

## Hostile Workplace: Aide's Case To Go Forward.

An African-American woman who herself had emigrated to the US from Africa worked as a patient care assistant.

She was harassed by two coworkers at the hospital who called her racially offensive names. One of them elbowed and pushed her.

She complained to her supervisor, but for three weeks the harassment still went on while the supervisor simply assured her that labor relations at the hospital was looking into the problem.

***The employer is liable to an employee for a racially hostile environment created by the employee's coworker if the employer fails to take prompt and effective remedial action once the employer knows or should know about the problem.***

UNITED STATES DISTRICT COURT  
NEW YORK  
June 15, 2015

The US District Court for the Southern District of New York found grounds for the patient care assistant's civil rights lawsuit against the hospital.

For a hostile work environment to constitute a civil rights violation for which an employee can sue, the work environment must be infected with animosity toward the employee related to a legally protected characteristic like race, nationality, religion, gender or age, rather than simple personal animosity.

In this case the coworker's remarks were sufficiently tainted with plain racial innuendo to amount to a civil rights violation by the coworker's employer, if the employer failed to take prompt and effective remedial action.

The harassment did continue at least three weeks after the victim complained to her supervisor. Generally the courts expect to see immediate employer corrective action on a complaint of racial harassment in the workplace. Amar v. New York, 2015 WL 3754999 (S.D. N.Y., June 15, 2015).

## Worker's Comp: Nurse's Award For PTSD Upheld.

A nurse had a history of mental health treatment for post-traumatic stress disorder (PTSD) stemming from a chaotic and difficult family history that included an alcoholic and abusive father.

Her father also sexually abused the nurse's own five year-old daughter. That event was followed by a series of hospitalizations for the nurse for PTSD.

Then the nurse experienced a serious relapse of her PTSD symptoms soon after a new supervisor took over at the medical center where she worked.

The nurse went out on medical leave, never returned to her job and filed for worker's compensation benefits.

***Worker's compensation does not cover emotional disability arising out of bona fide personnel action. However, there is an exception for intentional infliction of emotional harm.***

APPEALS COURT OF MASSACHUSETTS  
June 16, 2015

According to the Appeals Court of Massachusetts, worker's compensation does not cover emotional stress, even if it is genuinely disabling, from garden-variety on-the-job conflict with a supervisor.

However, emotional harm triggered intentionally is compensable under worker's compensation, the Court ruled.

In this case the Court saw intentional acts by the nurse's supervisor toward her which exceeded the limits of appropriate workplace conduct.

An incident in which the nurse's supervisor yelled at her was a deliberate act of humiliation intended to make the nurse the scapegoat for something that was the supervisor's responsibility, the Court said.

It also appeared to the Court that the supervisor denied the nurse bereavement leave in a time of personal hardship as a purely malicious act of retaliation. Wicklow's Case, 2015 WL 3677763 (Mass. App., June 16, 2015).

## Conspiracy, Slander: Nurse's Suit Affirmed.

A physician who was not a hospital employee who served as staff liaison for the physicians who practiced in the hospital decided he wanted an emergency department supervising nurse fired.

The physician called for a meeting involving the nurse, the nurse's supervisor, the hospital's CEO and the hospital's HR manager. The physician voiced his objections to the nurse's conduct, particularly her frequent disputes with physicians over patient-care and non-patient-care issues in the emergency department.

Following the meeting, to keep her job the nurse was offered an improvement plan and demotion to a non-supervisory position. After she refused she quit, according to the hospital. She claimed she was fired.

***The jury awarded the nurse \$80,000 as damages against the hospital for conspiring with the physician to interfere with the nurse's employment relationship with the hospital.***

COURT OF APPEALS OF MISSISSIPPI  
May 26, 2015

The Court of Appeals of Mississippi affirmed the jury's verdict for the nurse.

The Court chose to disregard the apparent inconsistency that the verdict applied only to the hospital while the physician who was not a hospital employee was the one who slandered her.

Complaints to superiors about an employee's job performance are legally privileged from liability for slander. However, the privilege is not absolute. It is only a qualified legal privilege, meaning it does not protect disparaging information offered up with malicious intent.

The nurse did not have an employment contract with the hospital, yet that did not prevent the jury from finding the hospital conspired with the physician to interfere unjustly with the nurse's existing employment relationship with the hospital. South-ern Health v. Crausby, \_\_ So. 3d \_\_, 2015 WL 3541907 (Miss. App., May 26, 2015).