

Family And Medical Leave Act (FMLA): 50 Employees Are Required.

Given the current size of many employers in the health care field, it can be overlooked that the US Family and Medical Leave Act (FMLA) only applies to employers with fifty or more employees, at the site or within a seventy-five mile radius of the site.

That issue came to the forefront recently in a utilization review nurse's lawsuit against her former employer. She claimed she was denied her right to medical leave for breast cancer surgery, chemotherapy, radiation and mental depression.

The employer defended the lawsuit with an affidavit from the human resources director that the company had only forty-six employees when the nurse was terminated for unexcused absences the nurse claimed should have been excused as medical leave.

The nurse claimed four physicians

There is an absolute requirement that the employer have fifty or more employees at the site or within seventy-five miles, or the US Family and Medical Leave Act does not apply.

UNITED STATES DISTRICT COURT,
OHIO, 2000.

were in fact employees of the corporation rather than independent contractors, making the total number of employees fifty.

The US District Court for the Southern District of Ohio said if that were true it would have given the nurse rights under the FMLA. However, it is the employee's responsibility not just to claim it but to prove that certain persons are employees if the issue is disputed by the employer, which the nurse in this case failed to do. ***Alderdice v. American Health Holding, Inc.***, 118 F. Supp. 2d 856 (S.D. Ohio, 2000).

Chemotherapy: Nurses Held Liable For IV Extravasation.

Extravasation means escape of substances being injected into a blood vessel from the vessel into the surrounding tissue where they are then absorbed.

This can be caused by a needle that has broken through a blood vessel.

Extravasation was a concern with this patient because two of the drugs being used in her chemotherapy were vesicants, that is, drugs that could cause damage by irritation, inflammation and tissue destruction if they escaped from the blood vessel.

A nurse who is administering vesicant drugs intravenously should look for good return of blood. That means that as the needle is drawn back, the tube connecting the needle to the patient's arm will fill with blood, indicating the needle is inside the blood vessel.

However, extravasation can occur even with good return of blood.

Any complaint of pain by the patient should be responded to immediately. If there is evidence of extravasation, the IV should be switched to a different location.

SUPERIOR COURT OF NEW JERSEY,
2000.

Because of extravasation of Oncovin and Adriamycin during chemotherapy, the patient had more than one surgery to debride and excise dead tissue where the IV line was inserted on the back of her right hand.

The surgery left the tendons exposed. The wound was covered with a dressing that needed to be changed four times daily for a long period of time.

The patient sued the medical center and the two nurses responsible for the extravasation incident.

The jury awarded \$1.5 million. The trial judge ruled that amount was excessive and reduced the award to \$500,000.

The Superior Court of New Jersey upheld the verdict that the nurses were negligent and upheld the judge's decision that the \$1.5 million jury award was excessive and should be reduced by two-thirds.

One Nurse 95% At Fault

The jury ruled the first nurse 95% at fault. She started the IV line and gave Cytotoxan and Kytril with saline by IV drip. She twice ignored complaints of pain from the patient. A friend who sat with the patient through the procedure testified her right hand was red, puffy and swollen.

One Nurse 5% At Fault

A second nurse came in to give the Oncovin and Adriamycin by IV push. The court said these two drugs are vesicants and that is why they were given IV push rather than IV drip. The nurse did check for good return of blood and got it. Then when the patient complained of burning and pain the nurse stopped the treatment, reinserted the IV line in the left hand, completed the treatment and notified the physician. The physician ordered cold soaks for the right hand.

No Documentation

The court was satisfied from the friend's testimony and the nature of the injury that extravasation had unquestionably occurred. The court faulted the nurses also because of no documentation of the incident in the nursing progress notes. ***Iacano v. St. Peter's Medical Center***, 760 A. 2d 348 (N.J. App., 2000).