

## Needlestick: Court Permits Lawsuit Against Nurse's Employer.

A paramedic responded to a 911 call at a medical facility to treat a resident who was having a seizure.

When he got there the paramedic was told by the nurse that the patient had the HIV virus. During the ensuing struggle the nurse accidentally punctured the paramedic's hand with a needle that was contaminated with the HIV+ patient's blood.

Over the next sixteen months the paramedic was tested six times for HIV. One test was initially positive, but then ruled negative after re-testing.

The paramedic did not become HIV positive. However, he and his spouse sued the nurse's employer for mental anguish and emotional distress over his fear of contracting AIDS.

***Since the patient actually was HIV positive, the victim of a negligent needlestick injury has a reasonable fear of contracting AIDS and can sue for mental anguish and emotional distress.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
November 1, 2004

The New York Supreme Court, Appellate Division, noted the courts require in these cases that the patient actually be proven HIV positive. Otherwise fear of getting HIV is not considered realistic and is not enough to support a lawsuit for damages above and beyond the physical wound from the needlestick itself.

In this case the court ruled the paramedic's and his spouse's fear of HIV was realistic for six months and he could sue for that, but not sixteen months as he claimed in his lawsuit. Damanti v. Jamaica Community Adolescent Program, 2004 WL 2452803 (N.Y. App., November 1, 2004).

## Nurse With Diabetes, Multiple Medical Problems: Employer Violated His ADA Rights.

***It was obvious that the nurse had numerous medical problems which made it very difficult for him to continue covering floor shifts as a direct patient-care nurse in the nursing home.***

***He had rights under the Americans With Disabilities Act (ADA) which his employer ignored.***

***No one ever met with the nurse to discuss his limitations and how those limitations could be accommodated. He was just told he had to work the floor and that was his only option.***

***Once a disabled employee requests accommodation, the appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the employee.***

***The ADA requires the employer to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless the employer can demonstrate that the accommodation would mean an undue hardship for the employer.***

UNITED STATES DISTRICT COURT  
TEXAS  
October 19, 2004

A nurse was hired as a charge nurse, then promoted to an office administrative position overseeing Medicare claims processing. His promotion came with the provision that he would still have to work as a direct-care nurse covering floor shifts as needed.

Then he began to suffer a series of serious medical problems. He had heart bypass surgery and began dialysis for end-stage renal disease. A diabetic foot ulcer confined him to a wheelchair. Yet he was called upon to work the floor from his wheelchair whether he wanted to or not.

After being terminated he sued for disability discrimination under the Americans With Disabilities Act.

The US District Court for the Northern District of Texas believed his rights as a disabled person were violated.

**Reasonable Accommodation:  
Employer Refused the Required  
Interactive Process**

He had asked to be relieved of floor duty because of his ulcerated toe. Legally that opened the door to the requirement that his employer communicate with him in an interactive process to determine what his needs were and how his needs could possibly be met to both sides' satisfaction.

His needs were so blatant that he did not have to provide a doctor's note stating that he could not work the floor. Another person might have had to supply medical documentation and a capacity analysis if the disability and the needs were less obvious, but not this individual.

If the employer has failed to engage in what the ADA calls the interactive process, the legal analysis can stop there. The ADA has been violated. Disability discrimination has occurred.

It was not necessary to go on to weigh whether it would or would not have been a reasonable accommodation to take him off the floor and allow him to work only in the office in his administrative capacity. Vore v. Colonial Manor Nursing Center, 2004 WL 2348229 (N.D. Tex., October 19, 2004).