

Discrimination: Nurse's Case Is Turned Down.

An African-American RN complained to her supervisor that a co-worker had made a racially tinged remark that she considered offensive.

The supervisor immediately met with the co-worker to straighten her out.

When the co-worker made another comment two months later that offended the RN, she again reported it to her supervisor and her supervisor had another coaching session with the co-worker.

On another occasion the same co-worker said something disparaging about Mexicans, Asians and Jews, but the RN did not report that to her supervisor.

The RN herself was written up for work performance issues, but after she protested, the unfavorable write-up was removed from her personnel file.

Then she applied for a nursing position in another department that was considered a promotion and included a pay raise, and she got the position.

A racially hostile work environment is permeated with discriminatory intimidation, ridicule and insult.

UNITED STATES DISTRICT COURT
NORTH CAROLINA
February 4, 2013

The US District Court for the Middle District of North Carolina dismissed the RN's suit. There was insufficient evidence of a racially hostile work environment.

One co-worker made three comments which mentioned race. None of them were directed as insults at the RN herself. Nor were any of them physically threatening. One of the comments disparaged racial and ethnic groups to which she did not belong.

The RN's supervisor took prompt and appropriate remedial action which validated the RN's complaints.

There was no evidence that the RN's disciplinary history or available range of job opportunities was in any way impacted by racial bias. ***Henley v. Movant Health***, 2013 WL 424695 (M.D.N.C., February 4, 2013).

Disability Discrimination: Direct Care Is An Essential Function Of A Charge Nurse's Position.

The charge nurse asked to be permanently excused from direct care responsibilities such as lifting patients, pushing wheelchairs or stretchers, responding to emergencies or anything that required her to be on her feet for twenty to thirty minutes at a time.

The hospital argued correctly that direct patient care in a large metropolitan hospital means that any nurse on duty must be able to attend to the needs of patients at all times, to move and transport patients and to respond to medical emergencies like assisting a patient who may have collapsed to the floor.

Consequently, the hospital's job description for a charge nurse defines the fundamental responsibilities as supervision and coordination of direct patient care by other nurses, but still defines direct patient care by the charge nurse as an essential function of the charge nurse's position.

The court is required to defer to the employer's judgment as to what are essential versus marginal functions in an employee's job description.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
January 25, 2013

An RN charge nurse in a large metropolitan hospital sued her employer for disability discrimination because the hospital refused to excuse her permanently from all direct patient-care responsibilities.

Specifically she was denied an exemption from tasks that required physical effort like lifting patients, pushing stretchers and wheelchairs or standing on her feet for more than twenty minutes while attending to a patient's needs.

Her lawsuit pointed to Federal regulations interpreting the Americans With Disabilities Act which distinguish in general terms between so-called "essential" and "marginal" responsibilities of an employee's job description.

Qualified Individual With a Disability

A qualified individual with a disability, to benefit from the anti-discrimination laws, must be able, with or without reasonable accommodation, to perform the essential functions of the job.

The inability to perform marginal functions of the position, on the other hand, still permits the disabled individual to be considered qualified.

She claimed that her only essential function as a charge nurse was to supervise and coordinate the activities of other nurses, while direct patient care was only a marginal function for a charge nurse.

The US Court of Appeals for the Second Circuit (New York) dismissed the case.

Employer's Judgment

Essential vs. Marginal Job Functions

The courts as a rule are required to defer to the employer's judgment as to which functions are essential versus marginal in an employee's job description.

A charge nurse, according to this hospital's job description, in addition to being able to supervise others, must be able to provide direct patient care whenever necessary, and direct patient care is an essential function in the employer's judgment.

Direct patient care in a large metropolitan hospital requires a nurse staff nurse or a charge nurse to be able to attend to the needs of patients. ***Davis v. NY City Health***, 2013 WL 276076 (2nd Cir., January 25, 2013).