Exit Interview: False Charges, Emotional Distress Lawsuit.

A public health nurse suffered from multiple sclerosis, a progressive condition which made it increasingly difficult for her to do her job. As her condition progressed her duties were adjusted to accommodate her disability.

The nurse also was found guilty of nursing errors, not specified in the court record, which could have had serious consequences for her patients. A decision was made to terminate her employment.

During her exit interview a co-worker accused her of falsifying patient records to conceal the errors she had made. According to the court, the co-worker knew this accusation was false. The nurse sued for negligent infliction of emotional distress. The Appellate Court of Connecticut upheld her right to sue.

To prove negligent infliction of emotional distress intent is not required, only proof that it is foreseeable that emotional distress could occur.

APPELLATE COURT OF CONNECTICUT
January 18, 2005

The court ruled the nurse did not have to prove her co-worker intended to inflict emotional distress. It was not necessary that her co-worker's conduct be extreme or outrageous, only that it was wrong and she knew it was wrong. Wrongful conduct in a termination, even if the termination is justified, can be the basis for a lawsuit.

It was only necessary that the co-worker should have anticipated that making false accusations could cause a person in the nurse's position to experience emotional distress. **Olson v. Bristol-Burlington Health Dist., 87 Conn. App. 1, 863 A.2d 748 (Conn. App., January 18, 2005).**

Pregnancy Discrimination: Employee Does Not Actually Have To Be Pregnant To Sue.

An employee has a straightforward case of discrimination in violation of the US Pregnancy Discrimination Act (PDA) if the employee can show:

1. She was pregnant;

2. She was qualified for her job;

3. She was subjected to an adverse employment decision; and

4. There was a connection between her pregnancy and the adverse employment decision.

However, it can get more complicated than that.

The PDA also prohibits an employer from discriminating against a woman because of her capacity to become pregnant.

The most obvious case of that would be discrimination against a woman who had been pregnant, had taken maternity leave and might become pregnant again and decide to go out on leave.

This discussion, however, is based on the assumption the employee can prove that her potential to become pregnant was her supervisor's motivation.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
March 11, 2005

The US Circuit Court for the Sixth Circuit has given a broad interpretation to the US Pregnancy Discrimination Act, an interpretation which allows not only pregnancy but an employee's capacity to become pregnant or a supervisor's expectation she will become pregnant as grounds for a discrimination lawsuit.

A nurse resigned her position due to complications of her first pregnancy. When she was ready to return to work she applied for re-hire on a part-time basis. She was turned down. She filed a complaint with the Equal Employment Opportunity Commission, then sued her former employer in Federal court.

Potential Pregnancy Grounds For Suit

The court agreed in general terms with the underlying legal premise behind her lawsuit, but ruled she did not have the evidence to prove her case.

There had been scheduling difficulties surrounding her pregnancy before she resigned. It can be considered discriminatory for an employee to be penalized based on a supervisor's expectation that normal pregnancy-related scheduling difficulties may occur and/or that the employee will take leave or resign due to pregnancy.

In this case, however, the court put the blame for the scheduling difficulties on the nurse's uncooperative attitude. The court did not see her former supervisors as having a discriminatory attitude toward the normal consequences of pregnancy.

Was Asked If She Intended To Become Pregnant Again

She was asked in her re-hire interview if she intended to become pregnant again. Although asking her that question was ill-advised, the court ruled it was not persuasive evidence of discriminatory motivation when taken in context with her uncooperative attitude. One isolated remark is generally not sufficient evidence of discrimination. **Kocak v. Community Health Partners of Ohio, Inc. __ F.3d __, 2005 WL 563974 (6th Cir., March 11, 2005).**