

Islamic Nurse: Court Discusses Religious Discrimination Issues.

The Superior Court of New Jersey carefully considered the complex allegations behind an Islamic nurse's religious discrimination case and ruled that, on balance, her hospital employer's actions were justified.

Anti-Muslim Remark By Supervisor

The nurse first pointed to the fact, which was corroborated by the testimony of others, that her supervisor had once said she did not want to hire a Muslim.

The court pointed out, however, that the nurse, a Muslim, was in fact hired. An employee or applicant for employment must suffer some sort of adverse employment action to have a discrimination case, under the legal analytic framework set down by the US Supreme Court, and since she was actually hired there was no adverse employment action.

The supervisor, when confronted, did apologize. The court said, in general, that one biased remark by a supervisor, standing alone, is not enough over which to sue.

Religion vs. Seniority Rights

The Islamic nurse wanted July 2nd off to attend a wedding which she stated was a religious celebration in her culture.

Her supervisor, however, told her that time off on the July 4th holiday weekend had to be allocated strictly on the basis of seniority under the hospital's nurse-staffing guidelines. The court pointed out that the general rule is this situation is that one employee's religious preference is only secondary to others' seniority rights.

Christmas / Non-Christian Employee

The Islamic nurse also objected to being required to work on Christmas. She claimed it was religious discrimination to force a non-Christian to work on a Christian holiday or holy day so that a Christian employee could take the day off.

The court ruled it simply is not religious discrimination to expect an employee to work on a day which has religious significance to others but does not have significance to the employee in question. **E-Sioufi v. St. Peter's University Hosp., 887 A.2d 1170 (N.J. App., December 29, 2005).**

In religious discrimination cases the courts use the same format for analysis as with other forms of discrimination.

Does the employee belong to a minority group?

Was the employee performing the job at a level that met the employer's legitimate expectations?

Did the employee suffer an adverse employment action?

Did other employees, non-members of the same minority group, not suffer similar adverse employment action?

If the answer is "yes" to all four questions the employer has to show a legitimate, non-discriminatory reason behind its actions.

In practical terms the courts look for thorough documentation of the employee's shortfalls and of the corrective action that was taken to convey the employer's expectations.

The employee gets the last word, to try to show that the issues the employer has raised are only a pretext behind an unlawful discriminatory motive, if that is truly the case.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
December 29, 2005