

Fire Safety: Proposal From CMS To Adopt 2012 Life Safety Code.

On April 16, 2014 the US Centers for Medicare & Medicaid Services (CMS) published proposed new regulations to adopt the 2012 edition of the Life Safety Code in place of the 2000 edition adopted by CMS in 2003.

This change is **not** mandatory at this time. As a US Federal agency, CMS is required to publish any proposed new regulations in the US Federal Register for public comments. CMS will accept public comments until June 16, 2014.

Institutions affected include hospitals, long term care facilities, ambulatory surgical centers, inpatient hospice facilities and others that participate in Medicare or Medicaid.

The new 2012 edition of the Life Safety Code contains complicated standards for building sprinkler systems, patient-room windows, evacuation of patient units, ventilation of surgical suites and placement of alcohol-based hand sanitizer dispensers.

CMS's Federal Register announcement is at <http://www.nursinglaw.com/CMS041614.pdf>

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E.R.: No Shoes Or Clothes Offered, Court Allows Disability Discrimination Suit.

A former emergency department patient suffers from epidermolysis bullosa simplex, described in the court record as a rare medical condition which can result in progressive pain, discomfort, skin blistering and impaired healing.

The US District Court for the Northern District of New York ruled the patient has the right to sue a hospital for disability discrimination over an unfulfilled request voiced by the patient in the emergency department for some comfortable shoes, socks, a sweatshirt, various other clothing items and Chapstick.

The patient's condition is a disability and the hospital had a legal obligation under the US Americans With Disabilities Act to provide reasonable accommodation, which it failed to do, according to the Court.

The patient is not entitled to monetary compensation but may only seek a court order against future lapses by the hospital should he return to the same E.R. Levesque v. CVPH Med. Ctr., 2014 WL 1269383 (N.D.N.Y., March 26, 2014).

Disability Discrimination: Court Says Nurse's Broken Arm Is Not A Disability, Case Dismissed.

An LPN who worked in a long-term care facility sustained a non-work-related fractured arm.

A few days later her supervisors told her she had to take an evening shift that involved a demotion from team leader to float nurse, to which she reluctantly agreed.

Days after that she was told she would have to take a night shift or be fired. The LPN was soon fired.

Apparently there had been disciplinary write-ups and ongoing concerns with the LPN's job performance that did not stem directly from her broken arm and arguably could have been the reasons her job responsibilities were changed.

The LPN sued, alleging that these changes were disability discrimination against her due to her broken arm.

The LPN's broken arm is not a disability as the term is used in the Americans With Disabilities Act.

Not every physical impairment is a disability. A short term temporary restriction that is expected to resolve fully does not render a person legally disabled.

The LPN has no proof her condition and her medical restrictions were anything more than temporary.

UNITED STATES DISTRICT COURT
NEW YORK
March 26, 2014

The US District Court for the Western District of New York ruled the LPN had no grounds to sue under the US Americans With Disabilities Act (ADA).

To have rights under the ADA a person must have a disability, a record of a disability or be perceived by the employer to have a disability that is recognized as a disability by the law.

Not every impairment is a legal disability under the ADA. A short term temporary restriction is not a disability recognized by the ADA.

Other court cases have already established the legal precedent that a fractured bone does not qualify as a disability, assuming a relatively short period of healing is expected followed by no long term limitations. Kruger v. Hamilton Manor, __ F. Supp. 2d __, 2014 WL 1345333 (W.D.N.Y., March 26, 2014).