

Pregnancy Discrimination In Employment: Nurse's Case Thrown Out By Court.

The nurse involved in this case was recruited out of nursing school to work in a hospital's post-anesthesia care unit, having worked at the hospital in a volunteer capacity for some years before graduating from nursing school. Along with three other recruits in the PACU, two of whom had prior med/surg nursing experience, she began an intensive three-month orientation program in which she and the others were under the tutelage of a clinical instructor and always closely precepted by an experienced nurse while on duty.

Initially the nurse in question was seen as having a positive attitude, but was having trouble taking the initiative in patient care, was not asking questions and was not reporting going on and off the unit. A plan of corrective action was decided upon and discussed with her.

As time went on, however, there were numerous specific, documented incidents of sub-standard patient care, such as failure to administer IV drip and IV push medications properly, failure to call a code promptly for a patient in respiratory distress, and failures to assess patients accurately, all of which could have placed patients in serious jeopardy, if the situations had not been caught by preceptors or more experienced co-workers. After a series of disciplinary conferences, the hospital determined it was prudent and necessary to terminate the nurse's employment.

The nurse told her superiors of her pregnancy one month before she started being written up for serious discrepancies in patient care. After being terminated less than three months after the first serious incident, she filed discrimination charges with the EEOC. The Federal District Court in Oklahoma dismissed all discrimination charges filed over this nurse's termination, as there were adequate, documented, non-discriminatory reasons for her firing. **O'Hara vs. Saint Francis Hospital, Inc.**, 917 F. Supp. 1523 (N.D. Okla., 1995).

Inadequate patient care is a legitimate, non-discriminatory reason for firing a nurse.

The hospital produced evidence the nurse was released because she was incompetent, in that she lacked the skills of a professional nurse which were essential to her work and posed a threat to patient care and safety.

In general, the courts will consider circumstantial evidence of discrimination, such as suspicious timing of disciplinary action right around the time an employee announces she is pregnant.

However, in this case, the timing of the nurse's disciplinary write-ups alone was not sufficient to validate her accusations of pregnancy discrimination, according to the court, given that the sub-standard patient care episodes were well documented and corroborated by many witnesses.

The nurse was not able to produce a witness, other than herself, to dispute the hospital's list of documented incidents of sub-standard patient care.

UNITED STATES DISTRICT COURT,
OKLAHOMA, 1995.

Reports Of Abuse And Neglect Of Vulnerable Adults: Legal Protection Not Extended To Anonymous Calls To State Agency.

Persons who in good faith file formal reports of actual or suspected incidents of abuse or neglect of vulnerable persons with appropriate officials are protected by law from their employers' retaliatory actions.

The Court of Appeals of Minnesota ruled recently, however, that this legal protection will not be extended to a caregiver employed to work with developmentally disabled adults who makes repeated anonymous phone calls to a state agency, to voice her concerns over the system being used by her employer to monitor residents' medications, over one resident seeming to dominate other residents, and over her supervisor's "bossy and unprofessional attitude."

Thus, according to the court, it was legally permissible for the facility to fire this caregiver, when a co-worker reported her as the one behind the anonymous calls.

First, to qualify for legal protection from retaliatory action by one's employer for reporting abuse or neglect of vulnerable persons, a formal report must be filed with appropriate officials.

Second, there must be a good faith belief that abuse or neglect has happened or continues to take place. Abuse or neglect means depriving a vulnerable person of necessary food, clothing, shelter, health care or supervision, or non-therapeutic conduct producing pain, injury or mental distress, or sexual contact with such a person, or misuse of such a person's assets or possessions.

Differences of opinion do not amount to reports of neglect or abuse, and are not given any special protection under the law, according to the court. **Cannon vs. Rehabilitative Services, Inc.**, 544 N.W. 2d 790 (Minn. App., 1996).