

# Employment Law: Court Says Nurse Can Claim Hospital Discriminated Against Her On The Basis Of Her National Origin.

**I**n a recent case, the Court of Appeal of California had to take a close look at all the facts surrounding a Hispanic nurse's claims of employment discrimination filed against a hospital in California. The court's analysis provides valuable insights into how courts will sort out discrimination claims after the fact. These insights can give some guidance before-the-fact to managers making hiring decisions, and help to reduce employment discrimination claims.

The nurse in question, according to the court, grew up in Mexico and attended a Catholic school which required fluency in American English which was taught by American teachers. The nurse's nursing education and prior job experience were obtained in Texas. The court pointed out that by outward appearances this nurse did not appear to be of Hispanic origin. The point the court was making is that our laws protect minority groups from discrimination. It makes no difference to what degree someone is perceived or not perceived to be a minority group member.

The nurse first came to work at the hospital as an agency nurse. An agency nurse is an employee of the agency and is not an employee of the hospital where she works. An agency nurse is considered an independent contractor vis a vis the hospital where she works. In California the employment discrimination laws do apply to independent contractors. In other states, and under Title VII of the U.S. Civil Rights Act, independent contractors are not covered by anti-discrimination laws. For what it is worth, in many places in the U.S. it is not against the law to discriminate against an independent contractor.

However, there is a flip-side. The agency nurse in this case applied for a staff job that was posted in the same unit where she had been working with good reviews as an agency nurse. At this point she came under the protection of the employment discrimination laws as a job applicant. And

***It is unlawful to discriminate on the basis of race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status or sex.***

***When a claim of employment discrimination has been filed, a court must sort out the situation after the fact to find out if the law has been violated.***

***A court will find illegal discrimination if the victim belongs to a protected class of persons like a racial or national minority group, if the victim applied for a job for which the employer was seeking applicants, and the victim was rejected despite being qualified for the job.***

***The employer can try to explain why a qualified minority applicant was rejected. The court must carefully scrutinize the employer's alleged reasons for rejecting a qualified minority applicant, and disregard what the employer says if it is merely a pretext for discrimination.***

***Without a legitimate and compelling reason for rejecting a qualified minority, the employer will be found guilty of discrimination.***

COURT OF APPEAL OF CALIFORNIA, 1997.

having worked in the same unit and having done the same job, it was virtually impossible for the hospital to claim there was no discrimination involved in refusing to hire her as a staff nurse.

The law says that if a minority applicant is rejected for a job for which he or she is qualified, the employer has the burden of explaining why. A court will listen to a legitimate and compelling explanation for turning down a minority applicant. But the courts are under a strict legal mandate to disregard any explanation that is just a pretext for discrimination.

In this case, however, it was not necessary to look around for circumstantial proof of discrimination. The nursing unit manager, without knowing the nurse in question was Hispanic, had said disparaging things to her about Hispanics as patients. This made it relatively easy to show that in rejecting the nurse's application for a staff position the nursing manager was directly motivated by discriminatory intent.

The court seemed to imply that supervisors with authority over hiring and other personnel decisions who have prejudiced attitudes are discrimination lawsuits just waiting to happen. Their racist remarks are red flags that must be heeded.

When the nurse was interviewed for the staff position, the unit manager asked where she was from, and learned for the first time she was from Mexico. But seemingly innocent questions delving into a person's race or national origin, religion, etc., which do not bear upon educational qualifications and professional experience, are strictly off-limits in a job interview.

In this case, when the nurse related that she was from Mexico the nurse manager asked her why she did not just go back to Mexico to work and abruptly ended the interview. For the court this was more proof that prejudice was a motivating factor in the nurse not being offered the job. **Sada vs. Robert F. Kennedy Medical Center**, 65 Cal. Rptr. 2d 112 (Cal. App., 1997).