

Gender-Based Shift Assignments: Federal Court Upholds Male CNA's Sex-Discrimination Lawsuit.

A male CNA was hired for the night shift and began working the night shift in a nursing home.

He was also working a second job during the day as a waiter.

His supervisors abruptly reassigned him to a day position. His shift differential for night work was gone. He was told he had to quit his second job during the day and he could no longer pick up extra hours on p.m. and days-off night shifts.

The nursing home started a new policy, he was told, prohibiting male caregivers from working second and third shifts, fearing a heightened risk of sexual assaults by male caregivers upon female residents during the late hours.

The CNA tried it for a while, then quit and sued for gender discrimination.

The nursing home adopted a new policy not to allow male caregivers to work p.m. or night shifts.

The nursing home's new policy is discriminatory on its face and violates Title VII of the US Civil Right Act.

The CNA has a legitimate right to sue for being cast in the role of a potential sexual predator simply on the basis of his male gender.

UNITED STATES DISTRICT COURT
OKLAHOMA
August 1, 2008

The US District Court for the Western District of Oklahoma ruled the CNA had a valid lawsuit.

The nursing home created a hostile work environment by labeling the CNA as a potential sexual predator based on nothing more than his male gender. His response, quitting, was not really quitting; he was forced out by the hostile environment at the facility.

Discrimination caused real consequences, loss of his second job, his night shift differential, his extra hours and ultimately his job as a CNA.

Even though this particular factual scenario is not illegal under the state anti-discrimination law in Oklahoma, it is clearly outlawed by Federal law, the court ruled. **Bair v. Colonial Plaza, 2008 WL 3154686 (W.D. Okla., August 1, 2008).**