

Family And Medical Leave Act: Court Finds That Nurse's Legal Rights Were Violated.

A hospital staff nurse was terminated after she requested a medical leave to have surgery on her wrist for a non-job-related problem.

Her supervisors were apparently getting tired of having to schedule around her repeated but legitimate requests for medical leaves for various health conditions.

The nurse sued her former employer for violating her rights under the US Family and Medical Leave Act. The judge in the US District Court for the Northern District of Indiana endorsed the jury's verdict in her favor over objections by the hospital's attorneys that the verdict was contrary to the evidence.

The judge saw it as an open-and-shut case. The nurse was not able to take leave to which she was entitled because she was terminated from her position shortly before her leave was to start. Her vested rights were interfered with, and that was that.

Workplace Rules Were Not Enforced Uniformly

The hospital's lawyers tried to complicate the case by saying that the nurse was actually terminated, not for taking yet another medical leave, but for violating the hospital's policies against sexual harassment in the workplace.

She apparently did participate in inappropriate sexually explicit conversations with her co-workers on the job in the neonatal intensive care unit.

Even if that was true, as it apparently was, none of the other guilty parties were ever warned or disciplined, much less terminated for their own clearly prohibited misconduct.

When work rules are not applied uniformly across the board with all employees, an employee caught up in a dispute over a work rule infraction can often argue convincingly that he or she has been singled out for special treatment for an underlying reason that has nothing to do with the work rule in question, lending credence to the employee's case if the employee is claiming in reality to be a victim of discrimination or retaliation. **Staples v. Parkview Hosp.**, 2009 WL 4885156 (N.D. Ind., December 16, 2009).

An employee has the right to sue his or her employer for violation of the US Family and Medical Leave Act (FMLA) if:

The employee was entitled to time off from work because the employee had a serious medical condition that made the employee unable to perform the functions of the job;

The employee gave the employer proper notice of the need for time off from work; and

The employer in any way interfered with, restrained or denied the employee's entitlement to take time off.

It is not relevant to delve into the motivation or the state of mind of the employee's supervisors. If action is taken which interferes with the employee's rights, the employer can be held liable.

It was probably true that the nurse in this case did violate the hospital's policies against sexual harassment by going along with her co-workers in sexually explicit conversations on the job. But none of the others were disciplined, much less fired, only the nurse in question.

UNITED STATES DISTRICT COURT
INDIANA

December 16, 2009

Cardiac Rehab: Blood Glucose Not Checked, Nurse Not Liable For Patient's Accident Driving Home.

The patient had been an insulin-dependent diabetic for at least fifteen years before she started an outpatient cardiac rehab program at the hospital following open heart surgery.

The rehab program consisted of cardiovascular exercise routines performed under the supervision of a nurse with a specialized background in cardiac rehab.

The nurse usually checked this patient's and the other diabetic patients' blood glucoses at the end of each exercise session before letting them leave.

No Indication of a Problem With Blood Sugar

One day, however, the nurse did not check the diabetic patients' blood glucoses because she had to focus on another patient who said she was not feeling well. The patient in question had a hypoglycemic episode on the way home and was injured in a one-car motor vehicle accident.

The jury in the Superior Court, Norfolk County, Massachusetts ruled the nurse was not liable. There was no reason that day for the nurse to suspect a problem with the injured patient's blood glucose. **Russell v. LaFond**, 2009 WL 5498604 (Sup. Ct. Norfolk Co., Massachusetts, May 22, 2009).

Arbitration: Sister Had No Authority To Sign.

The Court of Appeals of Kentucky ruled that the deceased's family's lawsuit against the nursing home would go to trial before a jury, and not go to arbitration, because the arbitration agreement was signed at the time of admission, not by the resident but by his sister who had no authority to sign legal documents on his behalf. **Stanford Health & Rehab v. Brock**, 2010 WL 323274 (Ky. App., January 29, 2010).