

# LEGAL EAGLE EYE NEWSLETTER

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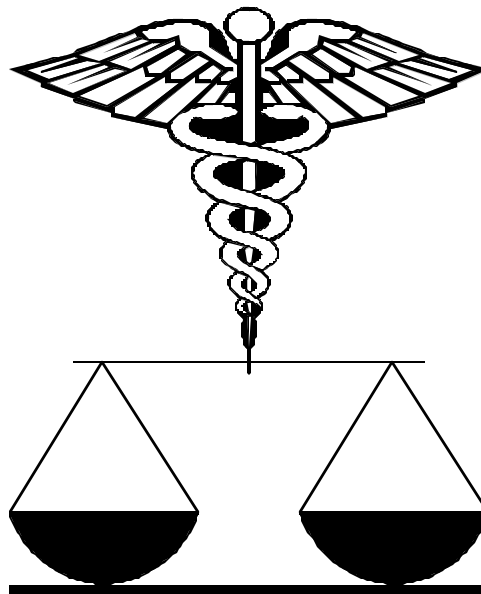
## Gender-Based Shift Assignments Upheld By Court Over Charge Of Discrimination.

**H** healthcare facilities may consider the privacy and therapeutic needs of patients in making gender-based shift assignments for caregivers, the U.S. Court of Appeals for the Third Circuit has ruled in a groundbreaking case.

The court threw out a sex discrimination lawsuit filed against a psychiatric hospital serving emotionally disturbed children and adolescents, many of whom were victims of sexual abuse and battery. The suit was filed by a female staff member who disputed being assigned to the midnight shift.

Her shift assignment was justified by the hospital on the grounds it was necessary for effective patient care to have at least one male and one female staff member on duty at all times on all shifts. According to the hospital, this policy was necessary for effective patient care for the population it served.

The court accepted the hospital's rationale that adolescent patients have hygiene, menstrual and sexuality concerns which can be discussed more freely with a staff member of the same sex. Child patients often must be accompanied to the bathroom, and sometimes must be bathed by a staff member. In addition, a therapeutic care environment for troubled children and adoles-



***Attention to the special needs of patients is crucial to effective caregiving.***

***The need for at least one male and one female staff on all shifts makes gender a bona fide occupational qualification for shift assignments in a psychiatric facility serving sexually abused and battered children and adolescents.***

UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT 1996.

cents requires both male and female role models. These role models, according to the court, serve as surrogate parental figures, whose therapeutic effectiveness hinges upon their own gender compared to the gender of the patient and/or the gender of the patient's abuser.

The court ruled that when a healthcare provider has a genuine rationale for gender-based staffing assignments, based on patients' actual care needs, gender is a bona fide occupational qualification.

In general, if an employer looks to an employee's gender as the sole basis for a decision by the employer which adversely affects the employee's rights, the courts will assume the employer is guilty of sex discrimination and will uphold a lawsuit filed by the employee.

However, according to the court's ruling in this case, when gender is used as the basis for caregivers' staffing assignments because patients' legitimate care needs require that caregivers' gender be taken into consideration in making such assignments, gender is a bona fide occupational qualification, and is not grounds for a valid sex discrimination lawsuit by an employee against the employer. **Healey vs. Southwood Psychiatric Hospital**, 76 F. 3d 128 (3rd Cir., 1996).

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