

# Homophobia: Male Nurse's Discrimination Lawsuit Is Disallowed By A Federal Court.

The hospital fired a homosexual male nurse and he sued the hospital for sex discrimination.

The US Circuit Court of Appeals for the Seventh Circuit upheld the District Court's decision to throw out the lawsuit. In rendering its opinion, the Circuit Court made a number of important points about employment discrimination law.

## **Federal Law and Sexual Orientation**

Title VII of the US Civil Rights Act deals with employment discrimination based on sex, race, national origin and religion.

Title VII says that sexual harassment has been one traditional form of illegal sex discrimination by men against women.

The courts have gone further. The courts have said that sexual harassment by men against men and women against women is illegal, that is, Title VII outlaws sexually-offensive conduct in the workplace even between same-sex persons.

At this time Title VII does not outlaw employment discrimination based on sexual orientation.

## **Retaliation**

Nevertheless, Federal and state laws protect employees from employer retaliation for filing charges of discrimination, threatening to file charges of discrimination or for assisting another employee who is filing or threatening to file such charges, not just discrimination itself.

For a retaliation lawsuit it is not important whether the employee's charge of discrimination turns out to be valid. It is important only that the employee sincerely believed it was valid. If an employee genuinely believes he or she had valid grounds to complain, the employer can be penalized for retaliation, even if the employee's discrimination charge is ruled invalid by a court or human rights agency.

## **Attitude versus Overt Action**

After he was terminated and his lawsuit was in progress the male nurse testified he had been harassed by a hospital physician because he, the nurse, was a homosexual.

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***Title VII of the US Civil Rights Act does not deal with employment discrimination based on sexual orientation.***

***Nevertheless, no employer can retaliate against an employee who voices what the employee sincerely believes is a legitimate charge of discrimination or harassment, even if there is no factual or legal support for the employee's complaint.***

***Going beyond that, when an employee complains of harassment or retaliation, the employer is still allowed to claim the employee's work was substandard.***

***A nurse who falsifies a chart entry chart is guilty of substantial misconduct.***

***A nurse can be fired for misconduct that has the potential to compromise a patient's safety.***

UNITED STATES COURT OF APPEALS,  
SEVENTH CIRCUIT, 2000.

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However, the court interpreted the grievance the nurse filed before he was terminated as a complaint only about the physician's homophobic attitude rather than a complaint charging overt acts of sexual harassment.

The hospital had interpreted the nurse's grievance the same way. Although the hospital had no legal obligation to correct someone's attitude, a supervising physician counseled the physician and got a commitment to be more sensitive about how his attitude affected the nurse.

The court did not uphold the underlying harassment charge because it was based on the nurse's sexual orientation.

Only after the nurse had been fired and the lawsuit papers were filed did the nurse raise the issue of sexual harassment. But if that was the first time he complained of actual harassment the court could not uphold a charge of retaliation because the hospital did not know he was complaining about harassment until after he was fired.

## **Legitimate Non-Discriminatory Reason For Adverse Employment Action**

In the final analysis the court said the hospital had legitimate non-discriminatory reasons for firing the nurse from his charge-nurse position.

As a patient was being admitted, the nurse discussed the patient and obtained admitting orders from the physician, the same physician who was allegedly guilty of harassing the nurse.

Both the nurse and the physician forgot to discuss the patient's code status. There was nothing wrong with that, until the nurse took it upon himself to discuss the patient's wishes with the family and to write an order for "No Code - Pending Physician's Orders."

The court agreed with the hospital it is not a nurse's place to designate a patient as a no-code, because the patient's safety could be unreasonably compromised if there is a code incident before the physician can straighten it out.

## **False Entry In Patient's Chart Is Grounds For Termination**

The court agreed with the hospital the nurse was guilty of intentionally falsifying a physician's order in a patient's chart. That was a major infraction of hospital policy. In and of itself it justified the nurse's termination, apart from any question of discrimination, harassment or retaliation, in the court's judgment. The court ruled for the hospital and dismissed the nurse's lawsuit. **Hamner v. St. Vincent Hospital and Health Center, Inc.**, 224 F. 3d 701 (7th Cir., 2000).