

Employment Discrimination: Migraines And Allergies Are Not Disabilities, Court Rules.

Migraine headaches and allergies are not employment disabilities as the term disability is defined for purposes of employment discrimination laws, the U.S. District Court for the Northern District of Mississippi has ruled.

The court felt compelled to dismiss a home health aide's disability discrimination lawsuit against her employer. Her physicians certified that she could not call on patients in their homes, due to her medical problems, but should have a position staying in the office or clinic all the time.

The hospital that was the parent corporation of the home health agency permitted the aide to file eight applications for transfer to eight separate clerical and technical support positions, and interviewed her for six of those positions even though a hospital employee normally would only be allowed to file four transfer applications per year. However, her skills were insufficient for any of the positions, she was not allowed to transfer and was terminated.

The court went to some length to show that the hospital had made a strong effort to accommodate this employee's needs, but was unable to do so because her skills were not transferable to any available position consistent with her medical restrictions.

But the real issue, the court felt, was that migraine headaches and allergies were not what the law was getting at when disability discrimination was outlawed. The court did not believe the aide's medical problems were fabricated, and accepted the fact they interfered with the duties of a home health aide. Even still, an employee's problems must meet the legal definition of a disability as defined by law, for a court to allow a lawsuit. **Howard vs. North Mississippi Medical Center**, 939 F. Supp. 505 (N.D. Miss., 1996).

Sexual Harassment: Women As Objects Of Doctor's Derision, Lawsuit Upheld.

Abusive conduct does not have to be explicitly sexual in nature to be unlawful sexual harassment.

The key issue is whether members of one gender are exposed to disadvantageous terms or conditions of employment to which members of the other gender are not exposed.

Intimidation and hostility to women because they are women obviously can result from conduct other than explicit sexual advances.

There is a right to sue for sexual harassment when the workplace is permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment.

To be able to sue for sexual harassment, a victim does not have to demonstrate a tangible psychological injury.

An employer must investigate and take prompt remedial action when it receives a complaint of sexual harassment. In this case, four months was too long a delay in taking action.

UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT (MISSOURI), 1997.

The U.S. Circuit Court of Appeals for the Eighth Circuit (Missouri) recently upheld the right of a female resident physician to sue the hospital where she worked for sexual harassment, because of conduct directed at her by a supervising staff physician.

The Circuit Court overturned a lower court which in error had thrown out the suit. The Circuit Court stated as a broad generality that conduct by a male supervisor toward a female employee does not have to be explicitly sexual in nature to constitute unlawful sexual harassment.

Sexual harassment is fundamentally a form of gender discrimination. Derogatory comments, hostility and intimidation directed at women, but not at men, are discriminatory, and a form of sexual harassment. In this case, according to the court, the physician in question had a practice of referring to male residents and addressing them with the title "Doctor" and their last names, while female physicians were referred to as addressed by their first names. This was a signal the physician did not consider women as deserving as men of full professional recognition.

The physician asked the female resident in front of others why she had chosen a career in medicine rather than in nursing, or getting married and staying home with the children like another physician's wife.

The female resident was hospitalized twice, allegedly as a result of stress from her job situation. The court pointed out, however, that the right to sue for sexual harassment on the job is not dependent upon the victim having to show a direct cause-and-effect link between the harassment and a diagnosable mental or physical injury.

In this case it took four months until the director first spoke with the physician in question. The court said this did not meet the employer's legal requirement of prompt remedial action reasonably calculated to end the harassment. **Smith vs. St. Louis University**, 109 F. 3d (8th Cir., 1997).