

Pregnancy Discrimination: Court Finds Unequal Treatment, Nurse Has Grounds For Her Case.

While she was out on maternity leave an LPN began receiving calls from the facility's LPN supervisor and from the RN supervisor trying to get her to come back to work sooner than planned.

They reportedly threatened that if she did not return to work right away, once she did return she would be fired if she missed even a single day. They also held over her head the issue whether she would be given a choice between a.m. or p.m. shift if she did not cut her maternity leave short.

Medication Error Leads To Termination

The LPN refused to be threatened and took her full maternity leave, only to be fired over a medication error shortly after she did come back to work. The US District Court for the Eastern District of Arkansas went over the details very carefully.

She gave Atarax to a patient for whom Vistaril was ordered. Although those are trade names for two basically equivalent drugs she was not sure how to chart it in the medication administration record. She eventually went back and made a note for each night for more than a week that she did, in fact, give Atarax, but without noting it as a "late entry" as required by facility policy. Then she had to go back again and cross out her entries for two nights she later realized she did not actually work.

The LPN admitted that what she did was a clear violation of nursing standards and of facility policies and procedures.

However, for purposes of anti-discrimination law that was only part of the story. A male LPN had committed a medication error which could have compromised a resident's safety and then compounded his error by falsifying his charting after the fact to try to hide what he did.

What the male LPN did was at least as serious or even more serious than what the female LPN in question did, yet the male was only suspended for three days.

The court ruled that preferential treatment given to a male co-worker created a *prima facie* case that this female LPN was a victim of pregnancy discrimination. **Griffin v. Webb**, ___ F. Supp. 2d ___, 2009 WL 2870526 (E.D. Ark., September 3, 2009).

A male LPN was not fired, only suspended for three days, after he neglected to give a resident her medication, then gave the medication late but did not notify the physician and then falsified the medication administration record.

The terminated female LPN in question has a pregnancy discrimination case.

One of the fundamentals of anti-discrimination law is that an employee with a certain characteristic who claims to be a victim of discrimination must demonstrate that at least one other employee who lacks that characteristic was treated more favorably.

This applies across the board in race, gender, nationality, disability and pregnancy discrimination.

In general, to prove discrimination an employee must prove:

The employee is in a protected group;

The employee is meeting the employer's legitimate expectations;

The employee was the victim of adverse action; and

Another employee, not in the protected group, was treated more favorably.

UNITED STATES DISTRICT COURT
ARKANSAS

September 3, 2009