

Gender Discrimination: Victim And Supervisors Same Gender.

Fourteen of the facility's eighteen nurses were female and nine of its twelve social workers were female when the female mental health technician was terminated.

However, the US Supreme Court has ruled there is no legal presumption in discrimination cases that persons of one definable group will not discriminate against other members of their own group.

The fact the terminated employee was the same gender as the persons who made the decision to terminate her is not a valid legal argument in defense of the facility's action.

More relevant is the fact that the terminated female mental health technician was the only female among fourteen mental health technicians at the facility.

That fact is not conclusive but it does weigh in the terminated female employee's favor and against the facility's position in the lawsuit.

It tends to lend credibility to her claim that her former employer preferred males as mental health technicians for their supposedly superior ability to manage unruly psychiatric patients physically.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
February 23, 2016

A female mental health technician was terminated from her position in a mental health crisis center after she assisted an RN in discharging the wrong patient from the facility.

The technician and the RN both failed to check the patient's ID bracelet.

The discharged patient, who had checked himself in voluntarily the night before, returned a few hours later and voluntarily checked himself back in.

Nevertheless the technician was terminated three days after the incident for a major disciplinary infraction, action or conduct which endangered or may have been detrimental to the wellbeing of a patient or a violation of legal health or safety standards or facility policy.

Court Sees Grounds For Gender Discrimination Lawsuit

The US Court of Appeals for the Sixth Circuit (Michigan) found legal grounds for the technician's lawsuit to go forward against her former employer.

The Court ruled it was completely irrelevant that the nursing supervisors who made the decision to terminate the female mental health technician were themselves female as were the majority of the facility's other supervisory personnel.

State and Federal antidiscrimination laws offer no presumption that members of a certain group will not discriminate against other members of their own group.

It was relevant, although not conclusive, that all of the mental health technicians except this one were male.

Victim Able to Identify Comparators

For any discrimination case the victim must specifically identify one or more so-called comparators outside the minority group who were treated more favorably or less harshly by the employer than the victim who is bringing the lawsuit.

In this case the terminated mental health technician was able to identify two male mental health technicians who worked for the same supervisors on the same unit with the same job description doing exactly the same job who committed lapses in patient care of comparable seriousness who were treated more leniently than she was. Jackson v. VHS, __ F. 3d __, 2016 WL 700411 (6th Cir., February 23, 2016).

Family And Medical Leave Act: Court Upholds Verdict For Nurse.

A nurse working on a hemodialysis unit was approved for twelve weeks of Family and Medical Leave Act (FMLA) leave to recover from a broken wrist that prevented her from doing her job.

While she was off another nurse was hired to cover staff shortages due to the injured nurse's and other nurses' absences.

However, shortly before the injured nurse came back to work it was decided the newly hired nurse would replace the injured nurse, who would be terminated.

The US Family and Medical Leave Act says that an employee must be restored to his or her position or one comparable if the employee is able to return and work at the expiration of leave.

SUPREME JUDICIAL COURT
OF MASSACHUSETTS
March 9, 2016

The Supreme Judicial Court of Massachusetts ruled the nurse was illegally terminated in retaliation for exercising her FMLA rights.

The nurse would have been able to return after twelve weeks of leave, according to her physician. She would have been restricted from lifting more than five pounds with her one injured wrist, but that was a temporary restriction expected to last only a few more weeks and it did not limit her ability to work as a hemodialysis nurse.

Further, the other nurse who was hired in the nurse's absence was not an experienced hemodialysis nurse. Yet they decided to keep her even though she would not be fully up to speed until well after the more experienced nurse would have been back at work and completely done with her temporary lifting restriction.

The Court could see no other motivation than illegal retaliation behind the way the nurse was treated. Esler v. Sylvia-Reardon, __ N.E. 3d __, 2016 WL 10435938 (Mass. App., March 9, 2016).