

LEGAL EAGLE EYE NEWSLETTER

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Disability Discrimination: Court Challenges Hospital's Full-Release-For-Duty Policy.

A registered nurse's job title was RN Case Manager. Her job description required her:

To assist patients of varying physical ability and size in the movements required for clinical care;

Perform clinical duties consistent with standard nurse practice;

Communicate with co-workers, patients, physicians, etc.

Work varying shifts;

Provide service in a friendly, calm, professional manner.

Patient's Physician Cleared Her To Return To Work

After a complicated course of treatment and medical leaves for a femur fracture from a trip and fall on the job, the nurse's physician cleared her to return to work as a clinical case manager, with no lifting over 50 pounds and use of a cane to walk.

Hospital Policy

No Accommodation For Acute Injuries

Human resources interpreted the hospital's obligations under the Americans With Disabilities Act to require no accommodation whatsoever for an acute injury. The hospital would not allow an employee to return to work unless the employee was 100% cleared for duty and no appliances such as canes, walkers or wheelchairs would be considered.



The hospital's policy was that an employee still treating for an injury or still using an appliance could not return to duty.

The hospital made no effort on an individual case-by-case basis to see if the employee was nevertheless capable of doing his or her job or would be capable if an accommodation could be made.

UNITED STATES DISTRICT COURT

ILLINOIS

January 17, 2008

The US District Court for the Northern District of Illinois ruled the hospital's understanding of its legal duties was mistaken. Whether her condition was acute or chronic, the nurse case manager was substantially limited in the major life activity of walking. That fit the legal definition of a disability.

She was more likely than not a qualified individual with a disability, as her physician had cleared her to return to work if certain conditions could be met which did not appear to conflict with the core requirements of her job.

The hospital did not communicate with the nurse case manager, that is, as the law phrases it, engage in an interactive process to determine what she could do, what, if anything, she could not do and what help she might need to do her job.

There was no way to tell if a reasonable accommodation was needed to permit her to return to work until she was back to 100%. The employer, not the employee, bears the legal burden when such failure to communicate occurs.

The court said that an employer's rule is discriminatory if the rule flat-out does not allow an injured employee who is not yet 100% to return to work with a cane or other appliance that might be necessary. ***Street v. Ingalls Memorial Hosp., 2008 WL 162761 (N.D. Ill, January 17, 2008).***

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