

# Back Injury: Nurse's Light-Duty, No-Lifting Position Eliminated, No Right To Sue For Disability Discrimination, US Court Says.

A nurse injured her back helping to lift a 400-pound patient.

After a few weeks off she returned to work as a light-duty nurse. The light-duty, no-lifting position was created informally just for this nurse.

The light-duty nurse position never existed in the hospital's human resources department's table of organization, the US Court of Appeals for the Seventh Circuit pointed out.

The nurse was removed from the light-duty position for reasons not specified in the court record. Following that the nurse's physician wrote a report saying she was permanently restricted to sedentary work with no lifting in excess of ten pounds and no patient lifting whatsoever.

The hospital assigned her to a clerical position rather than giving her back the light-duty nursing position. The clerical position paid a much lower salary than a nursing position.

However, the court pointed out, her worker's comp benefits from her on-the-job injury plus her earnings from the clerical position made her after-tax income basically the same as she had before as a staff nurse.

She sued for disability discrimination, claiming she was entitled to continue in the light-duty, no-lifting position as a reasonable accommodation to her disability.

## Rehabilitation Act of 1973 Applies

As a Federal employee working in a Veterans Administration hospital the nurse's case came under the Rehabilitation Act of 1973, not the Americans With Disabilities Act that applies to disability discrimination lawsuits filed by private-sector employees.

The court pointed out that is only a technical distinction. The underlying principles of disability discrimination law are the same.

## Was the Nurse Disabled?

The threshold question in any disability discrimination case is whether the employee has a legal disability, as disability is defined for purposes of employment-related disability discrimination law.

***Although not required to do so, a hospital can create a light-duty, no-lifting position for a staff nurse with lifting restrictions from a back injury.***

***The hospital can eliminate the light-duty, no-lifting nursing position if the nurse's restrictions prove to be permanent or for any other reason at the hospital's discretion.***

***A hospital is not required to "manufacture" a job that will enable a disabled worker to keep working despite the disability.***

***A hospital is not required to pair a disabled nurse with another nurse or with an orderly to follow the nurse around to help with lifting patients.***

***That would essentially mean manufacturing two new positions for the benefit of a disabled employee.***

***Supporting patients while they ambulate, breaking their falls when they fall, picking them up from the floor, helping them in and out of bed, pulling them up in bed, etc., are essential and indispensable functions of a direct patient care nurse's job.***

UNITED STATES COURT OF APPEALS  
SEVENTH CIRCUIT  
September 5, 2002

The hospital conceded the nurse was disabled by her back injury.

The court commented that the hospital should have raised the argument, as in the court's view the legions of person in our society who are restricted to sedentary work and cannot lift more than ten pounds are not whom the laws were meant to protect from disability discrimination.

## "Manufacturing" a New Position Is Not Reasonable Accommodation

Inside and outside the healthcare field the courts have ruled uniformly that an employer has no obligation to create a new position for an employee's benefit, even if the employee is legally disabled and entitled to reasonable accommodation.

A nurse who cannot lift patients, whether the inability to lift patients arises from an injury on or off the job, has no right to have a light-duty, no-lifting position created or continued.

Nor is there a right to have lifting and transferring the nurse's patients shifted to other nurses or non-licensed personnel, the court said.

## Administrative Nursing Positions Utilization Review

A disabled nurse has the right to be considered for an administrative nursing position, like utilization review, that does not involve performance of physical tasks.

However, reasonable accommodation does not go so far as to give a disabled nurse the right to an administrative position for which the nurse is not qualified or the right to be trained for the position merely because the nurse is disabled or the right to special preference over other employees or outside applicants.

The court noted the patient's supervisor was not willing to testify the nurse was qualified for utilization review.

The court ruled the clerical position was a sufficient and reasonable accommodation under all the circumstances. ***Mays v. Principi***, \_\_ F. 3d \_\_, 2002 WL 2019361 (7th Cir., September 5, 2002).