relevant credentials, but may not so much as ask whether the applicant has a disability or will need accommodation.

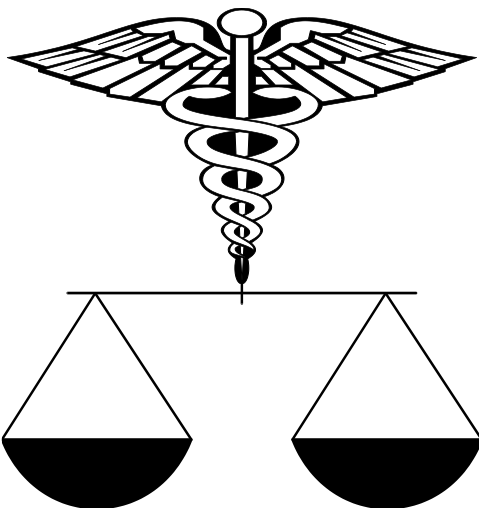
Only after employment has been offered may the employer require a physical examination relevant to the job requirements, and during that exam have the examiner observe or inquire as to a disability.

During this nurse's physical exam he revealed he had a serious leg injury that required him to be able to sit when he needed to.

With that information having been properly obtained, his offer of employment was taken back.

The US Equal Employment Opportunity Commission sued on his behalf for disability discrimination.

The US District Court for the Western District of Washington upheld the jury's verdict that the mental health crisis facility was not guilty of disability discrimination.



The jury heard evidence that most of the time the nurse sitting down while on the job would not be a problem for the facility.

However, there were times when a high level of physical fitness was required of all facility staff to be able to respond to a patient in crisis who needed to be physically restrained.

UNITED STATES DISTRICT COURT
WASHINGTON
July 22, 2024

The jury had several questions to answer in sequence. The first questions the jury answered were that the nurse did have a disability and the nurse was denied employment on the basis of his disability.

That was not the end of the jury's decision making. Remaining was the ultimate question whether the accommodation of being able to sit down when he needed imposed an undue hardship on the employer and was not a reasonable accommodation. The jury answered that being able to sit when he needed was not a reasonable accommodation under the circumstances.

Physical Restraint Had Been Necessary

From a legal standpoint it was important that the employer did not claim that there was only a possibility of having to intervene and physically restrain a patient acting out.

The evidence was that there had been a number of real incidents where staff, including nurses, intervened physically, medicated a patient and held the patient down until the medication took effect.

The possibility of comparable future incidents was real, not speculative.

Employment discrimination cases are routinely lost by employers who try to point to physical job requirements such as heavy lifting that employees actually doing the job in question have never actually had to fulfill. ***EEOC v. Mental Health, 2024 WL 3497343 (W.D. Wash., July 22, 2024).***

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