

Sexual Harassment: Court Faults Employer's Response, Validates Nurse's Lawsuit.

Two months after a male nurse co-worker began making sexually inappropriate comments to a female staff nurse she phoned the nursing director.

The director had been involved in hiring the male nurse and knew from his employment references he had been fired for violation of his previous employer's sexual harassment policy.

His offensive conduct continued. Two weeks after the phone call the nursing director told the nurse/victim that after she got written statements she would investigate the situation. The nursing director promised to start sexual harassment training sessions. The director met with the perpetrator a few days after that and gave him a "final" warning. Still the nurse had to work on the same floor as he did for several more months and had to go to great lengths to avoid him. She went to a psychiatrist and was put on antidepressants.

Five months after the phone call to the nursing director the male nurse was fired for an off-campus romantic affair with a former patient.

Court Validates Nurse's Lawsuit

Occasional teasing, offhand comments, sporadic use of abusive language and gender-related jokes are an accepted fact in the workplace and do not amount to a sexually hostile work environment.

The US District Court for the Middle District of Pennsylvania ruled in this case that the nurse had valid grounds for a sexual harassment lawsuit.

The director of nursing did basically nothing for nineteen days after a complaint of harassment from a female staff nurse by a recently hired male staff nurse whose record from his former employer contained two charges of sexual harassment, one of which had led to his termination.

The two nurses were not separated, his widely known offensive conduct continued and nothing was done to stop him.

The allegations of harassment were supported by statements from other nurses and a nursing unit manager who investigated the first victim's allegations. Lawrence v. Schuylkill Med. Ctr., 2012 WL 3536978 (M.D. Pa., August 14, 2012).

The focus is on the timing and the adequacy of the employer's response in sexual harassment cases involving co-workers on the same level in the institutional hierarchy.

Employees' lawsuits have been dismissed in cases where management undertook an investigation within a day after being notified of the harassment, spoke with the alleged harasser about the allegations and the employer's sexual harassment policy, warned the harasser that the inappropriate conduct would not be tolerated and acted upon that warning when necessary.

An employer can be liable to the victim in a sexual harassment lawsuit for the harassing conduct of a co-worker if the employer was negligent or reckless in failing to train, discipline, fire or take other effective remedial action upon notice that harassment was happening.

In this case basically nothing was even started for nineteen days after the first victim came forward and no investigation was undertaken until two days after two more victims spoke out. That was not right.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
August 14, 2012

Abuse: Nurses Aide Fired For Misconduct.

At 3:00 a.m. a nursing assistant employed in a nursing home received two calls at almost the same time, one from one resident's call light and one from a floor alarm in another resident's room.

She answered the call light first, then went to the other room. There the resident had removed her gown and thrown it on the floor along with a pillow that apparently set off the alarm.

The resident asked the aide to untie the tight knot near the head opening at the top of the gown.

The aide, who was apparently miffed at having to answer both calls without any help from the others on duty, became angry with resident and tried to force the gown back over her head without untying the knot, yelling at the resident who did not have her hearing aid in, while the resident was crying out in protest.

Abuse of a patient is grounds for terminating a patient-care worker.

Abuse is non-accidental conduct which produces or which reasonably could be expected to produce physical pain or injury or emotional distress.

COURT OF APPEALS OF MINNESOTA
July 23, 2012

The Court of Appeals of Minnesota ruled the facility had grounds to terminate the nurses aide for aggravated employment misconduct.

The definition of employment misconduct for an employee of a nursing home or hospital or other patient-care facility includes an act of patient or resident abuse, financial exploitation or recurring or serious neglect.

The definition of abuse includes conduct which is not an accident which produces or could reasonably be expected to produce physical pain or injury or emotional distress. Borg v. Regina Med. Ctr., 2012 WL 3023398 (Minn. App., July 23, 2012).