

Age Discrimination: Nurse's Lawsuit Dismissed.

An RN with eleven years on the job was working as night-shift house nursing supervisor at a 124-bed facility which served the behavioral, psychiatric and mental health needs of children and adolescents ages five to seventeen.

As house nursing supervisor during the night she was the highest ranking employee on duty in the facility.

A five-year old was brought in by the police after they found him wandering the streets in his underwear. The nursing supervisor helped a staff nurse assess the child and determined that he needed medical care that the facility could not provide.

Instead of arranging for medical transport and contacting the receiving facility she simply had the police drive the child in the police car to a children's hospital.

Nurse Terminated for Violation Of Hospital Policy

The nursing supervisor was terminated for violation of hospital policy which required transfer of any child presenting at the facility whose medical needs could not be met. The transfer was to be a medical transfer by ambulance accompanied by full communication with the receiving facility.

The nursing supervisor tried to argue that the child was not medically unstable, did not need to be sent in an ambulance and that there was no consent from a parent for admission to the receiving facility.

Nurse's Age Discrimination Lawsuit Dismissed

The US District Court for the Eastern District of Arkansas dismissed the nurse's lawsuit which alleged that age discrimination was behind the decision to fire her.

One necessary element of a successful age discrimination lawsuit is proof that the alleged victim was meeting the employer's legitimate expectations.

The Court ruled that an employee is not meeting the employer's legitimate expectations when the employee violates the employer's express policy in a way that could adversely impact patient safety and wellbeing and expose the employer to legal liability. When that happens the employee cannot claim that discrimination was the motive for discipline or termination. **Parker v. BHC Pinnacle Pointe**, 2013 WL 64517 (E.D. Ark., January 4, 2013).

To sue for age discrimination the alleged victim must prove he or she

Was 40 to 70 years of age; Suffered an adverse employment action; and

Was meeting the employer's legitimate expectations at the time of the adverse employment action.

The nurse did possess the basic qualifications for her position but her employer could show that there was nevertheless a legitimate reason for her termination.

The employer's grounds for termination were that the nurse, as house supervisor, did not follow hospital policy and practice in transferring a child who presented for admission.

Neither she or her staff nurse coordinated an appropriate medical transfer, contacted the receiving facility or gave a report to the receiving facility.

Not sending the child in an ambulance and not contacting the receiving facility, her superiors believed, was a potential Emergency Medical Treatment and Active Labor Act violation.

The house supervisor on duty during the night is responsible for initiating patient transfers in compliance with the EMTALA.

UNITED STATES DISTRICT COURT
ARKANSAS
January 4, 2013

Racial Bias: Nurse's Lawsuit Dismissed.

The nurse worked for a rehabilitation facility as a rehab nurse liaison.

Essentially she functioned as a marketing representative whose job was to bring new patients into the facility.

She is Caucasian. Her supervisor was African-American and her co-worker, a nurse who worked in the same capacity, was also African-American.

The Caucasian nurse was placed on probation for low performance numbers of patient referrals. While on probation she was told her marketing plan was due that day. She jotted down a couple of items, left the report on her desk and went home.

She was fired and then sued for race discrimination.

The co-worker was reprimanded, not fired, over her marketing plan but she was not already on probation for poor performance.

The co-worker is not a valid basis for comparison.

UNITED STATES DISTRICT COURT
ALABAMA
January 16, 2013

The US District Court for the Middle District of Alabama agreed in principle that a Caucasian employee with an African-American boss or African-American co-workers can be a racial minority with rights under the US Civil Rights Act.

However, the same rules apply as in other minorities' cases. The alleged victim must show that he or she was treated less favorably than a non-minority who was similar to the victim in all relevant respects except for not being a minority.

In this case the Caucasian nurse's co-worker was reprimanded over a substandard marketing plan but was not fired. The Court pointed out, however, that the co-worker was not already on probation for poor performance. Thus she was not a valid basis for comparison for purposes of a discrimination case, the Court ruled. **Peters v. HealthSouth**, 2013 WL 172998 (M.D. Ala., January 16, 2013).