Employment: No Pregnancy Discrimination, But Court Sees Disability Discrimination.

A nursing assistant worked in the skilled nursing wing of a nursing facility.

Some of the patients' care plans require considerable assistance with transfers including use of electric lifts and transfer belts and moving patients in wheelchairs. Nursing assistants also ambulate patients and must be able to assist them safely to the floor if and when they fall.

The facility defines the nursing assistant position as extremely physically demanding and requires a nursing assistant to be able to lift up to 75 pounds.

A nursing assistant who receives a medical restriction against lifting up to 75 pounds is to be immediately removed from his or her position.

When this nursing assistant became pregnant her nurse practitioner put her on a 25 pound lifting restriction due to an umbilical hernia.

Unable to work, the nursing assistant was given twelve weeks of Family and Medical Leave Act (FMLA) leave as required by law.

After her leave expired she was terminated, without her supervisors considering her request for a housekeeping position with only a 25 pound lifting requirement.

No Pregnancy Discrimination
Possible Disability Discrimination

The US District Court for the District of Minnesota ruled the facility fulfilled its legal duties as to the nursing assistant's pregnancy by giving her the FMLA leave to which she was entitled.

It was not illegal to deny her a light-duty patient-care assignment with minimal lifting due to her pregnancy, while the facility did give light-duty assignments to other employees who needed light duty due to on-the-job injuries. That practice is perfectly legal as long as it is completely blind and impartial as to pregnant vs. non-pregnant employees injured or not injured on-the job, the Court said.

However, the facility had no legitimate reason not to consider the nursing assistant for a housekeeping position. **Rojas Chino v. Lifespace, __ F. Supp.3d __, 2016 WL 4522826 (D. Minn., August 29, 2016).**

No pregnancy discrimination occurs when an employer denies light duty to an employee with a lifting restriction due to pregnancy but at the same time gives light duty to employees with lifting restrictions from on-the-job injuries.

The courts generally accept the employer's definition of a job position's physical requirements.

The courts generally will not consider employees' statements as to how much and how often they actually have to lift on the job.

When told she could not stay on as an aide with her lifting restriction the aide asked for a housekeeping position as a reasonable accommodation.

The employer was wrong to not to consider her for a housekeeping position. Its lifting requirement was compatible with the restriction imposed by her medical provider and she needed no license, certification or prior experience to work in housekeeping.

Not considering the aide for a housekeeping position as a reasonable accommodation could be considered disability discrimination.

UNITED STATES DISTRICT COURT
MINNESOTA
August 29, 2016

Whistleblower: Guard Reported Nurse, Awarded Damages For Wrongful Firing.

A hospital security guard who was fired after he told local law enforcement that he saw a hospital nurse kick a patient was awarded $21,500.00 from the hospital for wrongful termination.

When she kicked the patient the nurse was not acting as a public official or in an official capacity or performing a public governmental function.

Nevertheless, a nurse at a public hospital kicking a patient is a matter of public concern.

The security guard who reported her to local law enforcement was speaking out as a citizen on a matter of public concern.

He has First Amendment protection against reprisals from his employer.

UNITED STATES DISTRICT COURT
TEXAS
August 29, 2016

The US District Court for the Southern District of Texas turned down the hospital's petition to throw out the jury's verdict in the fired guard's favor.

The Court ruled it was irrelevant that the nurse was not a public official and was not performing an official act. Nor was it relevant that the security guard was not reporting a systemic problem or pattern of management misfeasance at the hospital.

The simple act of a nurse mistreating a patient at a public hospital is a matter of public concern. Any citizen who speaks out about it is exercising his or her Constitutional rights, the Court said. **Thatcher v. OakBend, 2016 WL 4505878 (S.D. Tex., August 29, 2016).**