

Association Discrimination: Nurse Fired Over Spouse's Medical Bills Has Right To Sue.

The Americans With Disabilities Act (ADA) contains rarely mentioned language prohibiting an employer from discriminating against an employee because of a disability affecting an individual with whom the employee is known to have an association or relationship.

A groundbreaking court decision in 2004 was the first application of the concept of "association discrimination" to the scenario where an employee was fired because the employee's spouse had a disability that was costing the employer's health insurance plan significantly more than the employer wanted to budget.

The employee has to prove cause-and-effect. In the case at hand it was fairly obvious.

The hospital was in financial trouble. Managers were told to come up with creative cost-cutting strategies. The nurse's spouse's cancer treatments had already cost the hospital more than \$180,000. The nurse was fired shortly after refusing to put her husband in a hospice and discontinue aggressive treatments.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
February 27, 2008

A registered nurse was fired from her job in a hospital over the strain that the spiraling costs (\$180,000+) her husband's cancer treatments were putting on the hospital's self-insured health plan.

The US Court of Appeals for the Seventh Circuit ruled the fired nurse had grounds to sue her former employer under the Americans With Disabilities Act (ADA) and the Employee Retirement Income Security Act (ERISA), but no grounds to sue for age or gender discrimination.

ADA Prohibits

Association Discrimination

The legal concept of association discrimination comes from rarely mentioned language in the ADA recently resurrected from obscurity by the US Court of Appeals for just the situation in this lawsuit.

The hospital's financial situation was no secret. The nurse's manager tried several times to convince the nurse to drop her husband's costly cancer chemotherapy and radiation treatments and get him into a hospice. When the nurse refused for the third or fourth time, she was abruptly fired.

The court was satisfied the nurse met her legal burden of proof as to her manager's true motivation. Cutting out the cost of treatment for a disabled person with whom the nurse had an association or relationship was the only plausible rationale for the manager's actions.

ERISA Prohibits Retaliation

Well recognized legal precedents applying ERISA outlaw employer retaliation against an employee using the employee's or a family member's benefits under an employer-provided insurance plan.

No Age or Gender Discrimination

A twenty-five year-old male nurse ran up medical expenses of about \$5,000 without being fired for overusing the company health plan. The court ruled that that did not prove a case of age or gender discrimination, given the disparity in the amounts of money involved. ***Dewitt v. Proctor Hosp.***, ___ F. 3d ___, 2008 WL 509194 (7th Cir., February 27, 2008).