

## Pregnancy: CNA Unable To Fulfill Essential Job Functions.

***Even if the CNA could still accomplish certain aspects of her job while under medical limitations, she cannot question the fact that she was unable to fulfill several essential physical responsibilities of a CNA once her doctor imposed heavy-lifting restrictions.***

***There is no dispute that a CNA's job duties include turning residents in bed, lifting patients from their beds to wheelchairs, pushing residents in wheelchairs and ensuring that patients do not fall while walking.***

***The CNA's employer is not under any legal duty to adjust the CNA's job duties to accommodate her on account of her pregnancy.***

***The Pregnancy Discrimination Act does not impose an affirmative obligation on employers to grant preferential treatment to pregnant women.***

***It is not relevant that in the past the CNA sometimes used a mechanical lift to move her patients or sought assistance from another CNA to ensure that a patient did not fall.***

***It is not disputed that at most times the CNA would be solely responsible for direct care of ten to fifteen patients.***

UNITED STATES DISTRICT COURT  
LOUISIANA  
November 4, 2014

The CNA returned to work the day after her doctor's appointment where she learned she was six-weeks pregnant with twins.

The nursing home temporarily put her on light duty which involved no heavy lifting. But then after her doctor restricted her from lifting more than thirty pounds for the duration of her pregnancy the CNA was sent out on medical leave and then terminated when her leave expired.

### **No Pregnancy Discrimination**

The US District Court for the Middle District of Louisiana dismissed the CNA's lawsuit which alleged her rights under the US Pregnancy Discrimination Act and Family and Medical Leave Act were violated.

To be able to sue for discrimination an employee who was terminated due to pregnancy must be able to show that she was fully qualified for her job. That means the employee must have been able to meet all of the legitimate physical demands of the job even though pregnant.

In this case the CNA had to admit that her job responsibilities included turning residents in bed, lifting patients from their beds to wheelchairs, pushing residents in wheelchairs and ensuring that residents did not fall while being ambulated.

The lifting restriction imposed by her own doctor was incompatible with all of these essential job functions.

It was not relevant to her case that sometimes she had used a mechanical lift or asked for help from another CNA. Being able to do heavy lifting was still an essential element of her job.

### **Family and Medical Leave Act**

If an employee is eligible for medical leave guaranteed by the US Family and Medical Leave Act (FMLA), the employee must be restored to her former position after returning from pregnancy leave, if the position still exists at the facility.

However, in this case the CNA had not been on the job more than a year when she went out on pregnancy leave and had not worked the 1250 hours required for eligibility under the FMLA. Technically she had no rights under the FMLA for her employer to violate. ***Luke v. Cplace, 2014 WL 5609537 (M.D. La., November 4, 2014).***

## Disrespect: Court Says Aide's Firing Was Justified.

Just one week before her termination the aide had attended an in-service training session which stressed the importance of treating every resident with respect regardless of what the resident might do or say.

The aide became involved in an altercation with a resident who wanted to help himself to coffee from the coffee cart after the aide had offered him coffee in the dining room but he had declined.

The altercation involved the aide yelling at the resident and jerking the coffee cart away, which left the resident breathing heavily and visibly agitated.

The episode was captured on a hallway video surveillance camera.

***The argument caused the resident to become visibly agitated and interrupted other employees' work who had to step in.***

***The aide's conduct was harmful to her employer because it interfered with the employer's mission to provide an environment free from abuse and could expose her employer to damage to its reputation and potential legal liability.***

APPELLATE COURT OF ILLINOIS  
November 12, 2014

The Appellate Court of Illinois ruled the aide was not eligible for unemployment benefits after her termination, because she was guilty of misconduct.

The aide deliberately and willfully violated her employer's policy that all residents were at all times to be treated with respect, regardless of what the residents themselves might do or say.

Impolite or disrespectful behavior by employees harms the facility's mission to provide an abuse-free environment for its residents and might lead to legal liability. ***Washington v. Dept. of Employment, 2014 WL 5858354 (Ill. App., November 12, 2014).***