

Jehovah's Witness: Aide's Religious Bias Case Dismissed.

An activities aide working in a long-term care facility was asked by a certified nursing assistant to pray the rosary with a resident who had requested someone to pray with her.

Praying the rosary with someone was a regular activity which residents had been told they could request.

The activities aide refused, telling the nursing assistant that praying the rosary was against her religion.

Several days later the activities aide was called to her manager's office and was told that a decision had been made to fire her for insubordination for the incident.

The activities aide sued her former employer for religious discrimination.

Only after she had been fired did the activities aide inform her employer that praying the rosary was against her religious beliefs as a Jehovah's witness.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
August 7, 2014

The US Court of Appeals for the Fifth Circuit (Mississippi) threw out a \$55,000 jury verdict obtained by the activities aide in a lower Federal court.

The first time the activities aide informed anyone in authority at the nursing facility that she had religious objections to something she knew was a regular activity offered to facility residents was after she had essentially already been fired.

According to the Court, the nursing assistant who asked her to pray with the resident was not the activities aide's supervisor or anyone's supervisor and was not an appropriate person to whom the activities aide should have expressed her religious objections.

She did not take the necessary steps to protect her rights, the Court ruled. **Nobach v. Woodland Village**, __ F. 3d __, 2014 WL 3882464 (5th Cir., August 7, 2014).

Crohn's Disease: Nurse's Disability Discrimination Case Dismissed.

A nurse who worked as an adult case manager suffered from Crohn's disease.

Her medical condition made her have to use the bathroom frequently, experience major diarrhea and suffer from fatigue and joint pain.

Her job responsibilities included advising patients at the time of hospital discharge, setting up follow-up appointments, calling patients and generally solving problems related to patients' healthcare.

Because two non-disabled nurses doing the same job were being paid higher salaries, she complained to her supervisors, filed charges with the Equal Employment Opportunity Commission and sued.

A pay disparity affecting a qualified individual with a disability, with no explanation other than the individual's disability, is unlawful discrimination.

UNITED STATES DISTRICT COURT
ARIZONA
July 28, 2014

The US District Court for the District of Arizona dismissed the nurse's case.

The Court ruled that her Crohn's disease is a legitimate disability and, because she was still fully capable of fulfilling the demands of her position, she is a qualified individual with a disability.

However, there were legitimate non-discriminatory reasons which justified the other nurses' higher salaries.

One of the other nurses is fluent in Spanish, which is a valuable asset contributing to the institution's ability to meet the needs of its Spanish-speaking clientele.

The other has significantly more job experience in the specific area of case management in a managed-care setting, which made the set of skills she brought to the job more valuable to her employer. **Wood v. Univ. Physicians**, 2014 WL 3721207 (D. Ariz., July 28, 2014).

Med Errors: Nurse's Disability Discrimination Case Goes Ahead.

An LPN was let go from her position in a nursing home just three days after she fell at work and broke several ribs and pinched a nerve in her elbow.

She missed no work before being fired but basically sat around for a few days doing sedentary tasks and did not work directly with patients or pass medications.

The LPN sued for disability discrimination.

Two factors support the nurse's disability discrimination case.

The timing of her termination is suspicious, just three days after her disabling injury.

Other nurses with similar records of medication documentation errors were offered counseling, not fired.

UNITED STATES DISTRICT COURT
OREGON
August 7, 2014

The US District Court for the District of Oregon let her case go forward.

The LPN was ostensibly fired for medication documentation errors discovered in a look-back review of her charting done right after she was injured.

The Court was suspicious of the timing of her firing, three days after her injury, before she saw her doctor and before a physician's opinion could be obtained as to her physical capacities so an interactive process could be started to determine if a reasonable accommodation was possible.

The LPN was also able to prove that other nurses with the same numbers of documentation errors, who were not disabled, were offered counseling and were not fired. **McDonald v. Care Center**, 2014 WL 3892969 (D. Ore., August 7, 2014).