

Discrimination, Retaliation: Filipino Nurse's Case Upheld.

The Court of Appeals of Michigan ruled it was wrong for the county circuit court to dismiss a Filipino nurse's discrimination case against the hospital where she had worked.

However, each of the judges or the Court of Appeals expressed different legal rationales for the Court's decision and the opinion has been officially designated as unpublished.

Pattern of Differential Treatment Presumption of Discrimination

The starting point was to look at the history of staff nurse relations at the hospital. After a change in official policy the hospital gratuitously continued orienting Caucasian staff nurses to the duties expected of charge nurses but did not orient any Filipino staff nurses and expressly turned down requests from the nurse in question to participate in such orientation.

Any differential treatment of minority employees can be seen after the fact as discriminatory. The employer may be required to produce a legitimate, non-discriminatory explanation or such actions will be presumed discriminatory.

In this case all the judges agreed there was an underlying pattern of discrimination. The hospital said that high patient censuses meant it had to curtail excusing staff nurses from their staff-nurse duties for charge-nurse orientation. However, that did not in any way account for the fact that Caucasian nurses still were being oriented as staff nurses while Filipino nurses were not. Racial discrimination was the only plausible explanation.

Retaliation

An employer cannot retaliate against an employee who files a civil rights complaint. The issue was whether retaliation was the motive for scrutinizing the Filipino nurse's nursing skills more closely after she complained compared to before.

In a climate of discrimination, retaliation will be seen as the more likely explanation, giving further ammunition to a minority employee's discrimination case. **Navarro v. Hutzell Hosp.**, 2004 WL 345387 (Mich. App., February 24, 2004).

The hospital had had a policy of routinely orienting qualified staff nurses to the charge nurse position, then officially dropped that policy on the grounds that high patient censuses made it impractical to excuse staff nurses from their staff-nursing duties.

But then the hospital continued to orient some staff nurses to the duties of the charge nurse position even after the hospital's official policy had changed.

The hospital oriented a number of Caucasian nurses to the staff nurse position, did not orient any Filipino nurses and turned down an express request from one Filipino nurse for charge-nurse orientation, citing patient censuses.

After the Filipino nurse complained to the Equal Employment Opportunity Commission her nursing skills were more closely scrutinized than any time during the previous eleven years.

With the pattern of racial discrimination and underlying climate of prejudice, there was probably retaliatory intent behind the way the nurse was treated.

COURT OF APPEALS OF MICHIGAN
UNPUBLISHED OPINION
February 24, 2004

Disability Discrimination: Restriction On Lifting Is Not A Disability.

A staff nurse filed suit for disability discrimination against the hospital where he was employed.

The Federal District Court in New York dismissed his case as invalid on its face. He stated in his lawsuit papers that he had a lifting restriction for which his employer refused to offer reasonable accommodation by finding him a staff nurse position which involved no patient lifting.

A disability is a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

A lifting restriction is not a disability within the meaning of the Americans With Disabilities Act.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
February 12, 2004

The US Circuit Court of Appeals for the Second Circuit likewise did not have to look beyond the allegations contained in the nurse's lawsuit, to rule in favor of the hospital.

To be entitled to reasonable accommodation an employee or applicant must have a disability.

Inability to lift is not a disability under the Americans With Disabilities Act. There is no right to reasonable accommodation for an inability to lift.

The hospital also argued that lifting was an essential function of a staff nurse's position but that was not necessary to go into that for the court to reach a decision.

Taylor v. Lenox Hill Hosp., 87 Fed. Appx. 786, 2004 WL 287171 (2nd Cir., February 12, 2004).