

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Family And Medical Leave Act: Court Finds That Nurse's Rights Were Violated.

A psychiatric registered nurse had a confrontation with her supervisor on the unit. Minutes later the nurse told the supervisor she was too upset to perform her work and was leaving.

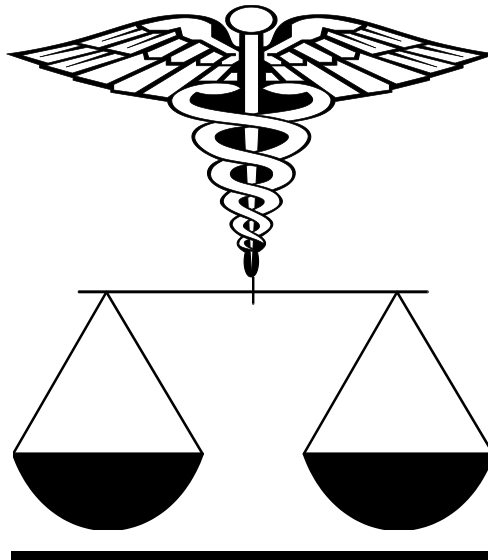
Before leaving the hospital she called her physician. He came to see her at the hospital and wrote a note recommending she not return to work at the hospital for two weeks. The nurse placed the note in her supervisor's mail box before she left that day.

Eight days later the nurse was fired for abandonment. She sued the hospital for violating her rights under the US Family and Medical Leave Act (FMLA). The US Circuit Court of Appeals for the Eighth Circuit ruled she had legal grounds to sue.

The hospital argued in its defense the nurse was not disabled and so she had no rights under the FMLA.

The hospital pointed out the nurse had already accepted a second job part-time in a nursing home and was already going through training, shadowing another nurse at the nursing home, when she walked off her job at the hospital. She reported for work and continued her orientation at the nursing home while she was away from her psychiatric nursing position at the hospital under her physician's orders.

The court ruled that did not matter.



***The FMLA applies to serious health conditions while the ADA applies to disabilities.***

***They are two entirely different legal concepts.***

***An employee medically incapacitated from working in his or her current position has a serious health condition, even if the employee is not disabled because there are other jobs the employee can perform.***

UNITED STATES COURT OF APPEALS,  
EIGHTH CIRCUIT, 2000.

The hospital was confused between the legal definition of *disability* under the Americans With Disabilities Act (ADA) and *serious health condition* under the FMLA. They are two very different legal concepts, the court said.

### **Disability Discrimination (ADA)**

A person who files a disability discrimination lawsuit first of all has to demonstrate that he or she is disabled. That means the person is unable to work at a broad range of jobs or unable to perform one or more major life activities like walking, seeing or hearing.

If a person who cannot perform just one particular job files a lawsuit under the ADA, the person will be ruled not legally disabled and the discrimination lawsuit will be thrown out.

For example, there have been cases of nurses who cannot lift adult patients but can work with children, or who can work eight hour shifts but not twelve. They have more options than one particular job and are not disabled.

The person also has to show he or she is a qualified individual with a disability, with or without reasonable accommodation, although in this case the court did have to delve into that issue to decide the case.

This case involved a similar situation. This nurse was able to do other

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# Family And Medical Leave Act: Court Finds That Nurse's Rights Were Violated. (Continued)

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nursing jobs, did work at another nursing job, and plainly was not disabled from work in general or from working as a nurse. But not being disabled and not having rights under the ADA did not cut off her rights under the FMLA.

The court noted that Equal Employment Opportunity Commission regulations state explicitly that the ADA's definition of disability and the FMLA's definition of inability to work due to a serious health condition are different concepts entirely.

### Serious Health Condition (FMLA)

An employee who is unable to work in his or her current job due to a serious health condition, even if it is the only job the employee cannot perform, has the right to medical leave under the FMLA.

The court ruled this nurse had enough evidence to prove her case that the hospital violated her FMLA rights.

### Medical Certification

The nurse provided a medical certification of her need for leave as required by law, the letter from her physician stating she needed to take at least two weeks off.

The employee does not have to see a healthcare provider for examination, assessment or treatment before beginning a period of eligible leave, as long as the re-

quirements are met at a later time. The court drew an analogy to someone who breaks a leg, who obviously does not have to see a doctor beforehand.

There were two or three hours from when the nurse walked off the unit until her doctor assessed her and certified her for medical leave. That was not a window of opportunity for the hospital to fire her for abandonment, the court stated.

### Three Days/Treatment

The court pointed out the law requires the employee to be incapacitated from his or her job for more than three consecutive calendar days and to be seen for treatment by a healthcare provider at least two times for the condition to qualify under the FMLA. Both these requirements were met in this case.

### Employer's Right To Challenge

If the matter ends up in court the employer can challenge the employee's healthcare provider's opinion. The court can second-guess or overrule employee's healthcare provider. But in this case the employer's challenge was unsuccessful.

The nurse's physician testified she was sicker than her patients. He stated she was unable to perform the essential functions of her job for medical reasons. She needed a break from her work on the psych unit because working in close proximity with her supervisor with whom there was conflict had re-injured a traumatized area of her life in which she still had significant unresolved personal issues.

### Second Medical Opinion

Under the FMLA the employer can require the employee to obtain a second medical opinion to corroborate the need for medical leave, although the second opinion is also subject to challenge by either side if the matter ends up in court.

The employer does not have to demand a second medical opinion just to reserve the right to challenge the employee's grounds for medical leave.

In this case the court agreed with the hospital that the hospital did not give up the right to challenge the employee's grounds for leave by not demanding a second medical opinion.

### FMLA Is To Be Interpreted

#### In The Employee's Favor

The bottom line for supervisors and managers is extreme caution when making decisions about employees' FMLA status. The courts are supposed to interpret the FMLA in favor of the employee whenever that is reasonably possible.

The ultimate authority for the courts in civil rights cases is the intent of Congress in enacting legislation like the FMLA.

Even for employees who could conceivably find other jobs when they are again able to work, Congress said by passing the FMLA it intended to minimize the disruption of established workplace relationships between employees and their current employers. **Stekloff v. St. John's Mercy Health Systems**, 218 F. 3d 858 (8th Cir., 2000).

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