Family And Medical Leave Act: Court Sees No Interference With Nurse's Right To Reinstatement.

A forty-two year-old RN was hired by the hospital as a staff nurse. Her job performance and evaluations were entirely satisfactory for almost two years before she was diagnosed with Meniere's disease, a disorder of the inner ear which involves hearing loss, tinnitus and vertigo.

Even as her nurse manager began to question her ability to do her job the nurse continued to work six months past her diagnosis until her own doctor recommended a medical leave to undergo a series of surgeries for her condition.

The nurse's supervisor approved a medical leave with a definite date specified when her available leave expired and she was required to return to work.

Nurse Unable to Return to Work When Medical Leave Expired

The US District Court for the Eastern District of Pennsylvania pointed out that the US Family and Medical Leave Act (FMLA) and a corresponding state law absolutely entitle eligible employees to take necessary unpaid leave from their jobs for legitimate medical purposes.

The flip side is that when the leave entitlement specified by law has expired, the employer is not required to reinstate the employee to the employee's former position or an equivalent position if the original position is no longer available.

In this case the nurse was not able to return to work on the date that had been specified when she went on leave, and the new return date was only one week beyond the maximum of her legal entitlement.

Her physician wrote a letter on her behalf requesting the additional week as reasonable accommodation to her disability, but a temporary medical condition is not considered a disability for purposes of disability discrimination law.

The Court left open the option for the nurse to keep her lawsuit alive by alleging employer retaliation. Her nurse manager repeatedly did not return phone calls when the nurse's husband phoned in weekly progress reports, possible evidence of personal animosity toward her for using FMLA leave. **Hofferica v. St. Mary Med. Ctr., 2011 WL 3474555 (E.D.Pa., September 20, 2011).**

An employee can sue for interference with Family and Medical Leave Act (FMLA) rights if the employee can show he or she was entitled to benefit from the Act and was denied.

One of the benefits of the Act is that when an eligible employee returns from leave, the employee is entitled to be reinstated to his or her former position or an equivalent position.

However, once an employee exceeds his or her allowable leave without returning, the employer is not obligated to keep open the employee's position or reinstate the employee upon his or her eventual return.

An employer may not terminate an employee because he or she has taken the leave permitted by law, but if the employee is not able to return to work after the 12-week period provided by law, the employer may terminate the employee.

In this case the employee has not even alleged in her lawsuit that she had any legally-protected leave time remaining when she was terminated for being unable to work.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
September 20, 2011

No Admission Assessment: Court Asks For Clarification From Patient's Experts.

The patient was admitted to the post-partum unit at 5:30 p.m. from post-anesthesia care where she had been showing signs of blood loss including a low BP.

One of her uterine arteries had been cut accidentally earlier that day by the surgeon during her planned cesarean.

The surgeon failed to notice the problem before he closed and sent the patient to the post-anesthesia unit.

The nurse who received the patient on the post-partum unit documented no admission nursing assessment or vital signs for the patient who was apparently having serious problems at the time.

The first chart documentation on the post-partum unit for the patient was a 5:45 p.m. note by the hospital's E.R. physician after he was summoned to the patient's bedside by the post-partum nurse.

COURT OF APPEALS OF TEXAS
August 25, 2011

The Court of Appeals of Texas was presented with the patient's nursing expert's report stating that the care by the post-partum nurse fell below the standard of care because she failed to document an admission nursing assessment including vital signs when she assumed the patient's care when the patient arrived on her unit.

However, given that the post-partum nurse saw good reason to summon the E.R. physician and took prompt action to summon the E.R. physician to the bedside, it was unclear how the nurse's failure to provide contemporaneous documentation had any affect on the patient's outcome.

The Court gave the patient's attorney 30 days to file a supplemental report from their nursing expert. **Methodist Willowbrook v. Cullen, 2011 WL 3806148 (Tex. App., August 25, 2011).**

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