

## Hearing Impaired Nurse: Private Office Is Not A Reasonable Accommodation.

At times over the years the nurse, who suffered from seventy-five percent bilateral hearing loss and tinnitus, had had a private office, but after a move to a new building it was denied her as not feasible.

***The nurse argued that a private office would spare her co-workers the annoyance of her speaking loudly in person and on the phone.***

***The employer is not required to consider the supposed benefit to others in deciding if an accommodation is reasonable.***

UNITED STATES DISTRICT COURT  
OHIO  
September 25, 2013

The US District Court for the Southern District of Ohio dismissed the nurse's disability discrimination lawsuit.

The nurse, who had a genuine disability, asked for a private office to reduce the background noise that made it difficult although not impossible for her to hear.

However, the medical documentation did not establish that a private office was necessary for the nurse to be able to do her job. Her audiologist made several suggestions including face-to-face communication and a personal FM system but never said that a private office was necessary.

In choosing an accommodation that is reasonable, the employer is entitled to select an option that is less expensive and disruptive than what the employee wants, if it is sufficient to permit the employee to fulfill the essential functions of the job.

The benefit to others from the accommodation the employee wants, i.e., sparing her office mates from her loud talking, is not a factor the employer must consider. ***Obnamia v. Shinseki***, 2013 WL 5408267 (S.D. Ohio, September 25, 2013).

## Freedom Of Speech: Nurse's Complaints Not Protected.

A registered nurse practitioner was fired from her position in a state-operated university healthcare facility after a long series of complaints about how things were being run.

Her complaints were about lack of medical supplies and medications, inadequate nursing assistant staffing and clerical support, missed patient appointments by the physician and her own work schedule.

Her complaints were voiced to her collaborative physician, to the assistant director and the director of human resources and to the university president.

***The First Amendment protects Freedom of Speech only when someone speaks out as a citizen on a subject of public concern.***

***The First Amendment does not apply to an employee's complaints made up the chain of command about issues related to the employee's duties in the workplace.***

***An employee airing a workplace grievance to the appropriate person to handle work-related problems or making comments to fellow employees about fellow employees is not speaking out as a citizen about anything of public concern.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
October 9, 2013

The US District Court for the Eastern District of Pennsylvania ruled the First Amendment's guarantee of Freedom of Speech did not provide legal grounds for the nurse to sue. ***Aina v. Howard-Vital***, 2013 WL 5567798 (E.D.Pa., October 9, 2013).

## Sexual Harassment: CNA's Case Dismissed.

After a male co-worker tried to kiss her a second time, a female CNA filed a complaint.

The hospital's director of human resources promptly launched an investigation which turned up other instances of sexual harassment of co-workers at the hospital by the same individual.

He was suspended with pay, given counseling, issued a written warning and then allowed to return to work. He never committed any further sexual harassment.

However, after he continued to approach the CNA to question her if she was the one who filed the complaint, a second investigation was launched which resulted in his termination.

***An employer can be liable for sexual harassment by a co-worker if the employer knew or should have known about it and failed to take prompt and effective remedial action.***

***The hospital promptly investigated the first complaint, suspended the perpetrator with pay, disciplined him, and afterward he committed no further sexual harassment.***

***When it was learned he was still questioning his victim about the incident, a second investigation resulted in his termination.***

APPEALS COURT OF MASSACHUSETTS  
October 8, 2013

The Appeals Court of Massachusetts dismissed the CNA's lawsuit. The hospital listened to her complaints and took prompt and effective action. ***Sansoucy v. South-coast Health***, 84 Mass. App. Ct. 1114, 2013 WL 5524116 (Mass. App., October 8, 2013).