

Chronic Migraines: Court Turns Down Nurse's FMLA Lawsuit.

There were complaints that a newly hired labor and delivery nurse was disappearing from the unit, that her co-workers sometimes could not find her and that she was taking unauthorized breaks.

The nurse's explanation was that she suffered from chronic migraines. She took medication, but could still come down with a sudden debilitating episode.

After she had been at the hospital a year and was eligible for Family and Medical Leave Act (FMLA) leave, the procedure and paperwork were explained to her to take intermittent medical leave for her migraines. She then used her FMLA leave to take several authorized days off.

Nurse Abandoned Her Patient Was Found Sleeping in a Patient Room

One night around midnight the nurse had a visual aura that let her know that a migraine was coming on. She sat down for a moment and took her medication when she began to feel off balance and nauseous.

Around 2:00 a.m. other nurses found that the monitor for one of the nurse's patients had not been tracing for about twenty minutes. They went to look for the nurse and found her sleeping in an unused patient room across the hall. The nursing supervisor led her down to the E.R. She returned briefly to the unit to do some charting, then went home and called in sick the next day.

A week later she was fired.

No Violation of FMLA Rights

The US District Court for the Northern District of Ohio found no violation of the nurse's rights.

There was no question the nurse was eligible for FMLA intermittent leave for a serious health condition, had previously informed her employer of her serious health condition and was authorized to use FMLA leave for her serious health condition and that night did experience a genuine episode of her serious health condition.

However, the nurse was not excused from the hospital's policy for notifying her supervisor and getting approval. She had no right simply to abandon her patients. **Lasher v. Medina**, 2016 WL 455k642 (N.D. Ohio, February 5, 2016).

Drug Diversion, Abuse: Court Turns Down Nurses' Disability Discrimination Lawsuit.

The hospital's policy is not discriminatory to deny employment to individuals whose licenses were or had been restricted because they participated in a drug rehabilitation program.

The hospital's policy applies to all applicants with restrictions on their licenses, whether the applicant's license is or has been restricted because the applicant is disabled or for some other reason.

It may be plausible that that policy disproportionately impacts rehabilitated drug addicts, but these nurses have not been able to prove that conclusively.

The hospital has not hired any non-disabled applicants who had prior restrictions on their licenses that resulted from the applicant's participation in misconduct that was not connected to illicit drug abuse.

The hospital's policy is not discriminatory, because it applies evenhandedly to all nurses with current or prior restrictions on their licenses.

There is no proof these nurses' disability was a motivating factor in not hiring them.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
January 29, 2016

The US Court of Appeals for the Sixth Circuit upheld the US District Court decision we reported in January 2015.

Two nurses had been referred into the state board's program for chemically dependent nurses who had been caught diverting controlled substances.

They could get treatment and then transition back into nursing with restricted licenses which limited access to certain clinical settings and required on-the-job mentoring and reporting of their progress.

However, while they were off work undergoing drug rehab a change in corporate ownership at their workplace meant they had to reapply for their old jobs.

New management had a new policy that no licensed staff would be hired or rehired who had a current or previous restriction on a professional license.

Employer's Policy Was Neutral As to Disability

The telling factor for the US Court of Appeals for the Sixth Circuit (Kentucky) in the hospital's favor was that its policy was completely neutral as to disability.

In some instances a successfully rehabilitated substance abuser is considered a disabled person with full access to the rights guaranteed to disabled persons in the workplace by the US Americans With Disabilities Act and comparable state employment discrimination statutes.

However, at this hospital all applicants for licensed positions were denied employment if they had a past or current license restriction, whether or not the restriction had anything to do with a disability.

The nurses could have raised the issue that the hospital's policy as applied in actual fact differentially affected legally disabled persons who were now successfully rehabilitated from chemical dependency, but they could only speculate on that issue with no solid proof that it was true.

In a discrimination case the court does not second-guess the wisdom of a personnel policy. The court only looks at whether a policy is applied differentially to disabled versus non-disabled persons. **Lopreato v. Select**, __ Fed. Appx. __, 2016 WL 374086 (6th Cir., January 29, 2016).