

# LEGAL EAGLE EYE NEWSLETTER

September 2001

*For the Nursing Profession*

Volume 9 Number 9

## Disability Discrimination: Lifting Is An Essential Function Of A Staff Nurse's Job.

A hospital staff nurse injured her back on the job and had to resign.

Six years later the hospital badly needed nurses and rehired her. The nurse manager of the rehabilitation unit set up an arrangement unique to the rehab unit by letting her work as "medication nurse." Her only duty was to pass medications, while other nurses had to perform all direct patient care tasks involving heavy lifting.

Technically the nurse in question was still a per diem relief staff nurse. The medication nurse arrangement was never reported to or sanctioned by the hospital's human relations department.

Then a new nurse manager took over on the rehab unit. She asked the medication nurse to provide a current doctor's report about her physical condition and lifting limitations.

Her doctor admitted he was trying to be optimistic when he said she could lift twenty pounds frequently. He had to admit she could not lift fifty pounds at all. The nurse was removed from the rehab unit.

The human resources manager offered to sit down with the nurse to look at the available positions at other facilities owned by the hospital's parent corporation and to explain the internal personnel transfer process.



***A hospital has the right to deem lifting fifty pounds an essential function of a staff nurse's position.***

***An employer can voluntarily give a disabled nurse light duty or allow her to depend on other nurses for lifting.***

***An employer does not have to continue a voluntary arrangement when sufficient staffing is not available.***

UNITED STATES COURT OF APPEALS,  
FIRST CIRCUIT, 2001.

The nurse insisted on keeping the favorable accommodation she had enjoyed as medication nurse on the rehab unit. She was terminated and filed suit for disability discrimination.

### **Lifting Is Essential Function**

The US Circuit Court of Appeals for the First Circuit ruled the hospital could expect staff nurses across the board to be able to lift fifty pounds.

### **Voluntary Arrangements**

The courts want to encourage voluntary arrangements to help disabled employees.

So, when an employer voluntarily carves out an arrangement for a disabled employee beyond what the law requires as reasonable accommodation, the courts do not require the employer to continue the arrangement at the risk of being sued for disability discrimination after staffing needs make the arrangement no longer feasible.

The court ruled that the medication nurse position was only a voluntary arrangement. The hospital's human resources department had never set up a specific job description for a medication nurse listing essential functions of the position that did not involve the same lifting requirements expected of a hospital staff nurse.

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