

LEGAL EAGLE EYE NEWSLETTER

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Discrimination: Court Turns Down Nurse's Case For Failure To Accommodate Disability.

A registered nurse injured her shoulder lifting a patient while working in a nursing home. She was initially cleared by her doctor to return to work with a lifting restriction, then cleared for full duty.

After two years on the job she enrolled in a master's degree program that would rule out the weekday afternoon shifts she had been working.

The facility offered her Saturday and Sunday sixteen hour shifts, but she insisted on 11:00 a.m. to 7:00 p.m. every other Friday and Saturday. The facility declined those hours and eventually terminated her after she stopped reporting for work when her master's program began.

The nurse sued for disability discrimination, claiming the former employer failed to accommodate her disability, the old shoulder injury.

Court Turns Down

Disability Discrimination Case

The US District Court for the Eastern District of Arkansas dismissed her case.

The starting point in disability discrimination is the question whether the victim or alleged victim has a disability.

A temporary condition which is expected to resolve fully or which has fully resolved is generally not regarded as a disability.

A disability is a physical or mental condition that severely limits a major life activity.



The first step in an employment disability discrimination case is for the victim to establish they have a disability, as disability is defined by law.

Only then does the inquiry go forward as to whether the employer discriminated, failed to accommodate or failed to participate in an interactive communication process to identify the employee's needs.

UNITED STATES DISTRICT COURT
ARKANSAS
May 17, 2024

The next question is whether the employer treated the victim adversely because of a disability, it having been established that the victim has a disability.

At this point in the legal analysis the employer can come forward with a legitimate, non-discriminatory reason for the adverse action. The burden of proof is on the employer to rebut an inference of discrimination from adverse treatment of a disabled employee.

The courts generally will accept business necessity or undue hardship, as articulated by the employer, as a legitimate, non-discriminatory justification.

In this case it was not realistic for the employer to carve out and work around a special set of convenient working hours allowed for one particular employee. Everyone either worked the standard shifts five days a week or two sixteens on the weekends, and that was that.

Still the employee can allege that the employer failed to initiate and participate in an interactive communication process with the employee as to the possibility of reasonable accommodation.

The employer's responsibility to communicate is mandatory when an employee communicates the existence of a disability affecting their job, even if the result is inevitable that no accommodation will be possible. ***Duvall v. Nursing, 2024 WL 2262257 (E.D. Ark., May 17, 2024).***

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