

LEGAL EAGLE EYE NEWSLETTER

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Cancer Chemotherapy: Fired Nurse Can Sue For Disability Discrimination, Court Says.

A registered nurse with more than forty years experience in a variety of clinical settings was working as a telephone triage nurse for a physicians' pediatric medical practice.

When she was diagnosed with cancer and started chemotherapy her supervisor told her she should go on Social Security disability. The nurse replied that she was not disabled, would not qualify for Social Security, was fully capable of continuing to work and wished to remain in her position. She was terminated two days later.

Employee Falsely Perceived as Disabled Is Protected by the ADA

The US District Court for the Middle District of Florida pointed to the express language of the Americans With Disabilities Act (ADA). An employer cannot discriminate against a qualified individual with a disability who can perform the essential functions of the job. Nor can an employer discriminate against an able individual who is falsely perceived to have a disability.

In short, an employee like the nurse in this case does not necessarily have to be disabled to benefit from the ADA.

Disability discrimination, like other employment discrimination, entitles the victim to back pay to make the victim financially whole for the wrong suffered.



The Americans With Disabilities Act (ADA) outlaws employment discrimination against a qualified individual with a disability.

A person falsely perceived by his or her employer to have a disability, who does not actually have a disability, is protected by the ADA to the same extent as a disabled person.

UNITED STATES DISTRICT COURT

FLORIDA

May 31, 2007

Back pay, as the phrase is used, includes lost salary, raises and fringe benefits, from the date of firing until the day of judgment in court, less any actual income the person earned during that period.

The ADA also allows a victim of discrimination to receive compensation for emotional pain and suffering and mental anguish, up to a maximum of \$50,000.

The court can also add the victim's lawyer's fees to the damages for back pay and pain and suffering.

COBRA Violation

Health Insurance Continuation

The nurse was fired at a point in her life where she was very vulnerable to disruption of her health insurance coverage.

By law, an employee discharged from employment is entitled to be notified of the right to continue health coverage on a private-pay basis, according to the US Consolidated Omnibus Budget Reconciliation Act (COBRA).

The court found a COBRA violation on top of the ADA violation.

The court ruled the nurse was entitled to damages for lost income, medical expenses for her chemo not covered by the insurance she should have had, mental anguish and emotional distress and attorney fees, totaling over \$155,000. **Doss-Clark v. Babies and Beyond Pediatrics, 2007 WL 1577770 (M.D. Fla., May 31, 2007).**

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