

## Disability: Employer Can Discontinue An Accommodation That Was Not Required.

A former hospital medical assistant suffers from polyradiculopathy and polyneuropathy. These are disabling nerve conditions for which her physician restricted her from any duties which require lifting more than fifteen to twenty pounds.

The hospital, for a time, granted her request for light duty. That meant that other medical assistants had to take over certain tasks with this medical assistant's patients in addition to their own duties with their own patients.

Eventually the hospital went back on its decision to allow her light duty. She was terminated on the grounds that she was physically incapable of performing the essential functions of her position.

After her termination the medical assistant sued her former employer for disability discrimination. The US District Court for the District of Columbia dismissed her case.

### Employer Can Discontinue

#### An Unreasonable Accommodation

Reasonable accommodation is required by the US Americans With Disabilities Act (ADA) to the needs of a disabled employee who will be able to fulfill the essential functions of the employee's position with reasonable accommodation.

However, an accommodation is inherently unreasonable and is not required by the ADA if it forces the employer to carve out an exception to the essential functions of the disabled employee's position.

Further, the courts have consistently ruled that by gratuitously granting a disabled employee a temporary accommodation which ignores one or more of the essential functions of the position, an employer does not change the essential functions of the disabled employee's position. That has been the consistent trend in court rulings involving nurses, nursing assistants and other healthcare personnel.

An employer is not bound to continue an accommodation indefinitely which was not a reasonable accommodation in the first place, and is not guilty of disability discrimination for not doing so. Hancock v. Washington Hosp. Ctr., \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 60288 (D.D.C., January 7, 2014).

***An employee who is unable to perform an essential function of the employee's job with or without reasonable accommodation is not a qualified individual with a disability within the meaning of the Americans With Disabilities Act (ADA).***

***The mere fact that an employer has voluntarily accommodated an employee's disability by temporarily eliminating an essential function does not mean that the employer has forever dispensed with the essential functions of the job.***

***An accommodation that eliminates an essential function of the job is not a reasonable accommodation under the ADA, even if the employer has voluntarily provided such an accommodation in the past.***

***It is undisputed that preparing patients to be seen by a physician is an essential function of this employee's job and that she is unable to perform that essential function because of the lifting restrictions imposed by her physician based on her disability.***

***This employee has no right to sue for disability discrimination.***

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA  
January 7, 2014

## Violence In The Workplace: Court Rules Nurse's Firing Unjustified.

A staff nurse approached her house supervisor to complain that her charge nurse was not adequately assisting her with the care of a particular patient.

According to the court record, the nurse's tone became accusatory and her voice got louder and louder. The nurse accused the charge nurse of not doing her job and being prejudiced. The nurse then went to see the charge nurse, pointed her finger at her and accused her of being passive aggressive.

Two days later the staff nurse was terminated for violation of the facility's workplace violence policy.

The facility's workplace violence policy prohibits threats, threatening behavior, acts of violence and abusive or offensive verbal comments.

***A threat is a communication that conveys an intent to inflict bodily harm on another person or destruction of the person's property.***

COMMONWEALTH COURT  
OF PENNSYLVANIA  
January 3, 2014

The Commonwealth Court of Pennsylvania ruled the staff nurse was not guilty of misconduct justifying termination. Her job was not restored but she was ruled eligible for unemployment compensation.

The Court looked at the legal definition of the word "threat" and concluded that the nurse's actions did not meet that definition.

The Court said that an employee is allowed to express concerns and vent frustrations in the workplace with supervisors and co-workers, even if the employee becomes loud and the situation becomes heated, so long as the employee does not express an intent to inflict bodily harm upon another person or to damage or destroy another person's property. Phillips v. Unemployment Comp. Bd., 2014 WL 29382 (Pa. Cmwlth., January 3, 2014).