

Nurse's On-The-Job Back Injury: Court Sets Out Employer's Duties.

A hospital staff LPN injured her back moving a patient. She went on worker's compensation, underwent surgery and rehab and returned to her job with a fifty-pound lifting restriction.

She injured her back a second time lifting a patient. She tried to return to work seven weeks later with a fifteen-pound lifting restriction.

The nurse was terminated because there was no nursing job available at the hospital with only a fifteen-pound lifting requirement. The nurse sued the hospital. The Supreme Court of Vermont dismissed her lawsuit.

Worker's Compensation

State worker's compensation laws strictly forbid employer retaliation and give employee victims the right to sue.

However, according to the court, the employee has to convince the court the desire to retaliate was the substantial motivating factor behind the action taken by the employer, which this nurse was unable to prove to the court's satisfaction.

Reasonable Accommodation

Unit Secretary Position

The focus of the nurse's lawsuit was a unit secretary position. She claimed the position was denied her as retaliation for twice having gone on worker's compensation. She also claimed she was entitled to the unit secretary job as reasonable accommodation to her new disability.

The court agreed in general that an employer has the legal obligation to offer a physically less demanding position to a worker who becomes disabled, under the worker's compensation laws if it was an on-the-job injury, or under the disability discrimination laws if it was not, but only if the position is suitable for the employee.

No Obligation To Re-Train

The nurse conceded she did not have the basic typing skills legitimately required of a hospital unit secretary. The court said it is widely accepted that the employer has no obligation to re-train a disabled worker. That would go beyond what is considered reasonable as reasonable accommodation. **Wentworth v. Fletcher Allen Health Care**, 765 A. 2d 456 (Vt., 2000).

The nurse took several different tacks in her lawsuit against her former employer.

The state worker's compensation statute strictly outlaws an employer from retaliating against a worker for filing a claim, by firing, demoting, refusing to reinstate the worker, etc.

The worker's compensation law also requires an employer to reinstate an injured employee as soon as the employee's rehabilitation is complete, in the first available position that is suitable to the employee.

State anti-discrimination laws and the US Americans With Disabilities Act require reasonable accommodation be offered to a disabled employee.

However, the nurse had no proof of retaliatory intent.

Further, the fifteen-pound lifting restriction imposed by the nurse's physician was not compatible with the legitimate demands put upon a staff nurse in a direct-care position.

The unit secretary job the nurse wanted required her to type 30 words per minute and she could not pass the typing test. Her employer has no obligation to re-train her by teaching her to type.

SUPREME COURT OF VERMONT, 2000.

CDC: New Draft Guideline For Environmental Infection Control In Healthcare Facilities.

On March 6, 2001 the CDC made available a new Draft Guideline for Environmental Infection Control in Healthcare Facilities.

The CDC is accepting public comments on the new Guideline until April 20, 2001. In general, any Federal agency must publish a draft of proposed new regulations for public comment before promulgating mandatory new regulations in final form. That is, at this time the CDC's new Draft Guideline does not contain mandatory Federal regulations.

The new Guideline will update and replace portions of the CDC's existing Guideline for Handwashing and Hospital Environmental Control and the Environmental Infection and Control portions of the CDC's Guideline for Prevention of Nosocomial Pneumonia, 1994.

The CDC's new Draft Guideline is 198 pages long. It is available and can be downloaded from the CDC's website at: <http://www.cdc.gov/ncidod/hip/enviro/guide.htm>

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CDC: New Vaccine Information Materials.

On March 6, 2001 the CDC published for public comment proposed new vaccine information materials for Pneumococcal Conjugate, Diphtheria, Tetanus, Acellular Pertussis (DTAP/DT) and Hepatitis B vaccines.

We have placed the materials on our website at <http://www.nursinglaw.com/vaccines3.htm>

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