

Antineoplastic And Other Drugs: NIOSH Intelligence Bulletin Re Healthcare Workers' Exposure.

On January 23, 2015 the National Institute for Occupational Safety and Health (NIOSH) of the US Centers for Disease Control and Prevention published a new document titled *NIOSH Current Intelligence Bulletin: Reproductive Risks Associated With Hazardous Drug Exposures in Healthcare Workers and Recommendations for Reducing Exposure*.

The entire sixty-four page document is available at <http://www.nursinglaw.com/CDC012315.pdf>

The NIOSH bulletin discusses the current scientific literature behind the well-known fact that many antineoplastic and certain other medications pose risks to healthcare workers, particularly pregnant women and women who have very recently conceived but do not yet know they are pregnant.

The bulletin sets out two categories of strategies to protect healthcare workers, industrial hygienic measures and temporary reassignment or alternative duty for vulnerable employees.

Pregnancy Discrimination Laws Are Implicated Affected Employees Must Be Offered Voluntary Choices

Of particular interest to us is the very cogent discussion beginning on page 29 of Medical, Legal and Ethical Issues.

The US Pregnancy Discrimination Act and pertinent court cases absolutely prohibit employers from making decisions on behalf of their pregnant employees or others to protect their reproductive health.

That prohibition is absolute no matter how compelling the scientific reasoning is or how genuine and beneficent the intentions are behind the employer's actions.

NIOSH makes it clear that employees can only be offered voluntary choices. Employees cannot be compelled to accept changes imposed by the employer in the workplace to protect their reproductive health or the health of their unborn children *vis a vis* exposure on the job to potentially teratogenic substances.

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Developing fetuses and newborns are especially vulnerable to antineoplastic and other hazardous drugs.

One NIOSH recommendation is alternative duty or temporary reassignment of employees who are pregnant, breastfeeding or actively trying to conceive.

Requests for special accommodations during pregnancy raise complex issues of science and law.

Alternative duty or other workplace policies intended to protect workers and their offspring may not discriminate against workers on the basis of gender or pregnancy.

The key legal concept is that an employee cannot be forced to accept temporary reassignment or alternate duty. That is illegal. These policies must be voluntary.

Offering temporary reassignment or alternate duty to employees on the basis of reproductive status is not discriminatory to other workers who may have temporary disabilities but are not offered temporary reassignment or alternate duty.

NIOSH also says to keep in mind that male and female reproductive issues both must be considered.

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Patient's Fall: Nursing Negligence Found.

The seventy-six year-old patient went from the hospital to a skilled nursing facility for rehab after back surgery.

On admission to skilled nursing he was rated a high fall risk. The care plan was written for two-person assistance to ambulate.

He fell in the skilled nursing facility while being ambulated by only one person and sustained a fatal closed head injury.

On the day the patient fell his care plan was changed from two-person to one-person assist with ambulation, with no documented fall-risk reevaluation to support that decision.

He had been found on the floor uninjured earlier that same day.

COURT OF APPEALS OF OHIO
December 23, 2014

The Court of Appeals of Ohio found sufficient legal grounds for the family's lawsuit against the skilled nursing facility.

The family's lawsuit alleged understaffing as the underlying root cause of the patient's fall and subsequent death.

The family's lawsuit was also supported by a more specific opinion from a nursing expert who reviewed the patient's chart and found that the care plan was changed from two-person to one-person assist with ambulation the morning of the day the patient fell.

On a very fundamental level the decision to make such a change required a new comprehensive assessment of the patient's condition and reevaluation of his fall risk. No documentation of any such reassessment or reevaluation could be found in the chart. Most likely none was done.

Even if a reassessment and reevaluation were documented, the change was plainly wrong, given that the patient was found on the floor in his room uninjured earlier the same day he later fell and was fatally injured. ***Carte v. The Manor*, 2014 WL 7274801 (Ohio App., December 23, 2014).**