

## Mental Illness: Court Allows Nurse's Disability Discrimination Case To Go Forward.

An RN suffered for many years from chronic depression, anxiety and post-traumatic stress disorder.

Over the years her exemplary job performance earned her a series of promotions into the ranks of the hospital's nursing supervisors.

These promotions, however, unfortunately for her, seemed to exacerbate her symptoms, and that led to discrepancies with her attendance which management felt were incompatible with her job.

In a complicated series of events the nurse was demoted back to staff nurse and then terminated altogether from her employment with the hospital.

She sued for disability discrimination. The US District Court for the Western District of Wisconsin ruled that, assuming the facts alleged in her lawsuit were true and could be proven in court, there were grounds for her case to go forward.

### Interactive Communication Process

A qualified individual with a disability has rights under state and Federal employment laws. A qualified individual with a disability is a disabled person who can perform essential job functions with or without reasonable accommodation.

To determine if reasonable accommodation will make an employee qualified who claims to or appears to have a disability, the employer must engage in an interactive communication process.

Failure of the employer to engage fully in the interactive communication process, in and of itself, amounts to disability discrimination, without the employee necessarily having to show that a feasible reasonable accommodation would have resulted from that process.

The Court said that when there is a mental health disability, the employer has a heightened burden to reach out to the employee to see what can be done.

Here that might have meant offering a more flexible approach to her working hours rather than insisting on rigid start times, given that she had become a supervisor and was no longer a staff nurse. **Walters v. May Clinic**, 2014 WL 549889 (W.D. Wisc., February 11, 2014).

***When an employee's disability is related to mental rather than physical health, the employer has a heightened duty to initiate or react to an employee's requests for assistance.***

***In a case involving an employee with mental illness, the communication process becomes more difficult.***

***The employer has to take some extra responsibility and take the small step of inquiring about possible accommodations.***

***The employer should take on some of the burden of triggering an interactive process for an employee with a mental health problem because an employee with mental illness may have difficulty effectively relaying medical information about the illness, particularly when the symptoms are flaring and reasonable accommodation is needed.***

***The nurse in this case cannot be faulted because she asked for "help" rather than "reasonable accommodation." The law does not require such an explicit request from the employee, and certainly not where there is a mental illness.***

UNITED STATES DISTRICT COURT  
WISCONSIN  
February 11, 2014

## Mental Illness: Court Turns Down Nurse's Disability Discrimination Case.

A staff nurse whose title was Peripherally Inserted Central Catheter Nurse suffered from anxiety and panic attacks which interfered with his attendance.

The hospital approved Family and Medical Leave Act leave for single days intermittently and sometimes weeks at a time and at least once changed his schedule at his request.

One day when he returned from leave he refused to see any patients at all and then left work early without permission.

He was terminated and sued for disability discrimination.

***Regular attendance is an essential function of a position which involves on-site presence to perform direct patient care.***

***Being allowed to arrive at work or go home at any time or stay home unpredictably is not a reasonable accommodation.***

UNITED STATES DISTRICT COURT  
FLORIDA  
February 3, 2014

The US District Court for the Middle District of Florida dismissed his case.

Reasonable accommodation can include schedule modifications or adjustments to the work environment for the benefit of a disabled employee.

However, regular scheduled on-site presence is an essential function of a direct patient-care nursing position.

Allowing a direct patient-care nurse indefinite and unpredictable absences from on-site responsibilities would be an unreasonable accommodation, as it would require others to take over extra duties and could compromise the employer's ability to provide urgently needed care to its acute patients. **Mecca v. Florida Health**, 2014 WL 408431 (M.D. Fla., February 3, 2014).