

# Sex Discrimination: Court Denies Nurse's Claim Based On Supervisor's Remarks.

When a new supervisor came on the unit she changed a male nurse's hours from 4:00 p.m. to midnight, then changed them again to 9:00 a.m. to 5:30 p.m. on weekdays and 11:00 a.m. to 8:30 p.m. on weekends.

Then she changed his hours again to 11:00 a.m. to 5:30 p.m. on weekdays and weekends.

He protested on the grounds those were the busiest hours in the unit, the emergency department, and working those hours would give him the heaviest workload of any nurse working any shift.

His supervisor said, "You're a man, you'll just have to tough it out."

That remark by the supervisor eventually led to a sex discrimination lawsuit, after a fairly complex set of events took place.

The US District Court for the Northern District of Illinois dismissed the case. As of this writing the court's opinion has not been selected for publication in the Federal Supplement.

## Male Nurse / Sex Discrimination

As a general rule, men working in traditionally female occupations can invoke Federal as well as state laws against gender-based discrimination. Male nurses are considered a protected class of persons under our anti-discrimination laws when the supervisor is female just like when the roles are reversed in other settings.

## Direct versus Indirect Evidence of Discrimination

As a general rule in discrimination cases the court first looks for direct evidence that a decision-maker was motivated by discriminatory intent when making a critical decision adversely affecting an employee who has legal protection from discrimination.

When there is direct evidence the court has an easier time satisfying itself it is making a correct decision.

Direct evidence of discriminatory intent can come in the form of biased statements from the decision-maker reflecting a negative opinion of a protected class of persons.

***To prevail on a claim of discrimination a plaintiff must show that the defendant intentionally discriminated against him.***

***The plaintiff may offer evidence either through direct or indirect methods of proof.***

***Under the direct proof method the plaintiff must show either an acknowledgment of discriminatory intent by the defendant or its agents or circumstantial evidence that provides the evidentiary basis for an inference of intentional discrimination.***

***Under the indirect method of proof the plaintiff must show all the elements of differential treatment, that is, the plaintiff was treated less favorably than others simply because of race, color, religion, sex, national origin or disability.***

***The plaintiff must be a member of a protected class, be qualified for the job, meet the employer's legitimate expectations and suffer an adverse employment action.***

***It is also necessary that the employer treated similarly situated persons more favorably who are not in the protected class of persons.***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
September 30, 2002

## Stray Remarks

### Do Not Prove Discriminatory Intent

Assuming a decision-maker has said something disparaging about a gender or racial minority or disabled persons, etc., the court still has to distinguish stray remarks from direct evidence of discriminatory intent.

To distinguish stray remarks from actual evidence of discriminatory intent the court in this case noted the male nurse's supervisor's remark was made months before he was actually discharged, his discharge being the actual focus of his discrimination lawsuit.

### Indirect Evidence of Discrimination Differential Treatment

An employee who is in protected class of persons can prove discrimination indirectly by showing that he has been treated differently than comparable persons outside the protected class.

If differential treatment has occurred, the employer has to prove there was no actual intent to discriminate.

In this case the male nurse was discharged after he became severely disabled from Guillain-Barre syndrome. His physician related it to a flu shot he was required to obtain and did obtain on the job.

There was a complicated history of interaction between the nurse and his employer as his disability slowly resulted in an inability to work and as he fought to have his claim recognized as a legitimate worker's compensation case.

The telling point for the court was this: To prove gender discrimination the nurse would have to prove that as a male nurse he was treated differently by his employer than female nurses who had actually gone through the same process of developing a rare syndrome and trying to prove it was related to the job.

Without a comparable basis for comparison to other employees a claim of differential treatment fails. The court ruled the nurse's subjective belief bias was present was not enough to support a lawsuit. Henon v. Principi, 2002 WL 31174454 (N.D. Ill., September 30, 2002).