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Healthcare Fraud: DON Followed Her Own Conscience, Can Sue After Quitting Her Job.

The director of nursing for a home health agency began to realize that people at her agency were committing healthcare fraud against the US government through fabricated clinical documentation meant to substantiate false billings and generate unwarranted reimbursements.

Rather than participate in healthcare fraud, the director of nursing quit her job. She did so as a matter of conscience and to avoid suspicion falling on her in any future government investigations that might be undertaken.

Then she sued her former employer for wrongful termination. Notwithstanding the fact her employer never actually terminated her, the US Court of Appeals for the Sixth Circuit (Kentucky) ruled the director of nursing had rights under the US False Claims Act and under state law in Kentucky.

The US False Claims Act provides legal rights to employees who resist or report fraud by the employer against the US government.

Any employee who is discharged, demoted, suspended, threatened, harassed or discriminated against for resisting or reporting such fraud can sue for full reinstatement and/or income lost, along with litigation costs and attorney fees necessary to bring legal action against the employer.



The nursing director's complaints to management about illegal activity should have made them expect that failure to take action would compel the nursing director to leave.

The nursing director has legal rights even though she was not actually terminated and nothing was done directly to her with the specific intent to force her to resign.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
March 2, 2018

The Court ruled the False Claims Act should be interpreted broadly enough to give those same rights to an employee who is not actually discharged, demoted or suspended, but who is basically forced to quit due to the employer's fraudulent activities.

Intent to fire the employee in question can be inferred by the court when the employee's resignation was a foreseeable consequence of the employer's fraudulent activities.

The director of nursing's employer forced her to turn a blind eye to fraud and expose herself to possible criminal prosecution, loss of her nursing license and damage to her reputation, or to quit.

The Court also found grounds for the director of nursing to sue her former employer under state law in Kentucky.

State law recognizes the legal concept of constructive discharge.

Constructive discharge gives an employee who quits his or her job the right to sue the former employer for wrongful discharge if the employer took action which made the employee's continued employment so grossly intolerable that resignation was the only realistic course for the employee. Being exposed to severe consequences if she did not resign fit the definition.

Smith v. Group, ___ Fed. Appx. ___, 2018 WL 1136072 (6th Cir., March 2, 2018).

Inside this month's
issue...

April 2018

New Subscriptions
See Page 3

Healthcare Fraud/US False Claims Act/DON/Wrongful Discharge
Emergency Department Nursing/Documentation - Fall Assessment
Nurse/Depression/Discrimination - Nursing Negligence/Causation
Transgender Nurse/Sexual Harassment/Discrimination/Retaliation
HIPAA/Nurse/Medical Confidentiality - Quality Assurance Privilege
Colostomy/Negligent Nursing Care - Choking/Nursing Negligence
Health Care Fraud/Conviction - Emergency Nurse/Sexual Misconduct
Nursing Home/Unfair Labor Practice - Vaccine Information Statements