

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Mandatory Immunizations: Court Throws Out Nurse's Disability Discrimination Lawsuit.

A registered nurse had a seven-year exemplary employment record at the hospital.

Then the hospital instituted a mandatory Tetanus, Diphtheria and Pertussis (Tdap) immunization requirement for all its clinical employees.

The nurse's physician wrote the nurse a note stating that she was medically exempt from Tdap vaccination.

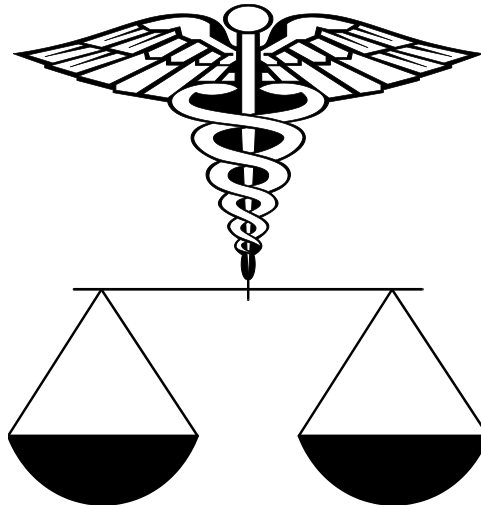
When pressed by the hospital's employee health nurse for more complete documentation, the nurse's physician explained that the nurse had severe anxieties about some side effects of the vaccine the nurse had read about, coupled with a history of multiple food and environmental allergies and eosinophilic esophagitis.

The hospital's employee health nurse informed the nurse that her physician's note did not document any of the specific medical contraindications identified by the vaccine manufacturer.

At this point the only choices left for the nurse were immunization or termination. She was terminated.

After her termination the nurse sued the hospital for alleged disability discrimination in violation of the Americans With Disabilities Act.

The US District Court for the Middle District of Pennsylvania dismissed the nurse's lawsuit.



***The hospital acted reasonably by offering an exemption to any employee whose physician verified at least one of the contraindications to the vaccine that had been identified by the manufacturer.***

***The conditions identified by the nurse's physician did not fit the bill and the nurse had to be immunized or terminated.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
May 15, 2017

The Court questioned the premise that anxiety relative to an immunization or eosinophilic esophagitis is a legal disability.

However, even if the nurse had some sort of legal disability, the hospital provided reasonable accommodation to her disability by offering to exempt the nurse if her physician could document at least one of the known contraindications identified by the manufacturer for its Tdap vaccine.

The hospital's employee health nurse even went so far as to spell out in her correspondence with the nurse's physician the specific contraindications to the vaccine identified by the vaccine manufacturer, to which the nurse's physician had no response.

The Court ruled the hospital was not required to accept the nurse's physician's simple statement that the nurse was exempt from vaccination that provided no verification that the nurse suffered from any contraindication to the vaccine that had been identified through acceptable scientific evidence.

The Court pointed to a large body of published research on the importance of Tdap vaccination for healthcare personnel from the CDC and the Advisory Committee on Immunization Practices. ***Ruggiero v. Mount Nittany, 2017 WL 2080236 (W.D. Penna., May 15, 2017).***

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