

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Family And Medical Leave Act: Court Finds That Nurse's Rights Were Violated.

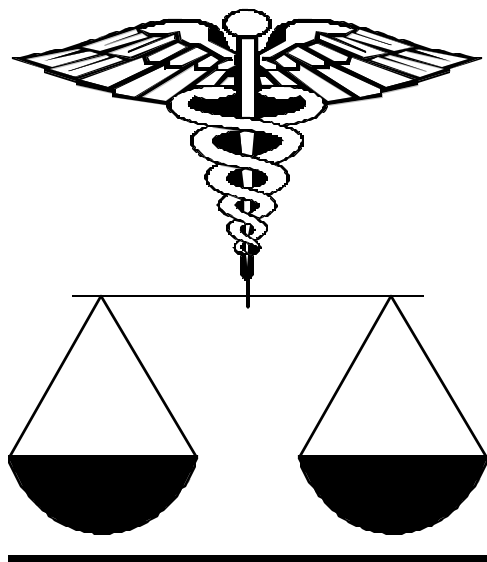
A psychiatric registered nurse had a confrontation with her supervisor on the unit. Minutes later the nurse told the supervisor she was too upset to perform her work and was leaving.

Before leaving the hospital she called her physician. He came to see her at the hospital and wrote a note recommending she not return to work at the hospital for two weeks. The nurse placed the note in her supervisor's mail box before she left that day.

Eight days later the nurse was fired for abandonment. She sued the hospital for violating her rights under the US Family and Medical Leave Act (FMLA). The US Circuit Court of Appeals for the Eighth Circuit ruled she had legal grounds to sue.

The hospital argued in its defense the nurse was not disabled and so she had no rights under the FMLA.

The hospital pointed out the nurse had already accepted a second job part-time in a nursing home and was already going through training, shadowing another nurse at the nursing home, when she walked off her job at the hospital. She reported for work and continued her orientation at the nursing home while she was away from her psychiatric nursing position at the hospital under her physician's orders.



***The FMLA applies to serious health conditions while the ADA applies to disabilities.***

***They are two entirely different legal concepts.***

***An employee medically incapacitated from working in his or her current position has a serious health condition, even if the employee is not disabled because there are other jobs the employee can perform.***

UNITED STATES COURT OF APPEALS,  
EIGHTH CIRCUIT, 2000.

The court ruled that did not matter. The hospital was confused between the legal definition of *disability* under the Americans With Disabilities Act (ADA) and *serious health condition* under the FMLA. They are two very different legal concepts, the court said.

### **Disability Discrimination (ADA)**

A person who files a disability discrimination lawsuit first of all has to demonstrate that he or she is disabled. That means the person is unable to work at a broad range of jobs or unable to perform one or more major life activities like walking, seeing or hearing.

If a person who cannot perform just one particular job files a lawsuit under the ADA, the person will be ruled not legally disabled and the discrimination lawsuit will be thrown out.

For example, there have been cases of nurses who cannot lift adult patients but can work with children, or who can work eight hour shifts but not twelve. They have more options than one particular job and are not disabled.

The person also has to show he or she is a qualified individual with a disability, with or without reasonable accommodation, although in this case the court did have to delve into that issue to decide the case.

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