

# LEGAL EAGLE EYE NEWSLETTER

September 2001

*For the Nursing Profession*

Volume 9 Number 9

## Disability Discrimination: Lifting Is An Essential Function Of A Staff Nurse's Job.

A hospital staff nurse injured her back on the job and had to resign.

Six years later the hospital badly needed nurses and rehired her. The nurse manager of the rehabilitation unit set up an arrangement unique to the rehab unit by letting her work as "medication nurse." Her only duty was to pass medications, while other nurses had to perform all direct patient care tasks involving heavy lifting.

Technically the nurse in question was still a per diem relief staff nurse. The medication nurse arrangement was never reported to or sanctioned by the hospital's human relations department.

Then a new nurse manager took over on the rehab unit. She asked the medication nurse to provide a current doctor's report about her physical condition and lifting limitations.

Her doctor admitted he was trying to be optimistic when he said she could lift twenty pounds frequently. He had to admit she could not lift fifty pounds at all. The nurse was removed from the rehab unit.

The human resources manager offered to sit down with the nurse to look at the available positions at other facilities owned by the hospital's parent corporation and to explain the internal personnel transfer process.

The nurse insisted on keeping the



***A hospital has the right to deem lifting fifty pounds an essential function of a staff nurse's position.***

***An employer can voluntarily give a disabled nurse light duty or allow her to depend on other nurses for lifting.***

***An employer does not have to continue a voluntary arrangement when sufficient staffing is not available.***

UNITED STATES COURT OF APPEALS,  
FIRST CIRCUIT, 2001.

favorable accommodation she had enjoyed as medication nurse on the rehab unit. She was terminated and filed suit for disability discrimination.

### **Lifting Is Essential Function**

The US Circuit Court of Appeals for the First Circuit ruled the hospital could expect staff nurses across the board to be able to lift fifty pounds.

### **Voluntary Arrangements**

The courts want to encourage voluntary arrangements to help disabled employees.

So, when an employer voluntarily carves out an arrangement for a disabled employee beyond what the law requires as reasonable accommodation, the courts do not require the employer to continue the arrangement at the risk of being sued for disability discrimination after staffing needs make the arrangement no longer feasible.

The court ruled that the medication nurse position was only a voluntary arrangement. The hospital's human resources department had never set up a specific job description for a medication nurse listing essential functions of the position that did not involve the same lifting requirements expected of a hospital staff nurse.

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# Disability Discrimination Law: Lifting Is Essential Function Of Staff Nurse's Job (Continued).

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The court did not want to see an employer punished for doing more than the Americans With Disabilities Act (ADA) requires, something they should be encouraged to do whenever possible.

## Reasonable Accommodation

Job restructuring is one of the general principles for employers to achieve reasonable accommodation. That is, employers can allow tasks to be shared between disabled and non-disabled employees to create a more favorable situation for a disabled employee.

Job restructuring hypothetically could mean allowing a nurse with a lifting restriction to depend on other nurses to lift and reposition patients or to assist with lifting and repositioning tasks that a non-disabled nurse might be able to do alone.

## Essential Functions of the Job

However, the court pointed out the bottom line is that the ADA does not require an employer to dispense with the essential functions of a disabled employee's job description. Hiring two nurses to do one nurse's job, one who can lift patients and one who cannot, is not required as reasonable accommodation.

## New Position / Retraining Not Required

The ADA does not require an employer to create a new position to meet the special needs of a disabled employee. The hospital had no legal obligation as reasonable accommodation to this nurse's disability to make the medication nurse position an official nursing position with a job description listing lighter lifting duties.

The law does require an employer to reassign an employee to a vacant position that is compatible with the employee's physical restrictions, assuming the disabled employee is qualified.

If not qualified, the ADA does not require an employer to offer a disabled employee education, training or retraining on a preferential basis compared to non-disabled employees.

## The Interactive Process

The law requires the employer to open up lines of communication with a disabled employee. The employer must try to find out what the employee's needs are, determine the employee's qualifications and inform the employee what other job options are available. The ADA regulations call this the "interactive process."

The ADA requires the employer to take the initiative and engage in an interactive process with a disabled employee to determine how the employee's needs can possibly be met. Failure to initiate or engage in the interactive process is one way that disability discrimination can occur.

However, it is a two-way street. The employee also has the obligation to participate in the interactive process. Otherwise the employee forfeits the right to sue for disability discrimination.

In this case the hospital and its parent corporation did attempt to engage in the interactive process, the court ruled. The human resources manager offered to sit down with the employee and discuss available positions within the corporate system and to explain the process for applying for an internal transfer.

The nurse refused to consider anything other than a "medication nurse" position created specially for her, with other nurses instructed they were to do all lifting tasks and not depend on the medication nurse to perform or assist in lifting.

The court said by doing this the nurse ignored her legal obligation to cooperate in the interactive process. At that point her employer had no further obligation to engage in the interactive process, and being unable to engage in the interactive process there was no way for the employer to achieve reasonable accommodation.

Being unable to achieve reasonable accommodation because of fault by the employee, the employer in this case had no liability for disability discrimination, the court ruled. Phelps v. Optima Health, Inc., 251 F. 3d 21 (1st Cir., 2001).

# Sexual Assault: Hospital Not Penalized, Let Nurse With Disability Care For Patients.

A hospital is liable for damages in a civil lawsuit when a nurse sexually assaults a patient under the nurse's care, if and only if there is something in the nurse's work history or personal history the hospital knew about or should have known about that indicated the nurse had a propensity toward committing a sexual assault.

***The nurse had a history of manic depression and was getting treatment.***

***Because of his superior dedication to patient care, the hospital let him work with patients.***

***He sometimes had emotional outbursts with co-workers and had one with one patient.***

***But there never was any reason for the hospital to believe the nurse would sexually assault a patient.***

SUPREME COURT OF ALABAMA, 2000.

The Supreme Court of Alabama sided with a hospital's decision to allow a nurse diagnosed with a psychiatric disability, bipolar disorder, to care directly for patients even though he had a history of difficulties interacting with his co-workers.

The hospital was ruled not liable in the family's lawsuit because the court could find nothing in the nurse's work, personal or medical history that would have made the hospital expect him to commit a sexual assault. Ex parte South Baldwin Regional Medical Center, 785 So. 2d 368 (Ala., 2000).