# Reasonable Accommodation: Employer Has To Know Of Nurse's Disability, Or No Suit Can Be Filed.

No employer can be held liable for failing to accommodate an employee's disability unless the employer has been informed or knows about the employee's disability, the U.S. District Court for the District of Maine has ruled.

***The courts are divided on whether infertility is a dysfunction of a major life activity, that is, whether it is a disability under the anti-discrimination laws.***

***However, this court did not have to decide that question directly. The nurse in this case did not inform her supervisors her leave request had to do with her infertility. Her supervisors did not and could not know she considered herself disabled, and thus did not discriminate against her.***

UNITED STATES DISTRICT COURT, MAINE, 1997.

The nurse got twelve weeks leave to which she was entitled under the Family and Medical Leave Act to adopt her child. Although the child was healthy, she asked to use her sick leave to take more time off. This was denied, and a disability discrimination suit resulted. The court ruled that the nurse's infertility, why she adopted, may or may not be a legally recognized disability. The point was the nurse never told her supervisors she considered herself disabled and never asked to use sick. **Clapp vs. Northern Cumberland Memorial Hospital, 964 F. Supp. 503 (D. Me., 1997).**

# Employment Law: Male Nurse's Sex Discrimination Case Dismissed By Court.

***A male nurse has the right to file a claim of gender-based discrimination in employment. A male nurse is considered a member of a protected class of persons.***

***To succeed with a discrimination case, a male nurse must show that similarly-situated female nurses were treated more favorably than he was treated.***

***Anyone claiming employment discrimination must also show he or she was qualified for the position in question. In this case the hospital conceded this and it was not an issue.***

***Even if differential treatment of a member of a protected class can be shown, the employer still has the option to try to convince the court there was a legitimate non-discriminatory reason for the action that has been taken against the employee.***

***The need to contain costs through personnel restructuring can be a legitimate, non-discriminatory reason for an employer's actions. In this case fifty-three women nurses lost their 2x12 weekend "Baylor" positions, and the one man. No discrimination occurred.***

UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT (ILLINOIS), 1997.

The male nurse in this case delayed his entry into law school a full year so that he could orient and train in the operating room before being given a two days times twelve hours weekend full-time-pay nursing position in the operating room, where he intended to work on weekends until he completed law school.

Then the hospital decided to phase out gradually all of the 2x12 weekend nursing positions in the hospital, as a cost-containment measure. Nurses were offered eight-hour shifts instead. They obviously had to start working some weekdays to keep full-time status and full-time pay.

The nurse complained when his arrangement was changed, was terminated, and sued. The facts of the case were complicated because he was out on medical leave at that time for a non-work-related motor vehicle accident. This led to charges of disability discrimination on top of the charge of sex discrimination.

The U.S. Circuit Court for the Seventh Circuit (Illinois) quickly disposed of the disability discrimination issue. The nurse did not provide an updated physician's letter as required by hospital policy to support his continuing right to medical leave. Other personnel had been hired to take his place. The hospital did not discriminate by firing him for overstaying medical leave.

The gender discrimination issue got more attention from the court. A male nurse is, in general terms, someone who can claim gender discrimination. However, in this case the court saw no proof the hospital treated this nurse differently than similarly-situated female nurses. His "Baylor" position was the very first of fifty-four to go in a hospital-wide restructuring. But no similarly-situated female nurse was available for comparison, i.e., one at the time overdue on medical leave from a car accident working weekends-only while in law school, and thus no basis existed, according to the court, for the nurse to prove he was a victim of discrimination. **Auston vs. Schubnell, 116 F. 3d 251 (7th Cir., 1997).**