

Employment Discrimination: Court Upholds Nurse's Right To Sue.

Following her termination from a staff nurse position a nurse filed a complex lawsuit against her former employer in the US District Court for the Southern District of Indiana for disability and religious discrimination.

No Disability Discrimination

The nurse, after fourteen years service at the hospital, came down with irritable bowel syndrome. During intermittent bouts of diarrhea she was unable to work.

The court did not have to consider the threshold question whether irritable bowel syndrome is a disability for purposes of the Americans With Disabilities Act (ADA).

The court pointed out the nurse called in sick for one quarter of the shifts she was scheduled to work during a one-year period.

A hospital staff nurse with chronic absenteeism that violates the employer's established attendance policies is not considered a qualified individual with a disability even if the absences are caused by a disability that is recognized by the ADA.

Regardless of the underlying cause, it is not reasonable accommodation for a healthcare facility to have to tolerate a staff nurse's excessive absenteeism, the court said.

Religious Discrimination Occurred

A supervisor had mockingly upbraided her for taking time off for the Jewish Passover and then more time off to mourn, or sit shivah, after Passover for a close relative who had died during Passover but by Jewish law could not be mourned until after Passover was over.

Circumstantial evidence of management's discriminatory attitude surfaced when she was able to return from an extended medical leave. She was turned down for entry-level staff nursing slots for lack of relevant clinical experience, slots that did not call for relevant experience and were given to others without experience.

If a person who qualifies as a minority is treated differently than others, the employer must be prepared to explain why, or discrimination is presumed. **Praigrod v. St. Mary's Medical Center**, 2007 WL 178627 (S.D. Ind., January 19, 2007).