

LEGAL EAGLE EYE NEWSLETTER

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Degenerative Joint Disease: Court Rejects Nurse's Disability Discrimination Lawsuit.

Over a span of six years working in an assisted living facility an LPN developed degenerative joint disease which caused severe arthritic pain in her knees.

The director of nursing asked her several times whether her knee problem was getting in the way of her nursing responsibilities. The LPN elected to have knee replacement surgery.

The LPN was given twelve weeks of medical leave, meaning she was expected to return to work on a specified date without any medical restrictions.

She returned to work on the specified date, but with a note from her physician that for six more weeks she could not kneel, could not squat and could not lift more than 50 pounds, but was otherwise cleared by her physician to return to work.

The next day the facility terminated her employment, but with a provision that she was free to apply for re-hiring when her physician had lifted her medical restrictions entirely. The LPN did not return to work.

She sued her former employer for disability discrimination. The US District Court for the District of Minnesota dismissed her case. The Court's opinion is a very complete discussion of the subject of disability discrimination as it applies to nurses.



After her knee surgery the LPN asked to be accommodated by being allowed to call for assistance if a resident fell, being given an aide to help her or having her job kept open six more weeks to stay off and recuperate fully.

An employer need not reallocate or eliminate the essential functions of a job to accommodate a disabled employee.

UNITED STATES DISTRICT COURT
MINNESOTA
November 7, 2013

Disability Discrimination

Whether an individual relies on the US Americans With Disabilities Act or comparable state statutes, the very first question is whether individual is a qualified individual with a disability.

It was not disputed that the LPN had a disability. However, the facility hotly disputed her claim she was a qualified individual with a disability.

To be a qualified individual with a disability an employee must be able to perform the essential functions of the position, with or without reasonable accommodation.

Essential Functions of the Position

The courts usually tend to defer to the employer's own definition of the essential functions of a particular position.

A function is essential when the position exists to perform the function, the function may only be performed by a limited number of employees or it requires special expertise.

Evidence that a function is essential includes the employer's written job description, the amount of time spent performing the function, the consequences of not performing the function and current work experience of others in similar jobs.

Continued on page 5.

Inside this month's issue...

December 2013

New Subscriptions
See Page 3

Degenerative Joint Disease/Disability Discrimination
Neonatal Intensive Care - Post-Surgical Nursing Care/Hospital Bed
Medical Records - Nursing Home/Disability Discrimination
Nurse/Age Discrimination - Nurse/Employee Assistance Program
Nursing Assistant/Insubordination - Nurse/Racial Discrimination
Patient's Falls/Nursing Care/Restraints - Nursing Assistant/Abuse
Skin Care/Nurse As Expert Witness - Labor & Delivery Nursing
Nurses/Racial Discrimination - Nurse/HIPAA Violations

Degenerative Joint Disease: Court Rejects LPN's Disability Discrimination Lawsuit (Continued).

Continued from page 1.

In this case the facility's job description for a staff LPN was in place before the LPN went out on leave. It listed kneeling, squatting and lifting more than 50 pounds essential functions of the LPN position. The LPN herself signed off on a "Physical Job Demands" document to this effect when she started work.

The physical tasks of kneeling, squatting and lifting are inherently connected with attending to patients and the consequences of failing to perform a nurse's required duties are potentially dire, the Court said.

The restrictions imposed by the LPN's physician were incompatible with the essential functions of her job, unless there was a reasonable accommodation.

Reasonable Accommodation

The Court pointed out at the start of this phase of the analysis that a disabled employee need only ask for a certain specific accommodation and that shifts the legal burden of proof to the employer to demonstrate that the requested accommodation is unreasonable.

An accommodation is unreasonable if it imposes an undue hardship on the employer, that is, significant difficulty or expense is involved.

The court looks at the nature and cost of the accommodation in light of the overall financial resources of the organization, the number of persons employed at the facility and the impact of the requested accommodation on the facility's operations, to see if it would be unreasonable.

FMLA Retaliation

The LPN's lawsuit also alleged retaliation for taking medical leave for her knee surgery, leave to which she was absolutely entitled by the US Family and Medical Leave Act (FMLA).

The Court agreed in general terms that employers are strictly prohibited from such retaliation. However, the physician's restrictions which the facility could not accommodate were a legitimate reason for terminating her when she returned from leave. **Attigobe-Tay v. SE Rolling Hills**, 2013 WL 5954685 (D. Minn., November 7, 2013).

After her knee surgery the LPN asked to be accommodated by being allowed to call for assistance if a resident fell, being given an aide to help her or having her job kept open six more weeks to stay out and recuperate fully.

An employer need not re-allocate or eliminate the essential functions of a job to accommodate a disabled employee.

This LPN was the only nurse on duty overnight. Transferring her duties to other employees would hamper them in the performance of their own. An employer is not required to hire an additional employee or employees to assist a disabled employee.

Job restructuring, re-scheduling, part-time work and leaves of absence are within the definition of reasonable accommodation.

However, the facility already paid \$8,000+ in overtime to other nurses to keep the LPN's job open, rather than replacing her, which would have been problematic while she was out on FMLA leave. More time off would be unreasonably burdensome.

UNITED STATES DISTRICT COURT
MINNESOTA
November 7, 2013

Racial Bias: Nurses Did Not Discriminate Against Minority Housekeeper.

A hospital housekeeper who was a minority was terminated from her job for a series of disciplinary infractions that were considered to endanger the safety and wellbeing of patients, visitors and staff.

She sued her former employer, claiming that certain of the hospital's nurses were guilty of discrimination and racial hostility.

The hospital had legitimate, non-discriminatory grounds for firing the minority housekeeper, and the person who replaced her was also a minority.

UNITED STATES DISTRICT COURT
LOUISIANA
November 13, 2013

The US District Court for the Eastern District of Louisiana dismissed her case.

An RN reported the housekeeper for not putting out the wet-floor sign after another nurse slipped and almost fell after she mopped.

She accused the same nurse of harassment for asking her to empty the trash receptacles in the nurses station.

Another nurse reported the housekeeper and spoke with her at length after it took her more than forty-five minutes to respond to a page that she was needed in her work area.

During that time a hospital security guard, also a minority, reported that he had seen her return to the hospital parking lot in her vehicle, that is, she failed to answer the page because she apparently had left the hospital premises during her work shift.

The evidence taken as a whole tended to prove to the Court's satisfaction that race was not the issue. The nurses had unbiased reasons to complain about her job performance. **Allen v. St. James Parish Hosp.**, 2013 WL 6017931 (E.D. La., November 13, 2013).