

Elder Abuse: Court Protects Supervisor For Discipline Of Nurses Aides.

A charge nurse in a nursing home was fired for an incident in which she allegedly became loud and argumentative with the CNA's over the way they were making up the patients' beds.

The charge nurse had a specific way she wanted the chux pads positioned to direct wetness away from patients' skin.

Common-Law Employee at Will Rule Must Bend for Public Policy Against Elder Abuse

The Court of Appeals of Iowa noted that the charge nurse did not have an employment contract and was not working under a collective bargaining agreement.

A common-law employee at will, as a general rule, can be let go by the employer at any time for any reason.

However, the employee-at-will rule does not justify disciplinary action by an employer that goes against public policy.

An employee cannot be fired for a reason that vio- lates public policy.

COURT OF APPEALS OF IOWA
March 26, 2009

The court upheld the basic premises behind the fired charge nurse's wrongful-discharge lawsuit against her former employer.

The charge nurse was in the act of trying to prevent elder abuse when she got into the verbal altercation with the CNA's that resulted in her firing; prevention of elder abuse is a public policy that deserves validation by the courts.

Although her legal status at the time was only an employee at will, the charge nurse has grounds to sue her former employer over her firing, the court ruled. Tuttle v. Keystone Nursing Ctr., 2009 WL 779538 (Iowa App., March 26, 2009).

Medical Confidentiality: HIPAA Applies To Employees' Charts.

The nursing supervisor violated the nurse's medical confidentiality when she looked in the nurse's E.R. chart to see if the physician had excused her from work.

The US Health Insurance Portability and Accountability Act (HIPAA) protects the medical confidentiality of employees who are also patients where they work.

Violation of medical confidentiality is valid justification to terminate an employee of a healthcare facility.

However, the way the hospital applied its policy for medical confidentiality has implications going beyond the rules protecting patient confidentiality.

When the facility terminated this nursing supervisor, an African American, the facility committed race discrimination. A Caucasian nursing supervisor who had done the same thing in the past was never disciplined.

When a facility imposes an ostensibly appropriate disciplinary policy on a minority employee after not doing so with a non-minority, the minority employee, even if guilty of serious misconduct, has grounds to claim race discrimination.

UNITED STATES DISTRICT COURT
ARKANSAS
April 1, 2009

A hospital staff nurse called in sick on Monday for Monday and Tuesday. Hospital policy was that nurses were not supposed to call in sick more than one day in advance.

The nurse's phone call indicated she was seen in the hospital's own emergency room for her present illness. The nurse's unit supervisor got the nurse's chart from the E.R. and checked to see if the physician had excused her from work both Monday and Tuesday as she claimed. Then the supervisor called human resources to discuss what to do about an apparently unexcused absence from work.

The human resources manager shot back with a memo to the effect that the nursing supervisor had violated the staff nurse's right to medical confidentiality in violation of hospital policy and Federal law.

The nursing supervisor was promptly terminated.

Minority Disciplined More Harshly Than Non-Minority Court Finds Race Discrimination

The US District Court for the Eastern District of Arkansas pointed out that violation of any patient's right to medical confidentiality can be grounds for termination, whether or not the patient also happens to be an employee of the facility. However, in this case there was more to it than that.

The African-American nursing supervisor in this case was terminated.

A Caucasian nursing director who in the past had openly admitted in a staff meeting that she had looked at an employee/patient's chart without permission never faced any disciplinary action.

It is blatant race discrimination to take harsher disciplinary action toward a minority than a non-minority employee for the same offense, the court pointed out.

Anti-discrimination law requires that the same disciplinary action must be handed out for the same offense to every employee regardless of race. Whether the harshness of the punishment matches the seriousness of the offense is only part of the issue. Scott v. Helena Reg. Med. Ctr., 2009 WL 903450 (E.D. Ark., April 1, 2009).