Retaliation: Aide's Case Dismissed.

An employee with eighteen years on the job at the nursing home was suspended and then fired after complaining to the director of nursing and to human resources that the facility administrator was treating female staff members more favorably with whom he had been having romantic liaisons.

The premise of the fired employee's lawsuit was that by treating those female employees more favorably who were having sex with him the administrator was treating those less favorably who were not.

In general terms, Title VII of the US Civil Rights Act protects employees who are victims of sex discrimination as well as those who report sex discrimination which victimizes others.

An employee suing for retaliation or claiming protection as a whistleblower must have reported or complained about conduct that was actually illegal, or there is no right to sue.

UNITED STATES DISTRICT COURT
ALABAMA
April 26, 2012

The US District Court for the Northern District of Alabama dismissed the case.

So-called "romantic nepotism" may be unfair to other employees and is a practice most companies would frown upon in this day and age, but it is not illegal per-se and does not fit the definition of sex discrimination under the US Civil Rights Act.

It follows, the Court went on to say, that the fired employee in this case has no right to sue her former employer for retaliation. The conduct she was complaining about was not illegal.

It was not relevant, the Court said, that the company's employee handbook forbade sexual relationships between supervisors and rank-and-file employees, due to the potential legal exposure to the company for sexual harassment. That did not give the fired employee reasonable grounds to believe such conduct was in fact illegal. **Watkins v. Fairfield Nursing Ctr., 2012 WL 1566228 (N.D. Ala., April 26, 2012).**

Commode Chair: Court Says Family Cannot Sue After Patient's Fall.

A hospital CNA helped the patient to the bedside commode and told her to call when she was ready for assistance with cleansing and transferring back to bed.

The patient's daughter said she would help out by cleansing her mother and helping her back to bed. But when the daughter tried to help her 250+ lb mother off the commode one of the drop-down arm rests released and both of them fell to the floor.

The patient herself received a monetary settlement from the hospital.

Instead of calling the CNA back to help, the patient's family member volunteered to get involved.

Her desire to help is commendable, but the hospital is not responsible for the risk of injury she undertook by trying to move her obese mother by herself.

COURT OF APPEAL OF LOUISIANA
May 16, 2012

The Court of Appeal of Louisiana dismissed the daughter's lawsuit for her own injuries claimed from the incident.

The hospital had records showing that all of its eighteen commode chairs had remained in service without complaints or repairs from the time they were purchased and the director of nursing and a physical therapist testified that no problems or defects were ever reported.

It was just as plausible, the Court concluded, that the patient or the daughter somehow activated the arm-rest-release lever and that is why the arm rest dropped down, as opposed to the chair itself having been broken before or during this incident.

Either way, a hospital simply is not responsible for an injury to a family member who voluntarily gets involved in patient-care tasks, the Court said. **Cavet v. Louisiana Extended Care Hosp., __ So. 3d __, 2012 WL 1698132 (La. App., May 16, 2012).**

Skin Condition: Court Finds No Disability Discrimination.

A nursing-home CNA had a skin condition on her face diagnosed by one of her physicians as exogenous ochronosis and by another treating physician as seborrheic dermatitis.

The CNA was terminated. She claimed she was told that the nursing home was no longer able or willing to shift patient-care assignments around among her former co-workers to accommodate some residents' objections to her caring for them because of her appearance.

The nursing home claimed there were ongoing problems with her communication and patient-care skills which did not improve despite repeated counseling and opportunities for in-service training.

The definition of disability includes a physiological disorder or condition or cosmetic disfigurement affecting bodily systems, including the skin, that substantially limits the individual in the performance of a major life activity.

The CNA's physicians did not restrict her from full participation in her work.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
May 17, 2012

The US District Court for the Eastern District of Pennsylvania ruled that the CNA's skin condition was not a disability for purposes of the Americans With Disabilities Act because it did not limit her ability to do her job and did not amount to a physical condition which substantially limits a major life activity.

If the individual does not have a disability, the individual cannot sue for disability discrimination in the workplace. **Deserne v. Abramson Center, 2012 WL 1758187 (E.D. Pa., May 17, 2012).**

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