

# LEGAL EAGLE EYE NEWSLETTER

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## Family And Medical Leave Act: Nurse Entitled To Same Work Shift On Return From Leave.

A staff nurse was fired from her job because she refused to accept a swing or graveyard shift when she returned to work from an authorized family leave instead of the day shift she had been working before.

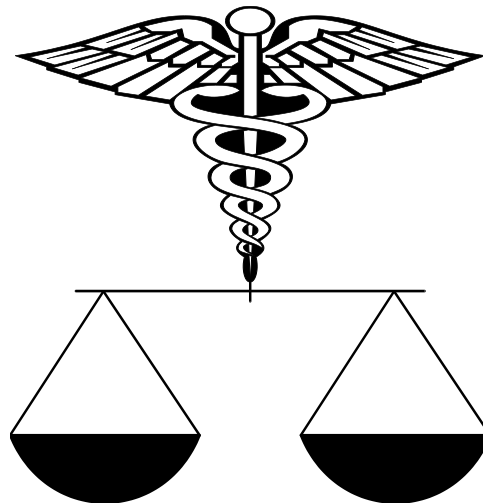
### **Sexual Harassment Single Mother**

The nurse alleged in her lawsuit that trying to reassign her to a shift that would be incompatible with her child-care responsibilities as a single mother was part of a broader pattern of discrimination and harassment directed at her by her supervisors because she was a single mother.

The US District Court for the Eastern District of Pennsylvania did not go into the evidence to decide if the nurse was in fact a victim of discrimination or harassment.

The court stated in general terms that treating an employee differently because she is a single mother does come within the legal definition of sexual harassment under Title VII of the US Civil Rights Act.

However, that being said, a significant stumbling block for an employee can be that a violation of the US Civil Rights Act must be reported to the US Equal Employment Opportunity Commission within 180 days.



***When an employee returns to work from FMLA leave the employee is entitled to the same position the employee held when the leave commenced or an equivalent position with equivalent terms and conditions of employment.***

***The nurse is a single mother with child-care responsibilities.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
November 8, 2004

Failure to file on time can result in the employee's right to sue being barred. The nurse's civil rights claim was denied for this reason.

### **Family and Medical Leave Act Inequivalent Position**

The nurse's lawsuit did have a solid leg to stand on. The US Family and Medical Leave Act (FMLA) requires that an employee be restored to the same or an equivalent position on returning from leave, unless that will pose an extreme hardship to the employer. Apparently there were plenty of day-shift openings at the hospital, yet she was told she had no choice but to accept swing or graveyard shift or resign from her position.

The court interpreted the language in the FMLA about the right to be restored to the same or an equivalent position to mean that for this nurse a shift other than the day shift she had been working was not equivalent.

Assuming the employee is covered by the FMLA (the employer has 50+ employees, the employee has been there more than one year), the employee is entitled to up to twelve weeks of unpaid leave in a twelve-month period for the employee's or a family member's serious health condition. **Lentz v. Gnadden Huetten Memorial Hosp., 2004 WL 2514898 (E.D. Pa., November 8, 2004).**

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