Retaliation: Nurse Refused To Sign Backdated Medicare Form, Termination Upheld.

The US Circuit Court of Appeals for the Eighth Circuit reviewed the circumstances that led up to a home-health registered nurse's termination and subsequent lawsuit for employer retaliation.

Employer's Side of the Story

According to her employer the nurse was terminated for behavioral problems, fourteen alleged documented instances of unprofessional conduct toward patients in the field and with co-workers in the office.

The nurse also refused to sign and back-date a Medicare Form 485 needed for her employer to receive payment for home visits the nurse had in fact made over a two -month period to a patient who was in fact certified by a physician for home health care.

Employee's Side of the Story

The nurse stated she had been instructed the form has to be signed either on or before the first day of the certification period indicated. She also stated she believed it was illegal to place a handwritten date next to her signature that was not the date she actually signed.

The nurse also indicated she believed it was wrong for her agency to instruct her to make home-health visits to patients she herself had determined were not homebound as defined by Medicare regulations.

The Court's Ruling

Signing a back-dated form is not, in and of itself, an illegal act. In the ordinary course of business forms cannot always be prepared and signed on the due date.

It would be illegal to sign a reimbursement form to obtain payment for services not rendered as indicated, but that was not what happened.

An employee can sue after being terminated as retaliation for refusing to perform an illegal or fraudulent act. But in this case the employee was not asked to do anything illegal. Her belief it was illegal was not relevant, the court said in throwing out her retaliation claim. **Callantine v. Staff Builders, Inc., 271 F. 3d 1124 (8th Cir., 2001).**

The general rule is that an employee who has no written employment contract and is not working under a collective bargaining agreement is considered a common-law employee at will.

An employee at will can quit at any time and can be terminated at any time at the employer's discretion.

There are major exceptions to the general rule, such as Federal and state anti-discrimination laws.

Most US state courts have also ruled that at-will employees cannot be terminated for reasons that violate public policy.

At-will employees can sue for retaliation for being terminated for refusing to violate the law, for reporting violations of the law by their employers or by fellow employees and for asserting other recognized legal rights.

That being said, there is no violation of the law involved in signing a backdated Form 485 for Medicare, assuming the home health nurse has made the indicated home visits and the physician had certified those visits as necessary.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2001.

Absenteeism: Arbitrator's Decision Upheld.

A hospital employee was terminated for excessive absenteeism and overall poor productivity. Her union filed a grievance, requested arbitration and asked that she be reinstated.

The employee had Hepatitis C and claimed disability discrimination.

The arbitrator ruled for the hospital, stating only that there was no basis to see the dismissal as unfair or discriminatory. The union filed suit in Federal court to set aside the arbitrator's decision.

When both sides have bargained for arbitration as the means to resolve their disputes, their disputes will be resolved by arbitration and not by going to court.

Arbitration is informal, flexible, expeditious and relatively inexpensive.

Unlike judges in court, arbitrators have no duty to provide the reasons for their decisions, as their decisions are not meant to be appealed.

UNITED STATES DISTRICT COURT, PUERTO RICO, 2001.

The US District Court for the District of Puerto Rico upheld the arbitrator. In labor law there is a strong policy in favor of arbitration and against the courts second -guessing arbitrators' decisions.

Unless the union contract says otherwise, arbitrators are not required as judges are to state the reasons for their decisions. That is, an arbitrator's decision is not subject to attack simply because the reasons for the decision are not spelled out. **Unidad Laboral v. Hospital De Damas, Inc., 171 F. Supp. 2d 38 (D. Puerto Rico, 2001).**