

## Employment Discrimination: Court Requires EEOC Charge Filed Within Strict Time Limit.

A registered nurse was sexually harassed on the job at the hospital by two different physicians at different times during her tenure.

During her tenure there also were issues with her own job performance. Those issues could have been seen as legitimate, or as trumped up issues raised to retaliate against her for turning down the physicians' unwanted advances and complaining about their inappropriate behavior.

Eventually the nurse quit. In the lawsuit the nurse claimed she was constructively discharged, that is, forced out of her job by the intolerably hostile and discriminatory work environment.

### **Did the Nurse File An EEOC Charge on Time?**

The hospital argued to the US District Court for the Western District of Virginia that the lawsuit should be dismissed, regardless of its merits, because the nurse did not file a charge with the EEOC within the 300 day deadline applied in Virginia.

There was no doubt that an employment discrimination case is subject to dismissal for late filing of the EEOC charge, or that 300 days is the deadline in Virginia.

The point for argument was the question, 300 days from when until when?

A hostile environment arises from discrete acts at specific times, but the acts can be seen to come together to form an ongoing pattern of conduct.

One of the physicians started and stopped his harassment more than 300 days before the nurse's EEOC charge. He is out of the case.

The other physician started more than 300 days before but continued into the 300 day period. His whole ongoing pattern of misconduct is in the case.

Failure to hire or promote occurs when the victim is so informed, not afterward when someone else is hired or promoted.

The same is true of other discriminatory decisions, that are not part of a pattern, which occur when they are communicated to the victim, and start the 300 or 180 day period running to charge with the EEOC. **Block v. Med. Ctr.**, 2023 WL 4014475 (W.D. Va., June 15, 2023).

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***The legal prerequisites for filing an employment discrimination lawsuit based on US Federal law can be very confusing.***

***Accurate advice must be obtained that applies to the particular US state where the alleged discrimination occurred, even though the case will involve allegations of violation of US Federal law.***

***Necessary prerequisites not followed can mean dismissal of a claim that would otherwise be valid and meritorious, for no other reason than that the time deadline to file the formal charge was allowed to lapse.***

***Filing a formal charge with the US Equal Employment Opportunity Commission (EEOC), and filing the charge on time, is perhaps the most important prerequisite.***

***In some states the EEOC charge must be filed within 180 days. In other states there is a 300 day deadline.***

***Online EEOC resources or a phone call or visit to an EEOC office can clarify when the charge must be filed in the particular state and how to do it.***

***Or a knowledgeable employment lawyer might be able to offer advice.***

UNITED STATES DISTRICT COURT  
VIRGINIA  
June 15, 2023

## Abuse Leads To Patient's Fall: Case Thrown Out Over Prejudicial Hearsay.

The jury awarded \$6,000,000 to the family of a deceased resident of a long term nursing and memory care facility. A high fall risk patient, she fell ambulating between her bed and her bathroom, and sustained injuries that led to her death.

The patient was not being assisted at the time of her fall, and had not called for assistance.

The theory of the family's lawsuit was that the patient's fall was caused by her excusable reluctance to call for assistance, due to an ongoing pattern of dismissive and at times outright abusive attitudes displayed by particular caregivers assigned regularly to work with her.

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***Neglect and abuse can be the basis for a lawsuit.***

***One way neglect and abuse can cause a patient to fall is the patient being understandably reluctant to call for assistance from caregivers whom the patient doubts will offer help or whom the patient expects will use it as an occasion for abuse.***

COURT OF APPEALS OF IOWA  
June 21, 2023

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The Court of Appeals of Iowa accepted the basic reasoning of the family's case.

However, the Court was compelled to throw out the multimillion dollar verdict due to the introduction into evidence at trial of objectionable second- and third-hand hearsay as to the way two particular aides acted toward the resident.

Dismissal of the case was without prejudice. A new trial was expressly authorized. Presumably the family's attorneys the next time will build the case on first hand observations rather than hearsay. **Nursing Home v. Arends**, 2023 WL 4104021 (Iowa App., June 21, 2023).