Family And Medical Leave Act: Court Upholds Nurse's Lawsuit.

A nurse needed to take every Friday off work for twelve weeks to take her adult daughter to her cancer chemotherapy treatments. The nurse applied to her employer for intermittent family leave under the US Family and Medical Leave Act (FMLA) and the parallel California state law. She was approved.

An employee is entitled to intermittent leave to care for a qualifying family member's serious health condition. However, the nursing home later went back on its allowance of intermittent family leave on the grounds that a non-disabled adult child is not within the FMLA's definition of a family member for whose serious health condition leave must be given. The nurse was told her only options were to work Fridays, take a full-time leave for the twelve week period or resign altogether.

The nurse resigned and sued for violation of the Federal and California state family leave laws.

The US District Court for the Northern District of California upheld her right to sue, adding a new legal wrinkle to the interpretation of the FMLA.

Employer's Misinterpretation of the Law Was Prejudicial

The court ruled the employer was eventually correct in its interpretation of the FMLA that an adult child who was not disabled prior to onset of the serious health condition at issue is not within the definition of a family member for whom an employee can take FMLA leave.

However, this nurse's employer caused actual prejudice to this nurse's employment situation by granting her leave request and then by going back on its decision and forcing her to resign through a misinterpretation of the FMLA.

Although the nursing home had no obligation to honor the nurse's request for intermittent leave in the first place, the court ruled the employer gave this nurse certain legal rights once her leave request was approved in error. After that the employer had no right to force the nurse to resign. **Headlee v. Vindra Inc., 2005 WL 946981 (N.D.Cal., April 25, 2005).**

The US Family and Medical Leave Act (FMLA) gives an employee who has been on the job at least a year the right to take up to twelve weeks unpaid leave for the employee's or a family member's serious health condition.

However, the FMLA limits the definition of family member to a spouse, son, daughter or parent. A son or daughter must be under the age of eighteen, or, if older than eighteen, the son or daughter must be incapable of self-care due to a pre-existing physical or mental disability.

The nurse's adult daughter, who required chemotherapy for cancer, had a serious health condition, but was not otherwise physically or mentally disabled and did not fit within the FMLA's definition of a family member for whom the employee could take leave.

Nevertheless, her employer acted prejudicially first approving FMLA leave in error, then going back on its decision and requiring the nurse to resign her position altogether so she could care for her daughter.

UNITED STATES DISTRICT COURT
CALIFORNIA
April 25, 2005

Disability Discrimination: Nurse Not Disabled, Suit Dismissed.

The US District Court for the Northern District of Illinois has reiterated the analysis the courts use in evaluating nurses' disability discrimination cases.

The threshold requirement in any disability discrimination case alleging failure to provide reasonable accommodation is for the employee to establish that he or she has a disability as contemplated by the Americans With Disabilities Act (ADA).

If the employee does not have a legal disability, the employer has no obligation to provide reasonable accommodation and the employee has no right to sue.

The nurse's medical restrictions, which included no repetitive lifting, pushing, pulling or squatting and no lifting over fifteen to twenty pounds, are not severe enough to qualify as a disability under the Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
ILLINOIS
April 27, 2005

The ADA defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

The courts routinely rule that restrictions on physical activity that may make an employee unsuitable for some jobs but do not rule the employee out from employment somewhere in the relevant job market do not make the employee disabled. The nurse in this case was eventually placed in the ENT clinic where physical activity is minimal, meaning she was never disabled all along. **Hannah v. County of Cook, 2005 WL 1026716 (N.D.Ill., April 27, 2005).**