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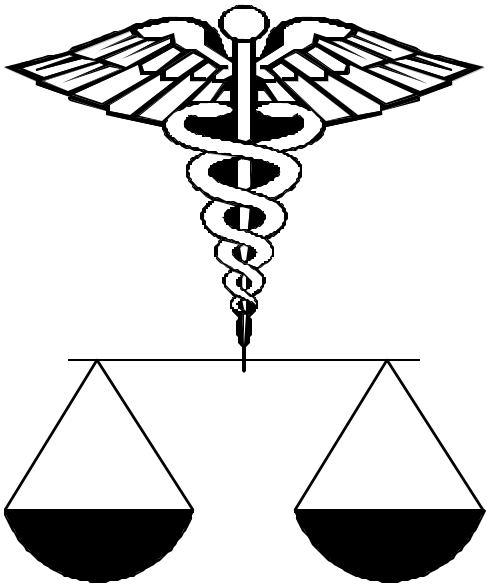
Pregnancy Discrimination Lawsuit: Court Overturns Nurses' Lifting Requirement.

Some important points of pregnancy-discrimination law, as the law applies to nurses, were emphasized in a recent ruling of the U.S. Fifth Circuit Court of Appeals (Texas).

Pregnant women are a specific category of persons protected by law from employment discrimination. An employer cannot have a physical-ability or strength requirement which results in a "disparate impact" on pregnant employees. This means whether or not an actual intent to discriminate can be proven, a physical-ability requirement is not going to pass for a bona fide occupational qualification, the court stated, if it is having the actual effect of pregnant women losing their jobs.

In this case, the hospital wrongly placed newly-pregnant nurses on involuntary medical leave, assuming the pregnant nurse's physician would not say she could push, pull, lift and support over 150 lbs. Pregnant nurses then fell victim to the hospital's rule that all employees out more than six months on medical leave had to be terminated.

The court was convinced the hospital's lifting requirement for nurses was purely artificial. The nurse in question was never tested, before she was hired, or after she was hired and before she became pregnant, to see if she could lift 150 lbs. In fact, no applicant or employee was ever tested to see if he or she could actually lift 150 lbs.



Pregnant nurses at this hospital needed a doctor's certificate saying they could lift 150 lbs., or they were forced out.

But the hospital never tested any nurse or expected any nurse to lift 150 lbs. on the job. The 150 lb. lifting requirement was purely artificial. It discriminated against pregnant nurses.

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT (TEXAS), 1996.

The hospital was wrong, the court ruled, for refusing to consider what the nurse's doctor had to say about her individual ability to continue to do her own particular job while she was pregnant. The U.S. Pregnancy Discrimination Act says that employers must consider each pregnant employee's need for pregnancy-related medical restrictions, if any, on an individual basis.

Action cannot be taken toward pregnant employees based on one-size-fits-all policies, but must be based on the employee's physician's judgment whether the employee can and should continue to do her job. It is not for the employer to tell an employee her pregnancy means she cannot work.

If a pregnant employee's physician does impose restrictions on lifting or standing or rules out exposure to infectious patients or hazardous substances, and the physician's restrictions are incompatible with the nurse's position, the nurse can be forced to take medical leave if a suitable alternate position is not available. **Garcia vs. Woman's Hospital of Texas, 97 F. 3d 810 (5th Cir., 1996).**

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