

LEGAL EAGLE EYE NEWSLETTER

December 2007

For the Nursing Profession

Volume 15 Number 12

Breast Cancer: Nurse Manager Not Disabled, Cannot Sue For Disability Discrimination.

A department nursing director was diagnosed with breast cancer. She needed several excisional biopsies and took an extended medical leave for radiation treatments and then chemotherapy.

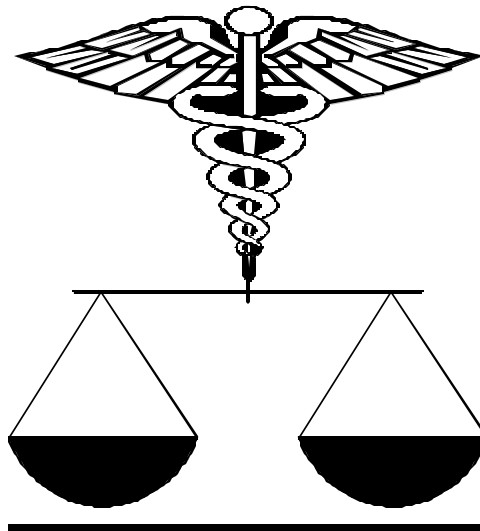
When she returned to work after her last medical leave she was told she could not continue as department director but would have to transfer to the staff nursing pool. At first she said she intended to resign. Then instead of resigning she asked and was allowed to transfer to a lower paying position as a unit nursing manager.

She sued her employer for disability discrimination. The US Circuit Court of Appeals for the Eleventh Circuit ruled in her employer's favor.

No Disability

The court ruled that the nurse did not have a disability. The fundamental issue in any disability discrimination lawsuit is whether or not the employee in question has a disability, as disability is contemplated under the anti-discrimination laws.

The court looks at the extent to which the employee is limited in major areas of life function. In this case, the nurse was, in fact, severely limited during the time she was recuperating from surgery and then undergoing radiation and chemotherapy.



A short-term impairment, even if quite severe, with no expected long-term side effects, is not a disability.

Even a condition as devastating and debilitating as breast cancer, involving multiple biopsies and surgeries, radiation therapy and chemotherapy, is not a basis for a disability discrimination lawsuit.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
November 15, 2007

However, according to the court, the most severe periods of limitation she suffered during her cancer treatment were short-term, temporary and contemporaneous with her treatment.

A Temporary Condition Is Not A Disability

The courts have already firmly established that a limitation of functioning, even if quite severe, that is short-term and temporary is not considered a disability, such as a period of recuperation from surgery.

Long-Term Restrictions Did Not Affect Ability To Work

She had a long-term fifteen-pound lifting limitation in the arm where lymph nodes were taken from the axilla, but that would not disable her from a management-level nursing job. If the employee does not have a disability, the court does not have to consider the issue of reasonable accommodation. **Garrett v. Univ. of Alabama**, __ F. 3d __, 2007 WL 3378398 (11th Cir., November 15, 2007).

Editor's Note: *Cancer Chemotherapy: Fired Nurse Can Sue For Disability Discrimination, Court Says.*, Legal Eagle Eye Newsletter for the Nursing Profession (15) 7, Jul. '07 p. 1 said that an employee falsely perceived by supervisors to have a disability, and dealt with on the basis of that false perception, is protected by the anti-discrimination laws even if the employee does not, in fact, have a disability.

Inside this month's issue ...

December 2007

[New Subscriptions](#)

See Page 3

IM Injection/Nursing Standard Of Care - Post-Surgical Nursing Care
Post-Colonoscopy Nursing Care/Versed/Drowsy Patient Falls
Alzheimer's/Psych Medication/Agitation/Gastrostomy Tube
Nursing Home Negligence/Arbitration/Surrogate Decision Maker
Aspiration Pneumonia/Dietary Orders/Mechanical Diet
Employment/Racial Discrimination - Religious Discrimination
Nursing Home/Patient Falls/Private Duty Sitter Left The Bedside
Confidentiality/Co-Workers' Emails/Co-Workers' Medical Records