Flexible Hours Requested, Employer Refused: No Disability Discrimination.

A health program associate employed in a long-term facility for the mentally ill was diagnosed with chronic fatigue syndrome.

When informed of the diagnosis, her employer reduced her hours to part-time and let her transfer to a facility closer to her home, pending a system-wide reorganization which was expected to close that facility.

Chronic fatigue syndrome is a disability.

Part-time work with regular days and fixed start and stop times is a reasonable accommodation.

A flexible schedule with no regular days or hours of attendance is not a reasonable accommodation.

APPELLATE COURT OF CONNECTICUT, 2000.

The employee eventually was required to work at a facility farther from home that had remained open. Her part-time status was continued, but she asked for a completely open-ended schedule, and that request was turned down. She sued for disability discrimination.

The Appellate Court of Connecticut upheld her employer. The accommodation she wanted was not reasonable. Granted she was disabled and she was entitled to reasonable accommodation, but her having no regular days or set hours of work would not be reasonable from the employer's perspective, the court ruled. **Ezikovich v. Commission on Human Rights and Opportunities, 750 A. 2d 494 (Conn. App., 2000).**

Nurse Requested Reduced Hours, Employer Refused: No Disability Discrimination.

This nurse by law is not disabled.

The Epstein-Barr virus does not hinder her ability to perform normal nursing tasks for a substantial number of hours during the week.

In fact, the nurse in this case got consistently favorable performance reviews up until the day she quit.

The nurse had to resign from the family planning clinic, but she is not restricted from finding another nursing position.

To be able to sue because reasonable accommodation was refused, an employee must have a disability as disability is defined by law.

The employee must also be able to perform the essential functions of the job with the accommodation, and the accommodation must be reasonable. That is referred to as being otherwise qualified despite a disability.

If an employee has a disability and is otherwise qualified and is treated adversely because of the disability, the employer may have to answer to a disability discrimination lawsuit.

UNITED STATES DISTRICT COURT, OHIO, 2000.

An LPN worked in an outpatient family-planning clinic thirty hours per week. Nine years after being hired she was diagnosed with Epstein-Barr virus. According to the court record, the virus caused her debilitating fatigue. Her only options were drug therapy and rest to relieve her fatigue.

The nurse was scheduled to work Mondays from 8:00 a.m. to 8:00 p.m. The entire medical staff was in the clinic on Mondays from 5:00 p.m. to 8:00 p.m., and those were the only hours during the week when the physicians were in the clinic to see patients. The number of patients coming to the clinic was highest on Mondays, particularly from 5:00 p.m. to 8:00 p.m., and the demand for the nurse's services was most critical during those hours.

Her physician wrote a letter to her supervisor at the clinic saying she could not work 5:00 p.m. to 8:00 p.m. because of extreme fatigue associated with her illness and requested that she be excused.

Her supervisor turned down her physician's request. They continued scheduling her for the Monday evening hours.

The nurse resigned and filed suit for disability discrimination. The U.S. District Court for the Northern District of Ohio ruled against the nurse.

The tack the court took was that the nurse failed to prove that her Epstein-Barr virus was a disability as disability is defined by law. Thus the court did not have to consider if the accommodation the nurse requested was a reasonable accommodation, although reading between the lines it looked like the court would rule it was not if it had to rule on the issue.

To be a disability, a medical condition must substantially limit a major life activity. That does not include being unable to meet the scheduling demands of one particular job. A nurse who is not able to work twelve-hour shifts has other options in the nursing job market, the court said. **Eibest v. Planned Parenthood of Stark County, 94 F. Supp. 2d 873 (N.D. Ohio, 2000).**