

## Age Discrimination: Hospital Had Grounds To Fire Nurse, Court Throws Out Bias Allegations.

A staff nurse was mistreating her patients. The neonatal clinical manager, nursing manager and a human resources representative obtained written statements from six nurses on the unit corroborating the facts.

The nurses actually witnessed the nurse pinching infants' noses to get them to eat and then force-feeding them. In one incident the infant became dusky but the nurse simply blew in the baby's face to restore breathing.

The nurse had also been seen spanking, shaking and yelling at her patients and applying pressure to infants' jaws to get them to suck a bottle.

She was informed an investigation was underway and was told she could name any witnesses she had on her side to dispute the allegations being made.

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***Employees forty to seventy years of age are protected from discrimination.***

***Before treating any such employee adversely compared to someone younger, the employer must have proof of a legitimate, non-discriminatory justification.***

***Mistreating or otherwise endangering patients is a legitimate, nondiscriminatory basis for disciplinary action.***

UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT  
May 9, 2006

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The nurse, sixty years of age, was fired and replaced by two part-time nurses in their twenties and thirties. She sued for age discrimination.

### **Protected Employee**

#### **Legitimate Justification Required**

Before any employee in the protected 40-70 year-old age bracket is treated adversely compared to younger workers, the employee's supervisors must be prepared to prove they have a legitimate, nondiscriminatory justification, the US Court of Appeals for the Sixth Circuit pointed out.

The court ruled that documented incidents of patient mistreatment by a healthcare worker are legitimate justification for firing. **Stephens v. Kettering Adventist Healthcare, 2006 WL 1307476 (6th Cir., May 9, 2006).**