

Depression: Court Says It Can Be A Disability, Time Off Can Be A Reasonable Accommodation.

The director of nursing in a nursing home requested eight months unpaid leave from her job, following her physician's recommendation and prognosis that it would help to resolve her depression.

While she continued to work and experience stress on the job her physician was unable to manage her illness with antidepressant medication and counseling.

Inability to work at one job or at a narrow class of jobs is not a disability.

Time off without pay for recuperation is a reasonable accommodation for a mental or emotional problem if time off is likely to promote healing.

UNITED STATES DISTRICT COURT,
PENNSYLVANIA, 2001.

The US District Court for the Western District of Pennsylvania made a preliminary ruling defining the issues for the trial of the nursing director's disability discrimination case.

Depression is a disability if there is evidence it causes a person to be unable to work, period, or to be unable to work at a broad range of jobs. The inability to handle one particular job is not a disability.

Time off is a reasonable accommodation if it is likely to promote healing and an eventual return to full duty status and the employer is able to cover the absence. Wilson v. Lemington Home for the Aged, 159 F. Supp. 2d 186 (W.D. Pa., 2001).

Rheumatoid Arthritis: Court Says It Is A Disability, But Scooter Is Not A Reasonable Accommodation For A Nurse Who Is Unable To Walk.

A nurse developed rheumatoid arthritis. It progressed to the point where she could no longer walk.

She had to quit her job in a nursing home. She sued the nursing home for disability discrimination. The US Circuit Court of Appeals for the Eighth Circuit ruled her employer fulfilled all of its legal obligations under the Americans With Disabilities Act. Thus there were no grounds for her to sue, the court said.

Reasonable Accommodation

The court ruled that allowing a staff nurse in a nursing home to use an electric scooter for personal ambulation is not reasonable accommodation.

The court sympathized with the disabled nurse, but saw the needs of the residents as paramount. A nurse in a nursing home has to be able to pass meal trays and push wheelchairs even when heavier lifting tasks are done exclusively by aides. A nurse also has to be ready and able to perform the Heimlich maneuver and CPR.

Interactive Process

The nurse asked to be classified as completely sedentary and to be allowed to use her scooter on the job for mobility. Her supervisor stated that would not meet the essential functions the nursing home had defined for a staff nurse and was not an acceptable accommodation to her disability. The court said the interactive process did not have to go farther than that.

Retaliation

The court noted in passing that retaliation against an employee who attempts to assert legal rights is illegal even when the employee's claim is invalid. Nevertheless, the court could find no specific evidence of retaliation in this case. Stafne v. Unicare Homes, 266 F. 3d 771 (8th Cir., 2001).

An employer must provide accommodation when the accommodation requested by a disabled employee is reasonable.

An employer has to initiate and engage in an interactive process with a disabled employee to determine the employee's abilities and limitations, to see what the employee wants and can accept by way of accommodation, to see how the employee's needs can be met and to see how the employee's and the employer's expectations can be balanced.

Failing to communicate with a disabled employee is a form of discrimination.

An employer must refrain from retaliation against an employee who is disabled or claims to be disabled who attempts to assert his or her legal rights.

Retaliation is illegal discriminatory conduct even if the employee actually is not disabled or cannot be reasonably accommodated by the employer.

UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT, 2001.