

# Age Discrimination: Court Evaluates Hospital's Policies.

The US Court of Appeals for the Sixth Circuit turned down an age discrimination lawsuit filed by a hospital nurse sixty-three and a transcriptionist fifty-three at the time of their terminations.

## **Violation of Medical Confidentiality Ostensible Reason for Termination**

The nurse got her ten year-old granddaughter's x-rays from the transcriptionist who worked in radiology for her daughter to give to the granddaughter's doctor at an office visit. The nurse's daughter did not sign a written release for her daughter's x-rays, but allegedly did verbally tell the nurse to tell radiology it was alright.

## **Hospital Did Not Have Policy Requiring Written Release**

Although it is now required by the US Health Insurance Portability and Accountability Act (HIPAA) the hospital had apparently never enacted procedures requiring signing of a printed release form prior to transmittal of patient records.

It is high-risk behavior *vis a vis* potential liability for employment discrimination to discipline or terminate a minority or forty-to-seventy year-old for violation of a policy or procedure which does not actually exist on paper.

In this case the court happened to be satisfied that the person responsible for the terminations believed there was such a policy and that termination was mandated by HIPAA and thus was not motivated by discriminatory intent.

## **OK To Target More Senior Employees For Reduction in Force**

Hospital management was looking to cut costs by removing employees who had built up more seniority. The court ruled that is legitimate as long as older employees are not disproportionately affected. Job seniority and chronological age are not necessarily equivalent, the court pointed out. Allen v. Highlands Hosp., \_\_ F. 3d \_\_, 2008 WL 4629518 (6th Cir., October 1, 2008).