

## Nurse Consultant: Court Considers Working At Home As Reasonable Accommodation.

As a full-time nurse consultant, the nurse performed compliance review for her employer's contract with the state's department of social and rehabilitative services.

The nurse consultant had consistently favorable performance and productivity reviews up until the time she had to take medical leave for scleroderma and esophageal dysmobility.

She was given intermittent leave for outpatient medical appointments and full-time leave for hospitalization. While on intermittent leave she worked on her case files at home.

When she returned to work after her hospitalization she was told she could no longer work at home and had to return all her case files to the office. At the time several of her assigned files were overdue for case completion.

The nurse consultant formally requested permission to work at home as reasonable accommodation under the Americans With Disabilities Act. Her request was denied and she was terminated for inability to perform her current position. She sued for disability discrimination.

Her case was carefully considered but

thrown out by the US Circuit Court of Appeals for the Tenth Circuit.

### Company Had An Established Work-At-Home Policy

The company had an established policy for allowing or disallowing nurse consultants, disabled or not, to work at home, based strictly on numerical case-closure rates, and the company followed its policy uniformly. This nurse, formerly very productive, was six cases behind on case closure to qualify to work at home.

In more general terms, the courts now see working at home as a possible reasonable accommodation that disabled employees can request. The courts differentiate jobs which require closely supervised teamwork, where working at home is not appropriate, from solitary unsupervised work, where a disabled employee may have a legitimate right to work at home.

It is critical for an employer to establish a work-at-home policy and adhere to it before a disability discrimination claim comes along. **Spielman v. Blue Cross & Blue Shield of Kansas**, 33 Fed. Appx. 439 (10th Cir., 2002).

## Multiple Sclerosis: Management Perceived Nurse As Disabled, Court Upholds Discrimination Suit.

A nurse had multiple sclerosis. She worked as a circulating nurse in the operating room. Her direct supervisors, who knew she had MS, consistently gave her positive evaluations on her routine periodic performance reviews, one of which was seven weeks before the events in question.

### Medication Error Attributed To Disability

The nurse prepared a local anesthetic containing epinephrine for a patient who was allergic to epinephrine. The error was caught in time by the nurse anesthetist and reported to the director of surgical services.

The director believed the nurse was cognitively impaired and unable to handle stress because of her MS and attributed the medication error to this falsely

***An employer cannot discriminate against an employee who has a disability or against an employee who the employer perceives has a disability who in fact is not disabled.***

***The hospital attributed a medication error to a cognitive impairment and lesser stress tolerance stemming from multiple sclerosis and demoted the nurse to a less demanding job.***

UNITED STATES COURT OF APPEALS,  
EIGHTH CIRCUIT, 2002.

perceived disability. The nurse was demoted to a temporary position in the surgical supply room. Although her pay was not reduced, the supply-room job did not involve professional nursing responsibilities.

The US Circuit Court of Appeals for the Eighth Circuit upheld a \$50,000 court judgment for the nurse for mental anguish and emotional distress.

There are grounds to sue for disability discrimination when an employer makes an adverse employment decision based on a false perception an employee has a medical condition the employee does not have or based on a false perception the employee is disabled from a real condition that in fact is not causing a disability. **Brown v. Lester E. Cox Medical Centers**, 286 F. 3d 1040 (8th