

Nurse Running Employer's Errand: Employer Can Be Liable To Pay Damages For Auto Accident.

The nurse in this case was asked to deliver stock IV fluids to the home of one of the hospital's home health patients, on the nurse's way home from work.

A nurse on an errand for the nurse's employer can be considered to be acting within the course and scope of the nurse's employment.

In general, the employer is liable for damages for an employee's act of negligence committed within the course and scope of the employee's employment.

In this case, the nurse had completed her errand for the employer and was on her own way home when the motor vehicle accident occurred. She was liable to pay damages, but the hospital was not.

COURT OF APPEAL OF LOUISIANA, 1997.

She left at her usual quitting time, made the delivery, drove back past the hospital, and on her way home had a motor vehicle accident. The jury found the nurse negligent, but the judge ruled the hospital was not responsible to pay personal injury damages in this particular case.

The point is that a nurse on an errand for the nurse's employer in many circumstances is considered to be in the course and scope of employment, and the employer will be liable for injuries caused to others in an auto accident. ***Bertrand vs. Bollich***, 695 So. 2d 1384 (La. App., 1997).

Narcotics Abuse: Nurse With Restricted License Is Not A Qualified Individual With A Disability.

Assuming the job description for the nursing position requires the nurse to be able to pass narcotics and/or to account for supplies of narcotics, a nurse with a restricted license that does not permit the nurse access to narcotics is not a "qualified individual with a disability" as the courts define that phrase under the laws against disability discrimination.

The disability discrimination laws do prohibit employment discrimination against successfully rehabilitated users of illegal drugs, by making a successfully rehabilitated addict a "qualified individual with a disability" who has the right to sue for discrimination.

But the laws do not make a nurse with a restricted license a "qualified individual with a disability" for a nursing position that would call for access to narcotics or other mind altering substances contrary to the nurse's restricted license.

UNITED STATES DISTRICT COURT,
KANSAS, 1997.

The nurse in this case failed to mention in his interview for a charge nurse position in a nursing home that his license was restricted. He was not allowed access to narcotics or other mind-altering medications. The restriction had been imposed following a long history of trouble with narcotics addiction. When he finally produced and tendered his license to his employer as required by law, shortly after beginning employment, he was fired. He sued for disability discrimination.

He claimed he was a successfully rehabilitated drug abuser, having been clean and sober thirty days before he reported to work at this job. The nurse's suit alleged he was by law a "qualified individual with a disability," protected from employment discrimination by the Americans With Disabilities Act. The U.S. District Court for the District of Kansas threw out the lawsuit. The court took a two-pronged approach to analyzing the case.

First, a nurse with a restricted license who cannot have access to narcotics is not a "qualified individual with a disability," with respect to a nursing position for which the job description requires the ability to pass and/or account for narcotics or mind-altering medications.

Second, this nurse was not a "successfully rehabilitated" drug user, just because he had been clean and sober thirty days. He was still a "current" drug user, based on the court's 20/20 hindsight after he was fired. Unfortunately, for employers who must make difficult decisions, and for employees who have successfully overcome addictions, the courts have not clearly defined just how long persons with past problems must be in remission before they get protection from the anti-discrimination laws. ***Scott vs. Beverly Enterprises - Kansas, Inc.***, 968 F. Supp. 1430 (D. Kan., 1997).